

ADVANCED ENERGY INDUSTRIES INC

Form S-8

May 19, 2003

Table of Contents

As filed with the Securities and Exchange Commission on May 19, 2003

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Advanced Energy Industries, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

84-0846841
(I.R.S. Employer
Identification No.)

1625 Sharp Point Drive, Fort Collins, Colorado 80525
(Address, including zip code, of principal executive offices)

2003 Stock Option Plan

(Full title of the plan)

Michael El-Hillow
Executive Vice President and Chief Financial Officer
Advanced Energy Industries, Inc.
1625 Sharp Point Drive
Fort Collins, Colorado 80525
(Name and address of agent for service)

With a copy to:
Carissa C. W. Coze
Thelen Reid & Priest LLP
333 So. Hope Street, Suite 2900
Los Angeles, CA 90071

970-221-4670
(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
Common Stock, \$0.001 par value	3,250,000	\$ 10.43	\$33,897,500	\$2,742.31

Edgar Filing: ADVANCED ENERGY INDUSTRIES INC - Form S-8

-
- (1) Also includes any additional shares of common stock that may become issuable under the 2003 Stock Option Plan as a result of the anti-dilution and adjustment provisions of the plan.
 - (2) Estimated solely for the purpose of determining the registration fee in accordance with Rule 457(h) under the Securities Act of 1933. The above calculation is based on the average of the reported high and low prices of the Common Stock on the Nasdaq National Market on May 16, 2003.
-
-
-

TABLE OF CONTENTS

PART I

Item 1. Plan Information

Item 2. Registrant Information and Employee Plan Annual Information

PART II

Item 3. Incorporation of Documents by Reference

Item 4. Description of Securities

Item 5. Interests of Named Experts and Counsel

Item 6. Indemnification of Directors and Officers

Item 7. Exemption from Registration Claimed

Item 8. Exhibits

Item 9. Undertakings

SIGNATURES

EXHIBIT INDEX

EX-5 Opinion/Consent of Thelen Reid & Priest LLP

Ex-23.1 Consent of KPMG LLP

Ex-23.2 Information Re: Consent of Arthur Andersen

Table of Contents

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

This registration statement on Form S-8 is being filed to register 3,250,000 shares of common stock of Advanced Energy Industries, Inc. issuable under the Advanced Energy Industries, Inc. 2003 Stock Option Plan. The documents containing the information specified in Part I of Form S-8 will be or have been sent or given to participants in the plan, as specified by Rule 428(b)(1) under the Securities Act of 1933. These documents are not submitted to the Securities and Exchange Commission with this registration statement, in accordance with the introductory Note to Part I of Form S-8. These documents, together with the documents incorporated by reference into this registration statement in Item 3 of Part II, shall constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933.

Item 1. Plan Information

See above.

Item 2. Registrant Information and Employee Plan Annual Information

See above.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The documents listed below, which we have filed with the Securities and Exchange Commission, are specifically incorporated by reference into this registration statement and form an integral part of this registration statement. Information in documents that we file with the Securities and Exchange Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 subsequent to the date of this registration statement will automatically update and supercede the information contained in the listed documents, until we file a post-effective amendment to this registration statement that either indicates that all securities covered by this registration statement have been sold or deregisters all securities unsold as of the date of the post-effective amendment.

(a) Annual Report on Form 10-K for the year ended December 31, 2002, filed on March 27, 2003;

(b) All other reports filed by us pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, since the end of the fiscal year covered by the annual report referred to in (a) above; and

Table of Contents

(c) The description of our common stock contained in the registration statement on Form 8-A filed under the Securities Exchange Act of 1934 on October 12, 1995, including any amendment or report filed for the purpose of updating such description.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

None.

Item 6. Indemnification of Directors and Officers

As permitted by the Delaware General Corporation Law, our Restated Certificate of Incorporation provides that no director of our company shall be personally liable to our company or any stockholder for monetary damages for breach of fiduciary duty as a director, except for liability: (i) for any breach of the duty of loyalty to our company or our stockholders; (ii) for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of the law; (iii) arising from payment of dividends or approval of a stock purchase in violation of Section 174 of the Delaware General Corporation Law; or (iv) for any action from which the director derived an improper personal benefit. While our Restated Certificate of Incorporation provides protection from awards for monetary damages for breaches of the duty of care, it does not eliminate the director's duty of care. Accordingly, our Restated Certificate of Incorporation will not affect the availability of equitable remedies, such as an injunction, based on a director's breach of the duty of care. The provisions of our Restated Certificate of Incorporation described above apply to our officers only if they are also directors acting in their capacity as directors, and does not apply to our officers who are not directors.

In addition, our bylaws provide that we shall indemnify our executive officers (as defined in Rule 3b-7 under the Securities Exchange Act of 1934) and directors, and any employee who serves as an executive officer or director of any corporation at our request, to the fullest extent permitted under and in accordance with the Delaware General Corporation Law; provided, however, that we may modify the extent of such indemnification by individual contracts with our executive officers and directors; and, provided further, that we shall not be required to indemnify any executive officer or director in connection with any proceeding (or part thereof) initiated by such person unless: (i) such indemnification is expressly required to be made by law; (ii) the proceeding was authorized by our board of directors; (iii) such indemnification is provided by us, in our sole discretion, pursuant to the powers vested in our company under the Delaware General Corporation Law; or (iv) such indemnification is required to be made under Article XI, Section 43, Subsection (d) of our bylaws. Under the Delaware General Corporation Law, directors and officers as well as employees and individuals may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation as a derivative action) if they acted in good faith and in a manner they reasonably believed to be in or

Table of Contents

not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful.

We maintain a policy of directors and officers liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

<u>Exhibit Number</u>	<u>Description</u>
4.1	Restated Certificate of Incorporation, as amended (1)
4.2	Bylaws (2)
5	Opinion of Thelen Reid & Priest LLP
23.1	Consent of KPMG LLP
23.2	Information regarding consent of Arthur Andersen LLP
23.3	Consent of Thelen Reid & Priest LLP (3)
24	Power of Attorney (4)

- (1) Incorporated by reference from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, filed August 13, 2001 (File No. 000-26966).
- (2) Incorporated by reference from our registration statement on Form S-1, filed September 20, 1995, as amended (File No. 33-97188).
- (3) Included in Exhibit 5.
- (4) Included on the signature pages to this registration statement.

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 of 1933;

Table of Contents

(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 thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) of the Securities Act of 1933 if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(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) shall not apply if the information required to be included in a post-effective amendment by such paragraphs is contained in one or more periodic reports filed with or furnished to the Securities and Exchange Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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; and

(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.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Fort Collins, State of Colorado, on the 16th day of May, 2003.

Advanced Energy Industries, Inc.

By: /s/ Michael El-Hillow

Michael El-Hillow
Executive Vice President and Chief
Financial Officer

POWER OF ATTORNEY

Each person whose signature appears below hereby appoints Douglas S. Schatz and Michael El-Hillow, and each of them severally, acting alone and without the other, his true and lawful attorney-in-fact with authority to execute in the name of each such person, and to file with the Securities and Exchange Commission, together with any exhibits thereto and other documents therewith, any and all amendments (including without limitation post-effective amendments) to this registration statement necessary or advisable to enable the registrant to comply with the Securities Act of 1933 and any rules, regulations and requirements of the Securities and Exchange Commission in respect thereof, which amendments may make such changes in this registration statement as the aforesaid attorney-in-fact deems appropriate.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Dated: May 16, 2003

/s/ Douglas S. Schatz

Douglas S. Schatz
Chairman of the Board, President and Chief
Executive Officer
(Principal Executive Officer)

Dated: May 16, 2003

/s/ Michael El-Hillow

Michael El-Hillow
Executive Vice President and Chief Financial
Officer
(Principal Financial Officer)

Table of Contents

Dated: May 16, 2003

/s/ Richard P. Beck

Richard P. Beck
Director

Dated: May 16, 2003

/s/ Trung T. Doan

Trung T. Doan
Director

Dated: May 16, 2003

/s/ Arthur A. Noeth

Arthur A. Noeth
Director

Dated: May 16, 2003

/s/ Elwood Spedden

Elwood Spedden
Director

Dated: May 16, 2003

/s/ Gerald M. Starek

Gerald M. Starek
Director

Table of Contents

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
4.1	Restated Certificate of Incorporation, as amended (1)
4.2	Bylaws (2)
5	Opinion of Thelen Reid & Priest LLP
23.1	Consent of KPMG LLP
23.2	Information regarding consent of Arthur Andersen LLP
23.3	Consent of Thelen Reid & Priest LLP (3)
24	Power of Attorney (4)

-
- (1) Incorporated by reference from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, filed August 13, 2001 (File No. 000-26966).
- (2) Incorporated by reference from our registration statement on Form S-1, filed September 20, 1995, as amended (File No. 33-97188).
- (3) Included in Exhibit 5.
- (4) Included on the signature pages to this registration statement.