

EXTREME NETWORKS INC

Form S-8

December 01, 2017

As filed with the Securities and Exchange Commission on December 1, 2017

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

EXTREME NETWORKS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0430270
(I.R.S. Employer
Identification Number)

6480 Via Del Oro

San Jose, California 95119

(408) 579-2800

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Extreme Networks, Inc. 2013 Equity Incentive Plan

(Full Title of the Plan)

Katy Motiey

Chief Administrative Officer – HR, General Counsel & Corporate Secretary

Extreme Networks, Inc.
6480 Via Del Oro

San Jose, California 95119

(408) 579-2800

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

Tad Freese, Esq.

Latham & Watkins LLP

140 Scott Drive

Menlo Park, California 94025

Telephone: (650) 328-4600

Facsimile: (650) 463-2600

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer
 Non-accelerated filer
 Emerging Growth Company

(Do not check if a smaller reporting company)

Accelerated filer
 Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

| Title of Securities | Amount | Proposed Maximum Offering Price | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee |
|---|------------------|---------------------------------------|---|-------------------------------|
| to be Registered | Registered(1) | Per Share(2) | Offering Price(2) | Registration Fee |
| Common Stock, par value \$0.001 per share | 9,000,000 shares | \$12.59 | \$113,310,000 | \$14,107.09 |

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement (this "Registration Statement") shall also cover any additional shares of common stock, par value \$0.001 per share, of Extreme Networks, Inc. ("Common Stock") which become issuable under the Extreme Networks, Inc. 2013 Equity Incentive Plan as amended and restated (the "Incentive Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of shares of the Registrant's outstanding Common Stock.

(2) The proposed maximum offering price per share has been estimated in accordance with Rules 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee. The computation is based upon the average of the high and low prices of the Registrant's Common Stock as reported on the NASDAQ Global Market on December 1, 2017.

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

Proposed sales to take place as soon after the effective date of the Registration Statement as awards under the above named plan are granted, exercised and/or distributed.

EXPLANATORY NOTE

Extreme Networks, Inc. (the “Registrant”) has prepared this registration statement in accordance with the requirements of Form S-8 under the Securities Act to register an additional 9,000,000 shares of the Registrant’s Common Stock, which are authorized for issuance under the Incentive Plan. The Registrant previously filed with the Securities and Exchange Commission (the “SEC”) a Registration Statement on Form S-8 on November 22, 2013 (File No. 333-192507) (the “First Registration Statement”), registering 21,709,153 shares of Common Stock that were authorized for issuance under the Incentive Plan and a Registration Statement on Form S-8 on January 20, 2017 (File No. 333-215648) (together with the First Registration Statement, the “Prior Registration Statements”), registering 8,300,000 shares of Common Stock that were authorized for issuance under the Incentive Plan. Pursuant to General Instruction E of Form S-8, the contents of the Prior Registration Statements are incorporated herein by reference.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

In this Registration Statement, Extreme Networks, Inc. is sometimes referred to as “Registrant,” “we,” “us” or “our.”

Item 3. Incorporation of Documents by Reference.

The SEC allows us to “incorporate by reference” the information we file with them, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference herein is considered to be part of this Registration Statement, and later information filed with the SEC will update and supersede this information. We hereby incorporate by reference into this Registration Statement the following documents previously filed with the SEC:

- (a) Our Annual Report on Form 10-K for the fiscal year ended June 30, 2017, as filed with the SEC on September 13, 2017 (File No. 000-25711);
- (b) The information specifically incorporated by reference into our Annual Report on Form 10-K for the fiscal year ended June 30, 2017 from our Definitive Proxy Statement on Schedule 14A, filed with the SEC on September 25, 2017 (File No. 000-25711);
- (c) Our Quarterly Report on Form 10-Q for the quarter ended September 30, 2017, filed with the SEC on November 9, 2017 (File No. 000-25711);
- (d) Our Current Reports on Form 8-K filed with the SEC on July 18, 2017 (as amended by a Current Report on Form 8-K/A filed on September 29, 2017), August 2, 2017, October 3, 2017 at 8:16:33 (with respect to Items 1.01 and 1.02 and Exhibit 10.1 of Item 9.01 only), October 3, 2017 at 17:10:56, October 30, 2017 (with respect to Items 1.01, 2.01, 9.01(a) and 9.01(b) and Exhibit 10.1 of Item 9.01(d) only and as amended by a Current Report on Form 8-K/A filed on November 3, 2017) and November 15, 2017 (File No. 000-25711); and
- (e) The description of our Common Stock contained in our registration statement on Form 8-A (File No. 000-25711), filed with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on April 5, 1999, including any amendments or reports filed for the purpose of updating such description.

All documents that we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment to the Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all of such 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 the filing of such documents; except as to any portion of any future annual or quarterly report to stockholders, or document or current report furnished under any current or future items of Form 8-K (including current Items 2.02 and 7.01, and exhibits furnished on such form that relate to such items), in each case, that is not deemed filed under such provisions. For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Under no circumstances will any information furnished under Items 2.02 or 7.01 of Form 8-K, and exhibits furnished on such form that relate to such items, be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

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Item 8. Exhibits.

| Exhibit Number | Description of Document | Incorporated by Reference | | |
|----------------|--|---------------------------|-------------|----------------------------------|
| | | Form | Filing Date | Exhibit Number Provided Herewith |
| 4.1 | <u>Restated Certificate of Incorporation.</u> | 8-K | 12/17/2010 | 3.1 |
| 4.2 | <u>Amended and Restated Bylaws.</u> | 8-K | 3/31/2011 | 3.1 |
| 4.3 | <u>Certificate of Designation, Preferences and Rights of the Terms of the Series A Preferred Stock.</u> | 10-K | 9/26/2001 | 3.7 |
| 5.1 | <u>Opinion of Latham & Watkins LLP.</u> | | | X |
| 23.1 | <u>Consent of Independent Registered Public Accounting Firm.</u> | | | X |
| 23.2 | <u>Consent of Latham & Watkins LLP (included in Exhibit 5.1).</u> | | | X |
| 24.1 | <u>Power of Attorney (included on signature page hereto).</u> | | | X |
| 99.1(#) | <u>Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | | | X |
| 99.2(#) | <u>Form of market based restricted stock units award agreement under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-Q | 1/30/2015 | 99.1 |
| 99.3(#) | <u>Form of restricted stock unit award agreement under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-K | 9/6/2016 | 10.15 |
| 99.4(#) | <u>Form of performance based restricted stock unit award agreement under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-K | 9/6/2016 | 10.16 |
| 99.5(#) | <u>Form of option award agreement under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-K | 9/6/2016 | 10.17 |
| 99.6(#) | <u>Form of restricted stock unit award agreement under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-Q | 11/2/2016 | 10.1 |
| 99.7(#) | <u>Form of performance based restricted stock unit award agreement under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-Q | 11/2/2016 | 10.2 |
| 99.8(#) | <u>Form of option award agreement under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-Q | 11/2/2016 | 10.3 |
| 99.9(#) | <u>Form of performance stock unit under Extreme Networks, Inc. Amended and Restated 2013 Equity Incentive Plan.</u> | 10-K | 9/13/2017 | 10.21 |

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| | | | | |
|----------|---|------|-----------|-------|
| 99.10(#) | <u>Form of 2017 restricted stock unit award agreement under Extreme Networks, Inc. 2013 Equity Incentive Plan</u> | 10-K | 9/13/2017 | 10.42 |
| 99.11(#) | <u>Form of Performance-based Vesting Restricted Stock Unit Grant Notice and Grant Agreement August 2017.</u> | 10-Q | 11/9/2017 | 10.4 |

#Indicates management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 San Jose, California, on December 1, 2017.

EXTREME NETWORKS, INC.

By: /s/ B. DREW DAVIES

Name: B. Drew Davies

Title: Executive Vice President, Chief Financial Officer (Principal Accounting Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below hereby constitutes and appoints B. Drew Davies as attorney-in-fact, each with full power of substitution and full power to act for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming that such attorney-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|-----------------------------|---|------------------|
| /s/ EDWARD B. MEYERCORD III | President and Chief Executive Officer, Director | December 1, 2017 |
| Edward B. Meyercord III | (principal executive officer) | |
| /s/ B. DREW DAVIES | Executive Vice President, Chief Financial Officer | December 1, 2017 |
| B. Drew Davies | (principal accounting officer) | |
| /s/ JOHN C SHOEMAKER | Director, Chairman of the Board | December 1, 2017 |
| John C Shoemaker | | |
| /s/ CHARLES CARINALLI | Director | December 1, 2017 |
| Charles Carinalli | | |
| /s/ KATHLEEN M. HOLMGREN | Director | December 1, 2017 |
| Kathleen M. Holmgren | | |

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/s/ EDWARD H. KENNEDY

Director

December 1, 2017

Edward H. Kennedy

/s/ RAJ KHANNA

Director

December 1, 2017

Raj Khanna