

SYNEX CORP
Form S-8
January 09, 2004

As filed with the Securities and Exchange Commission on January 9, 2004

Registration No. 333-_____

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

SYNEX CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

94-2703333
(I.R.S. Employer
Identification No.)

3797 Spinnaker Court

Fremont, California
(Address of principal executive offices)

94538
(Zip Code)

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SYNEX Corporation 2003 Employee Stock Purchase Plan,

SYNEX Information Technologies, Inc. 1997 Stock Option/Stock Issuance Plan,

SYNEX Information Technologies, Inc. 1993 Stock Option Plan, And

SYNEX Information Technologies, Inc. Special Executive Stock Option/Stock Issuance Plan

(Full title of the plans)

Robert T. Huang

President and Chief Executive Officer

SYNEX Corporation

3797 Spinnaker Court

Fremont, CA 94538

(Name, address and telephone number of agent for service)

Copy to:

Davina K. Kaile, Esq.

Pillsbury Winthrop LLP

2550 Hanover Street

Palo Alto, CA 94304

(650) 233-4500

CALCULATION OF REGISTRATION FEE

| Title of Securities | Amount To | Proposed | Proposed | Amount of |
|----------------------------|-------------------------|-----------------------|-----------------------|---------------------|
| To Be Registered(1) | Be Registered(2) | Maximum | Maximum | Registration |
| | | Offering Price | Aggregate | Fee |
| | | Per Share(3) | Offering Price | |

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| | | | | |
|---|--------------|---------|---------------|----------|
| Common Stock, par value \$0.001 per share: To be issued under the SYNEX Corporation 2003 Stock Incentive Plan | 5,506,649 | \$14.95 | \$ 82,324,403 | \$ 6,661 |
| Common Stock, par value \$0.001 per share: To be issued under the SYNEX Corporation 2003 Employee Stock Purchase Plan | 500,000 | \$14.95 | \$ 7,475,000 | \$ 605 |
| Outstanding options to purchase shares of Common Stock, par value \$0.001 per share | 8,536,299(4) | \$14.95 | \$127,617,671 | \$10,325 |
| Total Registration Fee | N/A | N/A | N/A | \$17,591 |

- (1) The securities to be registered include options and rights to acquire Common Stock.
- (2) Pursuant to Rule 416, this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend, recapitalization or any other similar transaction effected without receipt of consideration, which results in an increase in the number of the Registrant's outstanding shares of Common Stock.
- (3) Estimated pursuant to Rules 457(h) and 457(c) under the Securities Act of 1933, as amended (the Securities Act) solely for the purposes of calculating the registration fee, based on the average of the high and low prices of the Common Stock as reported on the New York Stock Exchange on January 7, 2004.
- (4) Includes 8,536,299 shares subject to outstanding options granted under the SYNEX Information Technologies, Inc. 1997 Stock Option/Stock Issuance Plan, SYNEX Information Technologies, Inc. 1993 Stock Option Plan, and SYNEX Information Technologies, Inc. Special Executive Stock Option/Stock Issuance Plan. Options that expire, terminate or are cancelled prior to exercise will be made available for issuance under the 2003 Stock Incentive Plan.

The Registration Statement shall become effective upon filing in accordance with Rule 462 under the Securities Act.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Program Annual Information.*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the Securities Act) and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Securities and Exchange Commission are hereby incorporated by reference in this Registration Statement:

(a) Registrant's prospectus dated November 25, 2003 contained in the Registrant's Post-Effective Amendment No. 1 to Form S-1 (File No. 333-108543), filed on November 25, 2003, which contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed.

(b) The description of Registrant's Capital Stock contained in Registrant's registration statement on Form 8-A, filed November 7, 2003 pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The validity of the shares of common stock offered hereby has been passed upon for the Registrant by Pillsbury Winthrop LLP, Palo Alto, California.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933. Article VII of the Registrant's Amended and Restated Certificate of Incorporation (Exhibit 3(i)3 to the Form S-1 Registration Statement) and Section 6 of the Registrant's bylaws (Exhibit 3(ii)3 to the Form S-1 Registration Statement) provide for indemnification of the Registrant's directors, officers, employees and other agents to the extent and under the circumstances permitted by the Delaware General Corporation Law.

The Registrant has entered into Indemnification Agreements (Exhibit 10.6 to the Form S-1 Registration Statement) with its officers and directors that will require the Registrant to, among other things, indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers to the fullest extent not prohibited by law.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

See Index to Exhibits, which list of exhibits is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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| <u>Name</u> | <u>Title</u> | <u>Date</u> |
|-----------------------|--------------|-----------------|
| /s/ David Rynne | Director | January 9, 2004 |
| David Rynne | | |
| /s/ Young Sohn | Director | January 9, 2004 |
| Young Sohn | | |
| /s/ Dwight Steffensen | Director | January 9, 2004 |
| Dwight Steffensen | | |

INDEX TO EXHIBITS

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 5.1 | Opinion of Pillsbury Winthrop LLP. |
| 23.1 | Consent of PricewaterhouseCoopers LLP, independent accountants. |
| 23.2 | Consent of Pillsbury Winthrop LLP (included in Exhibit 5.1). |
| 24.1 | Power of Attorney (see page 3). |
| 99.1* | SYNEX Corporation 2003 Stock Incentive Plan. |
| 99.2** | SYNEX Corporation 2003 Employee Stock Purchase Plan. |
| 99.3*** | SYNEX Information Technologies, Inc. 1997 Stock Option/Stock Issuance Plan. |
| 99.4**** | SYNEX Information Technologies, Inc. 1993 Stock Option Plan. |
| 99.5***** | SYNEX Information Technologies, Inc. Special Executive Stock Option/Stock Issuance Plan. |

* Incorporated by reference to Amendment No. 2, Exhibit 10.4 to Registrant's Registration Statement on Form S-1, No. 333-108543.
** Incorporated by reference to Amendment No. 2, Exhibit 10.5 to Registrant's Registration Statement on Form S-1, No. 333-108543.
*** Incorporated by reference to Exhibit 10.2 to Registrant's Registration Statement on Form S-1, No. 333-108543.
**** Incorporated by reference to Exhibit 10.1 to Registrant's Registration Statement on Form S-1, No. 333-108543.
***** Incorporated by reference to Exhibit 10.3 to Registrant's Registration Statement on Form S-1, No. 333-108543.