

Turtle Beach Corp
Form S-8
April 02, 2019

As filed with the Securities and Exchange Commission on April 2, 2019.

Registration No.

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

TURTLE BEACH CORPORATION

(Exact name of Registrant as specified in its charter)

11011 Via Frontera, Suite A/B

Nevada
(State of Incorporation)

San Diego, California 92127
(Address of principal executive
offices)

27-2767540
(I.R.S. Employer

Identification No.)

(Zip Code)

TURTLE BEACH CORPORATION

2013 STOCK-BASED INCENTIVE COMPENSATION PLAN (AS AMENDED)

(Full Title of the Plan)

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John T. Hanson

Chief Financial Officer

Turtle Beach Corporation

11011 Via Frontera, Suite A/B

San Diego, California 92127

(Name and Address of Agent for Service)

(888) 496-8001

(Telephone Number, Including Area Code, of Agent for Service)

With a Copy to:

Gregory A. Scherneck, Esq.

Dechert LLP

Cira Centre, 2929 Arch Street

Philadelphia, PA 19104

(215) 994-4000

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, smaller reporting company and emerging growth company in Rule 12b-2 under the Exchange Act.

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Emerging growth 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 to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

| Title Of Securities | Amount To Be Registered (1) | Proposed | Proposed | Amount Of Registration Fee |
|---|-----------------------------------|--|--|-------------------------------|
| | | Maximum Offering Price Per Share | Maximum Aggregate Offering Price | |
| Common Stock, par value \$0.001 per share | 2,300,000 | \$11.68(2) | \$26,864,000(2) | \$3,255.92 |

- (1) This Registration Statement relates to 2,300,000 shares of common stock, par value \$0.001 per share (Common Stock), of Turtle Beach Corporation (the Registrant) not previously registered and available for issuance under the Registrant s 2013 Stock-Based Incentive Compensation Plan (as amended, the Plan) pursuant to amendments to the Plan approved by the shareholders of the Registrant on April 1, 2015 (effective May 20, 2015) and June 12, 2018. Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this registration statement shall also cover any additional shares of Common Stock which become issuable under the Plan pursuant to this registration statement by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares of Common Stock. The Registrant has previously registered 1,977,696 shares of Common Stock of the Registrant for issuance under the Plan.
- (2) The Proposed Maximum Offering Price Per Share and Proposed Maximum Aggregate Offering Price have been calculated solely for purposes of determining the registration fee for this offering under Rule 457(c) and (h) under the Securities Act on the basis of the average of the high and low selling price per share of Common Stock on April 1, 2019, as reported by the NASDAQ Stock Market.

EXPLANATORY NOTE

On April 1, 2015 (effective May 20, 2015) and June 12, 2018, the holders of a majority of the outstanding common stock, par value \$0.001 per share (the **Common Stock**), of Turtle Beach Corporation (the **Company** or the **Registrant**) approved two separate amendments to the Company's 2013 Stock-Based Incentive Compensation Plan (as amended, the **Plan**) to increase the number of shares of Common Stock available for issuance under the Plan by an additional 800,000 shares and 1,500,000 shares, respectively (collectively, the **Additional Shares**). This Registration Statement on Form S-8 registers the 2,300,000 Additional Shares from those earlier increases that may be offered or sold to participants under the Plan, but does not increase the number of shares of Common Stock available for issuance under the Plan.

On February 18, 2014, the Company registered 1,977,696 shares of its Common Stock to be offered or sold to participants under the Plan pursuant to its Registration Statement on Form S-8 (File No. 333-193982) (the **Previous Registration Statement**). Accordingly, the contents of the Previous Registration Statement, including periodic reports that the Company filed with the Securities and Exchange Commission (the **Commission**) pursuant to the Securities Exchange Act of 1934, as amended (the **Exchange Act**), after the filing of the Previous Registration Statement, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

All of the share and per share amounts set forth herein give effect to the Company's 1-for-4 reverse stock split effective April 6, 2018.

PART I

INFORMATION REQUIRED IN SECTION 10(a) PROSPECTUS

Information required in Part I of Form S-8 to be contained in a prospectus meeting the requirements of Section 10(a) of the Securities Act is not required to be filed with the Commission and is omitted from this Registration Statement in accordance with the explanatory note to Part I of Form S-8 and Rule 428 under the Securities Act. The documents containing the information specified in Part I of Form S-8 will be sent or given to directors, officers, employees and consultants as specified by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant is registering additional securities under the Plan covered hereby for which the Previous Registration Statement is currently effective. This registration statement is filed solely to register the 2,300,000 Additional Shares of Common Stock for issuance under the Plan. Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of the Previous Registration Statement, including periodic reports that the Company filed with the Commission pursuant to the Exchange Act.

Item 8. Exhibits.

See Exhibit Index.

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|--|
| 4.1* | <u>Articles of Incorporation of Turtle Beach Corporation, as amended (incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-3 filed with the Commission on August 6, 2018).</u> |
| 4.2* | <u>Bylaws, as amended, of Turtle Beach Corporation (incorporated by reference to Exhibit 3.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 11, 2014).</u> |
| 4.3* | <u>Stockholder Agreement, dated August 5, 2013, by and among Turtle Beach Corporation and certain of our shareholders. (incorporated by reference to Exhibit 99.1 to the Registrant's Current Report on Form 8-K filed with the Commission on August 5, 2013).</u> |
| 4.4* | <u>Amendment No. 1 to the Stockholder Agreement, dated July 10, 2014, by and among the Company and the shareholders party thereto (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Commission on July 10, 2014).</u> |
| 4.5* | <u>Form of Turtle Beach Corporation stock certificate. (incorporated by reference to Exhibit 4.1 to the Registrant's Form 10/A filed with the Commission on July 27, 2010.)</u> |
| 4.6* | <u>Warrant, issued to SG VTB Holdings, LLC, dated July 22, 2015 (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Commission on July 23, 2015).</u> |
| 4.7* | <u>Warrant, issued to SG VTB Holdings, LLC, dated November 16, 2015 (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Commission on November 20, 2015).</u> |
| 4.8* | <u>Form of Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Commission on April 27, 2018).</u> |
| 4.9* | <u>Registration Rights Agreement, dated April 23, 2018, by and among Turtle Beach Corporation and the investors named therein (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Commission on April 27, 2018).</u> |
| 5.1 | <u>Opinion of Snell & Wilmer, L.L.P. (filed herewith).</u> |
| 10.1* | <u>Amended and Restated Turtle Beach Corporation 2013 Stock-Based Incentive Compensation Plan, as amended (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 6, 2018).</u> |
| 23.1 | <u>Consent of BDO USA, LLP (filed herewith).</u> |
| 23.2 | <u>Consent of Snell & Wilmer L.L.P. (included in Exhibit 5.1 filed herewith).</u> |
| 24.1 | <u>Power of Attorney (contained on signature page hereto).</u> |

* Previously filed and incorporated herein by reference.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act, 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 County of San Diego, California, on this 2nd day of April, 2019.

Turtle Beach Corporation

By: /s/ JUERGEN STARK
Juergen Stark
Chief Executive Officer, President and
Director

POWER OF ATTORNEY

KNOW TO ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Juergen Stark and John T. Hanson, each and individually, his or her attorneys-in-fact, with full power of substitution and resubstitution, for him or her in any and all capacities, to sign any or all amendments or post-effective amendments to this Registration Statement and to file the same with the Securities and Exchange Commission, granting unto each of such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary in connection with such matters and hereby ratifying and confirming all that each such attorney-in-fact, or his agent or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement on Form S-8 has been signed by the following persons in the capacities indicated on the dates indicated.

| SIGNATURE | TITLE | DATE |
|--|---|---------------|
| /s/ JUERGEN STARK Juergen Stark | Chief Executive Officer, President and Director <i>(Principal Executive Officer)</i> | April 2, 2019 |
| /s/ JOHN T. HANSON John T. Hanson | Chief Financial Officer, Treasurer and Secretary <i>(Principal Financial Officer and Principal Accounting Officer)</i> | April 2, 2019 |
| /s/ RONALD DOORNINK Ronald Doornink | Non-Executive Chairman of the Board and Director | April 2, 2019 |
| /s/ GREGORY BALLARD Gregory Ballard | Director | April 2, 2019 |
| /s/ WILLIAM E. KEITEL William E. Keitel | Director | April 2, 2019 |
| /s/ ANDREW WOLFE Andrew Wolfe | Director | April 2, 2019 |