

MoSys, Inc.
Form S-8
July 28, 2010

As filed with the Securities and Exchange Commission on July 28, 2010

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, DC 20549

FORM S-8

**REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933**

MoSys, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0291941
(IRS employer
identification no.)

**755 N. Mathilda Avenue
Sunnyvale, California 94085
(408) 731-1800**

(Address of principal executive offices)

MoSys, Inc. 2010 Equity Incentive Plan

MoSys, Inc. 2010 Employee Stock Purchase Plan
(Full title of the plan)

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James Sullivan, Chief Financial Officer and Vice President
MoSys, Inc.
755 N. Mathilda Avenue
Sunnyvale, California 94085
(408) 731-1800

(Name and address of agent for service)

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 Accelerated filer Non-accelerated filer Smaller reporting company
 (Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

| Title Of Securities To Be Registered | Amount To Be Registered (3) | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount Of Registration Fee (4) |
|---|------------------------------------|--|--|---------------------------------------|
| Common Stock, par value \$0.01 per share To be issued under the MoSys, Inc. 2010 Equity Incentive Plan | 2,497,711 | \$ 4.61(4) | \$ 11,514,448 | \$ 820.98 |
| To be issued under the MoSys, Inc. 2010 Equity Incentive Plan (1) | 1,502,289 | \$ | \$ | \$ |
| To be issued under the MoSys, Inc. 2010 Employee Stock Purchase Plan | 1,578,472 | \$ 4.61(4) | \$ 7,276,756 | \$ 518.83 |
| To be issued under the MoSys, Inc. 2010 Employee Stock Purchase Plan (2) | 421,528 | \$ | \$ | \$ |
| TOTAL: | 6,000,000 | \$ | 18,791,204 | \$ 1,339.81 |

(1) Represents shares of the Common Stock of MoSys, Inc. (the Registrant) that were previously registered for issuance under the MoSys, Inc. Amended and Restated 2000 Stock Option and Equity Incentive Plan and that remained available for future awards as of the termination of such plan on June 30, 2010. Pursuant to Rule 457(p) under the Securities Act, the registration fee previously paid with respect to such shares is being carried forward and applied to the registration of shares hereunder. Accordingly, no registration fee with respect to such shares is being paid at this time.

(2) Represents shares of the Registrant's Common Stock that were previously registered for issuance under the MoSys, Inc. 2000 Employee Stock Purchase Plan and that remained available for issuance as of the termination of such plan on June 30, 2010. Pursuant to Rule 457(p) under the Securities Act, the registration fee previously paid with respect to such shares is being carried forward and applied to the registration of shares hereunder. Accordingly, no registration fee with respect to such shares is being paid at this time.

(3) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers an indeterminate number of additional shares of common stock that may be offered or issued by reason of stock splits, stock dividends or similar transactions.

(4) Estimated solely for purposes of calculating the amount of the registration fee. The estimate is made pursuant to Rule 457(c) and (h)(1) of the Securities Act. Maximum fee is calculated pursuant to Section 6(b) of the Securities Act.

EXPLANATORY NOTE

This Registration Statement on Form S-8 covers the registration of an aggregate of 6,000,000 shares of the Registrant's Common Stock which may be offered pursuant to the MoSys, Inc. 2010 Equity Incentive Plan or the MoSys, Inc. Employee Stock Purchase Plan. Of the 6,000,000 shares of Common Stock being registered hereunder, 1,923,817 shares (the Prior Shares) are carried forward from registration statements on Form S-8 filed by the Registrant with the Securities and Exchange Commission (the SEC) on June 29, 2001 (333-64302), March 27, 2003 (333-104071), September 15, 2004 (333-118992), March 16, 2005 (333-123364), March 16, 2006 (333-132492), March 13, 2007 (333-141264), March 17, 2008 (333-149756) and March 16, 2009 (333-157964) (collectively, the Prior Registration Statements). 1,502,289 of the Prior Shares were originally registered for issuance pursuant to the MoSys, Inc. Amended and Restated 2000 Stock Option and Equity Incentive Plan (the Prior Incentive Plan), and the filing fee paid by the Registrant with respect to the registration of such shares was \$63.26. The remaining 421,578 Prior Shares were originally registered for issuance pursuant to the MoSys, Inc. 2000 Employee Stock Purchase Plan (the Prior ESPP, and together with the Prior Incentive Plan, the Prior Plans), and the filing fee paid by the Registrant with respect to the registration of such shares was \$37.87.

Both of the Prior Plans were terminated on June 30, 2010. Accordingly, on July 27, 2010, the Registrant filed a post-effective amendment to each of the Prior Registration Statements in order to remove from registration the Prior Shares covered by such Prior Registration Statement. The post-effective amendments described the Registrant's intention to carry forward the Prior Shares and the associated filing fees to this newly filed Registration Statement, in accordance with Instruction E of Form S-8 and the guidance provided by the Division of Corporation Finance under G.89 of the Manual of Publicly Available Telephone Interpretations.

PART I
INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information required in Part I will be sent or given to employees participating in the Plans, as specified by Rule 428(b)(1) promulgated under the Securities Act. In accordance with the instructions to Part I of Form S-8, such documents will not be filed with the Securities and Exchange Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 promulgated under the Securities Act. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this registration statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE
REGISTRATION STATEMENT

Item 3. Incorporation of Documents By Reference

With respect to the registration of the shares issuable pursuant to the 2010 Equity Incentive Plan and 2010 Employee Stock Purchase Plan, the following documents are incorporated by reference into this Registration Statement:

1. The Annual Report on Form 10-K and Form 10-K/A for the fiscal year ended December 31, 2009, filed by the Registrant with the Securities and Exchange Commission (the SEC) on March 26, 2010 and April 30, 2010, respectively;
2. The Quarterly Report on Form 10-Q for the quarter ended March 31, 2010, filed by the Registrant with the SEC on May 12, 2010;
3. All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act filed by the Registrant after December 31, 2009; and
4. The description of the capital stock of the Registrant contained in Amendment No. 7 to the Registration Statement on Form S-1 filed on June 26, 2001 (Registration No. 333-43122) and in the Form 8-A/A filed on December 22, 2004 (Commission File No. 000-32929).

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement and 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, are deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the respective dates of filing of such documents. Any statement contained in this Registration Statement or in a document incorporated by reference shall be deemed modified or superseded to the extent that a statement contained in any subsequently filed document which also is or is deemed to be incorporated by reference herein or therein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed to constitute a part hereof, except as so modified or superseded.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

II-1

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the "DGCL") authorizes a court to award, or a corporation's board of directors to grant, indemnity to any person who is made a party to any third-party action, suit or proceeding (other than an action by or in the right of the corporation) on account of being a current or former director, officer, employee or agent of the corporation (or serving at the request of the corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise) against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding, if (1) the person acted in good faith and in a manner reasonably believed to be in the best interests of the corporation (or in some circumstances, at least not opposed to its best interests), and (2) in a criminal action or proceeding, the person had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification may be made in respect of any claim, issue or matter as to which the person is adjudged to be liable to the corporation unless the Delaware Court of Chancery or the court in which the action or suit was brought determines upon application that the person is fairly and reasonably entitled to indemnity for the expenses which the court deems to be proper. To the extent that a current or former director, officer, employee or agent is successful in the defense of such an action, suit or proceeding, the corporation is required by the DGCL to indemnify such person for reasonable expenses incurred thereby. Expenses (including attorneys' fees) incurred by such persons in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of that person to repay the amount if it is ultimately determined that person is not entitled to be so indemnified.

As permitted by the DGCL, our Bylaws provide that the Registrant shall indemnify its directors and officers, and may indemnify its employees and other agents, to the fullest extent permitted by law. The Bylaws also permit the Registrant to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether the Bylaws would permit indemnification. The Registrant has obtained officer and director liability insurance with respect to liabilities arising out of certain matters, including matters arising under the Securities Act.

The Registrant also has entered into agreements with its directors and executive officers that, among other things, indemnify them for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by them in any action or proceeding, including any action by or in the right of the Registrant, arising out of such person's services as a director or officer of the Registrant, any subsidiary of the Registrant or any other company or enterprise to which the person provides services at the request of the Registrant.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

See Exhibit Index which is incorporated herein by reference.

Item 9. Undertakings.

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 the 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 the registration statement;

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided however, that paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the 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.

(4) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to 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.

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 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 Act and will be governed by the final adjudication of such issue.

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 Sunnyvale, state of California on July 28, 2010.

MOSYS, INC.

By: /s/ James W. Sullivan
James W. Sullivan
Vice President of Finance and Chief Financial Officer

POWER OF ATTORNEY

Each person whose individual signature appears below hereby authorizes and appoints Leonard Perham and James W. Sullivan, and each of them, with full power of substitution and resubstitution and full power to act, as his true and lawful attorney-in-fact and agents to act in his name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file, any and all registration statements relating to the same offering that are to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with exhibits thereto and other documents in connection therewith, and any and all amendments to this Registration Statement, including any and all post-effective amendments and amendments thereto, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorney-in-fact and agent or his substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

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

| Signature | Title | Date |
|--|---|---------------|
| /s/ Leonard Perham Leonard Perham | Chief Executive Officer, President and Director (principal executive officer) | July 28, 2010 |
| /s/ James W. Sullivan James W. Sullivan | Vice President and Chief Financial Officer (principal financial and accounting officer) | July 28, 2010 |
| /s/ Carl E. Berg Carl E. Berg | Director | July 28, 2010 |
| /s/ Tommy Eng Tommy Eng | Director | July 28, 2010 |
| /s/ Chi-Ping Hsu Chi-Ping Hsu | Director | July 28, 2010 |
| /s/ James D. Kupec James D. Kupec | Director | July 28, 2010 |

Exhibit Index

| Exhibit Number | Exhibit Description |
|-----------------------|--|
| 4.1 (1) | Specimen Common Stock Certificate |
| 4.8 (2) | MoSys, Inc. 2010 Equity Incentive Plan |
| 4.9 (3) | MoSys, Inc. 2010 Employee Stock Purchase Plan |
| 4.10 | Form of Option Agreement for Stock Option Grant pursuant to the MoSys, Inc. 2010 Equity Incentive Plan |
| 5.1 | Opinion of Bingham McCutchen LLP |
| 23.1 | Consent of Burr Pilger Mayer, Inc., Independent Registered Public Accounting Firm |
| 23.2 | Consent of Bingham McCutchen LLP (included in Exhibit 5.1) |
| 24.1 | Power of Attorney (included on the signature page hereto) |

(1) Incorporated by reference to the same-numbered exhibit to the Registrant's Registration Statement on Form S-1, as amended, originally filed August 4, 2000, declared effective June 27, 2001 (Commission File No. 333-43122).

(2) Incorporated by reference to Appendix A to the Registrant's proxy statement on Schedule 14A filed with the Securities and Exchange Commission on May 26, 2010 (Commission File No. 000-32929).

(3) Incorporated by reference to Appendix B to the Registrant's proxy statement on Schedule 14A filed with the Securities and Exchange Commission on May 26, 2010 (Commission File No. 000-32929).