

NEOPHOTONICS CORP  
Form S-8  
February 10, 2012

As filed with the Securities and Exchange Commission on February 10, 2012

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**NEOPHOTONICS CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**94-3253730**  
(I.R.S. Employer  
Identification No.)

**NeoPhotonics Corporation**

**2911 Zanker Road**

**San Jose, California 95134**

**(408) 232-9200**

(Address of principal executive offices)

**2010 Equity Incentive Plan**

**2010 Employee Stock Purchase Plan**

(Full title of the plans)

**Timothy S. Jenks**

**Chief Executive Officer**

**c/o NeoPhotonics Corporation**

**2911 Zanker Road**

**San Jose, California 95134**

**(408) 232-9200**

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

*Copies to:*

**John H. Sellers, Esq.**

**Cooley LLP**

**3175 Hanover Street**

**Palo Alto, California 94304**

**(650) 843-5000**

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. (Check one):

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

**CALCULATION OF REGISTRATION FEE**

Title of Securities  to be Registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum	Proposed Maximum	Amount of Registration Fee <sup>(4)</sup>
		Offering Price Per Share <sup>(4)</sup>	Aggregate Offering Price <sup>(4)</sup>	
Common Stock, par value \$0.0025 per share	870,190 shares <sup>(2)</sup>	\$ 5.77	\$ 5,020,996	\$ 575
Common Stock, par value \$0.0025 per share	600,000 shares <sup>(3)</sup>	\$ 5.77	\$ 3,462,000	\$ 397
<b>Total</b>	<b>1,470,190 shares</b>	<b>N/A</b>	<b>\$ 8,482,996</b>	<b>\$ 972</b>

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the Securities Act ), this Registration Statement shall also cover any additional shares of the Registrant's Common Stock that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.
- (2) Represents an increase in the number of shares of Common Stock reserved for issuance under the NeoPhotonics Corporation 2010 Equity Incentive Plan pursuant to an evergreen provision contained therein.
- (3) Represents an increase in the number of shares of Common Stock reserved for issuance under the NeoPhotonics Corporation 2010 Employee Stock Purchase Plan pursuant to an evergreen provision contained therein.
- (4) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The offering price per share and aggregate offering price are based on the average of the high (\$5.86) and low (\$5.67) sales prices of the Registrant's Common Stock on February 6, 2011, as reported on the New York Stock Exchange.

**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 1,470,190 shares of the Registrant's Common Stock to be issued under the Registrant's equity incentive plans pursuant to evergreen provisions contained therein, as follows: 870,190 shares issuable pursuant to the Registrant's 2010 Equity Incentive Plan and 600,000 shares issuable pursuant to the Registrant's 2010 Employee Stock Purchase Plan.

The Registrant's Form S-8 Registration Statements filed with the Securities and Exchange Commission (the *Commission*) on February 2, 2011 (File No. 333-172031), relating to the Registrant's 2010 Equity Incentive Plan and 2010 Employee Stock Purchase Plan, is incorporated herein by reference and made a part hereof.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents previously filed by the Registrant with the Commission (File No. 001-35061) are incorporated into this Registration Statement on Form S-8 by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2010, filed with the Commission on March 28, 2011;
- (b) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, filed with the Commission on May 12, 2011;
- (c) The Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011, filed with the Commission on August 11, 2011;
- (d) The Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, filed with the Commission on November 10, 2011;
- (e) The Registrant's Current Reports on Form 8-K (excluding any information and exhibits furnished under either Item 2.02 or Item 7.01 thereof) filed with the Commission on June 22, 2011, July 5, 2011, August 4, 2011, August 29, 2011, October 4, 2011 and December 16, 2011; and
- (f) The description of the Registrant's Common Stock contained in the Registration Statement on Form 8-A filed with the Commission on January 28, 2011, under the Securities Exchange Act of 1934, as amended (the *Exchange Act*).

All reports and other documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement, 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 then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be part hereof from the date of filing of such reports and documents.

Any statement contained in a report or document incorporated or deemed to be incorporated by reference into this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed report or document which is also 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.

**EXHIBITS**

<b>Exhibit</b>	<b>Exhibit</b>
<b>Number</b>	<b>Title</b>
4.1 <sup>(1)</sup>	Amended and Restated Certificate of Incorporation of NeoPhotonics Corporation.
4.2 <sup>(2)</sup>	Amended and Restated Bylaws of NeoPhotonics Corporation.
4.3 <sup>(3)</sup>	Specimen Common Stock Certificate of NeoPhotonics Corporation.
5.1	Opinion of Cooley LLP.
23.1	Consent of Cooley LLP (included in Exhibit 5.1).
23.2	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.
24.1	Power of Attorney (reference is made to the signature page of this Form S-8).
99.1 <sup>(4)</sup>	NeoPhotonics Corporation 2010 Equity Incentive Plan and forms of agreement thereunder.
99.2 <sup>(5)</sup>	NeoPhotonics Corporation 2010 Employee Stock Purchase Plan.

- (1) Filed as Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-35061), filed with the Commission on February 10, 2011, and incorporated herein by reference.
- (2) Filed as Exhibit 3.4 to the Registration Statement on Form S-1, as amended (File No. 333-166096), filed with the Commission on November 22, 2010, and incorporated herein by reference.
- (3) Filed as Exhibit 4.1 to the Registration Statement on Form S-1, as amended (Reg. No. 333-166096), filed with the Commission on May 17, 2010, and incorporated herein by reference.
- (4) Filed as Exhibit 10.4 to the Annual Report on Form 10-K (File No. 001-35061), filed with the Commission on March 28, 2011, and incorporated herein by reference.
- (5) Filed as Exhibit 10.5 to the Registration Statement on Form S-1, as amended (333-166096), filed with the Commission on November 19, 2010, and incorporated by reference herein.

**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 the City of San Jose, State of California, on February 10, 2012.

**NEOPHOTONICS CORPORATION**

By: /s/ Timothy S. Jenks  
 Timothy S. Jenks  
 President, Chief Executive Officer and Chairman of  
 the Board of Directors

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints **TIMOTHY S. JENKS** and **JAMES D. FAY**, jointly and severally, as his true and lawful attorneys-in-fact and agent, with full power of substitution and resubstitution, 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 on Form S-8, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-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 in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, 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.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Timothy S. Jenks Timothy S. Jenks	President, Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	February 10, 2012
/s/ James D. Fay James D. Fay	Chief Financial Officer (Principal Financial and Accounting Officer)	February 10, 2012
/s/ Bandel L. Carano Bandel L. Carano	Director	February 10, 2012
/s/ Allan Kwan Allan Kwan	Director	February 10, 2012
/s/ Björn Olsson Björn Olsson	Director	February 10, 2012
/s/ Michael J. Sophie Michael J. Sophie	Director	February 10, 2012

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/s/ Lee Sen Ting

Director

February 10, 2012

Lee Sen Ting

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