
UNITED STATES-
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

ACCURAY INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

20-8370041
(I.R.S. Employer
Identification Number)

1310 Chesapeake Terrace
Sunnyvale, California 94089
(Address of Principal Executive Offices including Zip Code)

Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan
Accuray Incorporated Amended and Restated 2007 Employee Stock Purchase Plan
(Full Title of the Plan)

Suzanne Winter
President and Chief Executive Officer
Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
(408) 716-4600

Copy to:
Katharine A. Martin
Lisa L. Stimmell
Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

(Name and Address, Including Zip Code, and Telephone Number,
Including Area Code, of Agent for Service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents, which were filed with the Securities and Exchange Commission (the “Commission”), are incorporated herein by reference (excluding any portions of such documents that have been “furnished” but not “filed” for purposes of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)):

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended June 30, 2022, filed with the Commission on August 17, 2022 (File No. 001-33301) (including portions incorporated by reference to the Registrant’s proxy statement on Schedule 14A);
- (b) The Registrant’s Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2022 filed with the Commission (File No. 001-33301) on [November 3, 2022](#);
- (c) The Registrant’s Current Reports on Form 8-K filed with the Commission (File No. 001-33301) on [September 20, 2022](#), [November 2, 2022](#), [November 16, 2022](#) and [November 17, 2022](#) (other than the portions of these documents not deemed to be filed); and
- (d) The description of the Common Stock contained in the Registrant’s Registration Statement on [Form 8-A](#) filed with the Commission on February 7, 2007 (File No. 001-33301), including any subsequently filed amendments and reports updating that description.

All documents subsequently filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement, or in any subsequently filed document which also is or is deemed to be incorporated by reference in this Registration Statement, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to be a part of this Registration Statement. Information contained in a Current Report on Form 8-K furnished to the Commission will not be incorporated by reference into this Registration Statement.

Item 4. Description of Securities

The Common Stock being registered hereunder has been registered pursuant to Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel

Not applicable

Item 6. Indemnification of Directors and Officers

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Section 145 of the General Corporation Law of the State of Delaware (the “DGCL”) authorizes a corporation’s board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents under certain circumstances.

As permitted by Section 102(b)(7) of the DGCL, the Registrant’s amended and restated certificate of incorporation contains provisions that limit the liability of its directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, the Registrant’s directors will not be personally liable to the Registrant or its stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of the director’s duty of loyalty to the Registrant or to its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; and
- any transaction from which the director derived an improper personal benefit.

The Registrant’s certificate of incorporation provides that it may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer, employee or agent of the Registrant or any predecessor of the Registrant, or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Registrant or any predecessor to the Registrant.

If Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of the Registrant’s directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. The Registrant’s amended and restated certificate of incorporation does not eliminate a director’s duty of care and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of non-monetary relief, remain available under Delaware law. This provision also does not affect a director’s responsibilities under any other laws, such as the federal securities laws or other state or federal laws.

The Registrant’s amended and restated bylaws provide that the Registrant shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, any director or officer of the Registrant who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director, officer, employee or agent of the Registrant or is or was serving at the request of the Registrant as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such action, suit or proceeding.

Further, the Registrant has entered into indemnification agreements with each of its current directors and officers. These agreements provide for the indemnification of the Registrant’s directors and officers for all reasonable expenses and liabilities incurred in connection with any action or proceeding brought against them by reason of the fact that they are or were the Registrant’s agents. The Registrant also maintains directors’ and officers’ liability insurance.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

<u>Exhibit No.</u>	<u>Exhibit Descriptions</u>
4.1 ⁽¹⁾	Form of Common Stock Certificate.
5.1 ⁽²⁾	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.

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23.1 ⁽²⁾	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1).
23.2 ⁽²⁾	Consent of Grant Thornton LLP, independent registered public accounting firm.
24.1 ⁽²⁾	Power of Attorney (contained on signature page hereto).
99.1 ⁽³⁾	Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan.
99.2 ⁽⁴⁾	Accuray Incorporated Amended and Restated 2007 Employee Stock Purchase Plan.
107.1 ⁽²⁾	Filing Fee Table

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- (1) Incorporated by reference to Exhibit 4.3 filed with the Registrant's Registration Statement on Form S-1/A (Registration No. 333-138622), filed with the Commission on February 5, 2007.
 - (2) Filed herewith.
 - (3) Incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Commission on November 16, 2022 (No. 001-33301).
 - (4) Incorporated herein by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Commission on November 16, 2022 (No. 001-33301).

Item 9. Undertakings

(a) 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 this 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 this 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 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.

(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 (a)(1)(i) and (a)(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 Section 15(d) of the Exchange Act that are incorporated by reference in this 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.

(b) 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 Section 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.

(c) 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.

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 the 30th day of November, 2022.

ACCURAY INCORPORATED

By: _____ /s/ SUZANNE WINTER

Suzanne Winter
President and Chief Executive Officer

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POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Suzanne Winter and Ali Pervaiz and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, with full power of each to act alone, with full powers of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this registration statement on Form S-8, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, with full power of each to act alone, 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 for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his, her or their substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ SUZANNE WINTER</u> Suzanne Winter	President and Chief Executive Officer and Director (principal executive officer)	November 30, 2022
<u>/s/ ALI PERVAIZ</u> Ali Pervaiz	Chief Financial Officer (principal financial officer)	November 30, 2022
<u>/s/ FRANCO PALOMBA</u> Franco Palomba	Vice President Chief Accounting Officer and Controller (principal accounting officer)	November 30, 2022
<u>/s/ JOSEPH E. WHITTERS</u> Joseph E. Whitters	Chairperson of the Board and Director	November 30, 2022
<u>/s/ ELIZABETH DAVILA</u> Elizabeth Dávila	Director	November 30, 2022
<u>/s/ ANNE B. LE GRAND</u> Anne B. Le Grand	Director	November 30, 2022
<u>/s/ JAMES M. HINDMAN</u> James M. Hindman	Director	November 30, 2022
<u>/s/ BYRON C. SCOTT</u> Byron C. Scott	Director	November 30, 2022
<u>/s/ BEVERLY A. HUSS</u> Beverly A. Huss	Director	November 30, 2022

/s/ MIKA NISHIMURA
Mika Nishimura

Director

November 30, 2022

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November 30, 2022

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089

RE: REGISTRATION STATEMENT ON FORM S-8

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 to be filed by you with the Securities and Exchange Commission on or about November 30, 2022 (the "Registration Statement"), in connection with the registration under the Securities Act of 1933, as amended, of (1) 4,000,000 shares of your common stock (the "Common Stock") available for issuance under the Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan ("Incentive Plan") and (2) 2,500,000 shares of your Common Stock available for issuance under the Amended and Restated Accuray Incorporated 2007 Employee Stock Purchase Plan (the "ESPP" and together with the Incentive Plan, the "Plans"). All such shares of Common Stock are referred to herein as the "Shares". As your legal counsel, we have examined the proceedings taken and are familiar with the proceedings proposed to be taken by you in connection with the issuance and sale of the Shares pursuant to the Plans.

It is our opinion that, when issued and sold in compliance with the prospectus delivery requirements and in the manner described in the Plans, and pursuant to the agreements which accompany each grant or award issued pursuant to the Plans, the Shares will be legally and validly issued, fully-paid and non-assessable.

We hereby consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto.

Very Truly Yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Wilson Sonsini Goodrich & Rosati

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated August 17, 2022 with respect to the consolidated financial statements and internal control over financial reporting of Accuray Incorporated included in the Annual Report on Form 10-K for the year ended June 30, 2022, which are incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned reports in this Registration Statement.

/s/ GRANT THORNTON LLP

San Jose, California
November 30, 2022

Calculation of Filing Fee Tables
Form S-8
(Form Type)
Accuray Incorporated
(Exact name of registrant as specified in its charter)
Table 1 – Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.001 per share (“Common Stock”), reserved for issuance pursuant to the Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan (the “2016 Plan”).	Rule 457(c) and Rule 457(h)	4,000,000(2)	\$ 2.20(4)	\$ 8,800,000.00	0.0001102	\$ 969.76
Equity	Common Stock reserved for issuance pursuant to the Accuray Incorporated Amended and Restated 2007 Employee Stock Purchase Plan (the “ESPP”).	Rule 457(c) and Rule 457(h)	2,500,000(3)	\$ 1.87(5)	\$ 4,675,000.00	0.0001102	\$ 515.19
Total Offering Amounts			6,500,000		\$ 13,475,000.00		\$ 1,484.95
Total Fee Offsets							-
Net Fee Due							\$ 1,484.95

- (1) Pursuant to Rule 416(a) of 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 2016 Plan, the ESPP or the Awards being registered 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 the Registrant’s outstanding shares of Common Stock. In addition, pursuant to Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefits plan described herein.
- (2) Represents an increase of 4,000,000 shares to the number of shares of the Registrant’s Common Stock reserved for issuance under the 2016 Plan.
- (3) Represents an increase of 2,500,000 shares to the number of shares of the Registrant’s Common Stock reserved for issuance under the ESPP.

- (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act, based on the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Global Market on November 28, 2022.
 - (5) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act, on the basis of 85% of \$2.20 per share, which represents the average of the high and low prices of the Registrant's Common Stock as reported on The Nasdaq Global Market on November 28, 2022. Pursuant to the ESPP, the purchase price of the shares of the Registrant's common stock reserved for issuance thereunder will be at least 85% of the lower of the fair market value of the Registrant's common stock on the first trading day of the offering period or on the exercise date.
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