

MERGE HEALTHCARE INC  
Form S-8  
June 20, 2014

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As filed with the Securities and Exchange Commission on June 20, 2014.

Registration No. 333-

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM S-8

Registration Statement Under  
The Securities Act of 1933

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MERGE HEALTHCARE INCORPORATED  
(Exact name of Registrant as Specified in its Charter)

DELAWARE 39-1600938  
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

350 North Orleans Street, 1st Floor  
Chicago, Illinois 60654  
(Address of Registrant's Principal Executive Offices) (Zip Code)

MERGE HEALTHCARE INCORPORATED  
2000 EMPLOYEE STOCK PURCHASE PLAN  
(Full title of the plan)

Justin C. Dearborn  
Chief Executive Officer  
Merge Healthcare Incorporated  
350 North Orleans Street, 1st Floor  
Chicago, Illinois 60654  
(Name and address of agent for service)

(312) 565-6868  
(Telephone number, including area code of agent for service)

Copy to:  
Mark A. Harris, Esq.  
Jeffrey R. Shuman, Esq.  
Jenner & Block LLP  
353 North Clark Street

Chicago, Illinois 60654

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CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)(2)	Proposed		Amount of Registration Fee
		Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(3)	
Common Stock, \$0.01 par value per share	500,000 shares	\$ \$2.27	\$1,135,000	\$ 146.18

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(1) Represents 500,000 shares of common stock, \$0.01 par value per share (the “Common Stock”), of Merge Healthcare Incorporated (the “Registrant”), reserved for issuance under the Merge Healthcare Incorporated 2000 Employee Stock Purchase Plan, as amended (the “Plan”).

(2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement on Form S-8 (the “Registration Statement”) shall also cover any additional shares of Common Stock that become issuable under the Plan by reason of any reorganization, merger, recapitalization, reclassification, stock split, reverse stock split or similar transaction.

(3) Estimated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and (h) of the Securities Act. The proposed maximum offering price per share is based upon the average of the high and low per share prices for the Common Stock as reported on The Nasdaq Global Select Market on June 16, 2014.

This Registration Statement shall become effective automatically upon the date of filing in accordance with Rule 462 of the Securities Act.

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PART I. PLAN INFORMATION

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants in the Plan as specified by Rule 428(b)(1) of the Securities Act. Such documents are not required to be filed with the Securities and Exchange Commission (the "Commission") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, 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

In accordance with Instruction E to Form S-8, the information in Items 5 and 7 of the registration statement on Form S-8 filed by the Registrant with the Commission on July 6, 2000, SEC file number 333-40882, is hereby incorporated by reference in this Registration Statement and made a part hereof.

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are hereby incorporated by reference in this Registration Statement and made a part hereof:

- (a) the Registrant's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2013 (the "Annual Report"), as filed with the Commission on March 17, 2014;
- (b) the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014, as filed with the Commission on April 30, 2014;
- (c) The Registrant's Current Reports on Form 8-K, as filed with the Commission on January 8, 2014; February 20, 2014; May 5, 2014 and June 19, 2014; and

(d) The description of the Registrant's common stock set forth in its Registration Statement on Form 8-A, as filed with the Commission on January 9, 1998, including all amendments and reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date hereof, but prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities 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. Notwithstanding the foregoing, nothing in this registration statement shall be deemed to incorporate (i) any information provided in documents incorporated by reference herein that is described in paragraph (d)(1), (d)(2), (d)(3) or (e)(5) of Item 407 of Regulation S-K promulgated by the Commission or Item 2.02 or Item 7.01 of any Form 8-K, or that is otherwise furnished under applicable Commission rules rather than filed, or (ii) any exhibits to the extent furnished in connection with such items.

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Item 4. Description of Securities.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant is a Delaware corporation. Reference is made to Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL"), which enables a corporation in its original certificate of incorporation or an amendment to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except:

For any breach of the director's duty of loyalty to the corporation or its stockholders;

For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

Pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions); or

For any transaction from which a director derived an improper personal benefit.

Reference is also made to Section 145 of the DGCL, which provides that a corporation may indemnify any persons, including officers and directors, who are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was a director, officer, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such director, officer, employee or agent acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the person's conduct was unlawful. A Delaware corporation may indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses that such officer or director actually and reasonably incurred. The indemnification permitted under the DGCL is not exclusive, and a corporation is empowered to purchase and maintain insurance against liabilities, whether or not indemnification would be permitted by statute.

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Article VIII of the Registrant's Bylaws provides in effect that, subject to certain limited exceptions, the Registrant shall exculpate its directors in accordance with Section 102(b)(7) of the DGCL and indemnify its directors and officers to the fullest extent not prohibited by the DGCL. The Registrant's directors and officers are insured under policies of insurance maintained by the Registrant, subject to the limits of the policies, against certain losses arising from any claims made against them by reason of being or having been such directors or officers. In addition, the Registrant has entered into contracts with certain of its directors providing for indemnification of such persons by the Registrant to the full extent authorized or permitted by law, subject to certain limited exceptions.

Item 8. Exhibits.

5 Opinion of Jenner & Block LLP.

23.1 Consent of Jenner & Block LLP (Included in Exhibit 5).

23.2 Consent of BDO USA, LLP.

24 Power of Attorney.

Merge Healthcare Incorporated 2000 Employee Stock Purchase Plan, as amended (incorporated by reference 99.1 from Annex A to the Registrant's Revised Definitive Proxy Statement on Schedule 14A filed with the Commission on April 29, 2014).

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;

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. 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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective 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 (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act, that are incorporated by reference in the Registration Statement.

That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment (2) 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.

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 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.

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 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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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, Merge Healthcare Incorporated 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 Chicago, State of Illinois, on June 20, 2014.

Merge Healthcare Incorporated

By: /s/ Justin C. Dearborn  
Justin C. Dearborn  
Chief Executive Officer  
(principal executive officer)

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

Signature	Title	Date
/s/ Justin C. Dearborn Justin C. Dearborn	Chief Executive Officer and Director (principal executive officer)	June 20, 2014
* Steven M. Oreskovich	Chief Financial Officer (principal financial officer and principal accounting officer)	June 20, 2014
* Dennis Brown	Director	June 20, 2014
* William J. Devers Jr.	Director	June 20, 2014
* Nancy J. Koenig	Director	June 20, 2014
* Matthew M. Maloney	Director	June 20, 2014
* Richard A. Reck	Director	June 20, 2014
* Neele E. Stearns, Jr.	Director	June 20, 2014
*By: /s/ Justin C. Dearborn Justin C. Dearborn Attorney-in-Fact**		

\*\*By authority of the Power of Attorney filed as Exhibit 24 to this Registration Statement.

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EXHIBIT INDEX

Exhibit No.	Description of Document
<u>5</u>	Opinion of Jenner & Block LLP.
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<u>23.2</u>	Consent of BDO USA, LLP.
<u>24</u>	Power of Attorney.
99.1	Merge Healthcare Incorporated 2000 Employee Stock Purchase Plan, as amended (incorporated by reference from Annex A to the Registrant's Revised Definitive Proxy Statement on Schedule 14A filed with the Commission on April 29, 2014).

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