

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

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

CLEARFIELD, INC.

(Exact name of registrant as specified in its charter)

Minnesota

(State or other jurisdiction of
incorporation or organization)

41-1347235

(I.R.S. Employer
Identification No.)

**7050 Winnetka Avenue North, Suite 100
Brooklyn Park, Minnesota 55428**

(Address of principal executive offices and zip code)

Clearfield, Inc. 2010 Employee Stock Purchase Plan
(Full Title of the Plan)

Cheryl Beranek
President and Chief Executive Officer
Clearfield, Inc.
7050 Winnetka Avenue North, Suite 100
Brooklyn Park, Minnesota 55428
(763) 476-6866

Copy of all communications to:

April Hamlin
Ballard Spahr LLP
2000 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
(612) 371-3211

(Name, 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, 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

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.

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee |
|--|-----------------------------|---|---|----------------------------|
| Common Stock, par value \$0.01 per share | 200,000 | \$12.93 | \$2,586,000 | \$335.67 |

- (1) The shares registered by this registration statement are additional shares reserved for issuance under the Clearfield, Inc. 2010 Employee Stock Purchase Plan. 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 of Clearfield, Inc. that become issuable under the Clearfield Inc. 2010 Employee Stock Purchase Plan 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 common stock of Clearfield, Inc.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) under the Securities Act and based upon the average of the high and low prices per share of the common stock of Clearfield, Inc. on the Global Market of The Nasdaq Stock Market, Inc. on April 27, 2020.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is filed by Clearfield, Inc. (the "Company") to register an additional 200,000 shares of its common stock authorized for issuance under the Clearfield, Inc. 2010 Employee Stock Purchase Plan (the "2010 Plan"). On February 24, 2010, the shareholders of the Company adopted the 2010 Plan and reserved 300,000 shares of common stock for issuance under the 2010 Plan. These shares are registered on a Form S-8 Registration Statement filed with the SEC on May 4, 2010 (File No. 333-166495). At the Company's annual meeting of shareholders held on February 27, 2020, the shareholders approved an increase in the number of shares reserved under the 2010 Plan from 300,000 to 500,000. The additional 200,000 shares are covered by this Registration Statement. Pursuant to General Instruction E of Form S-8, the contents of the earlier registration statement are incorporated herein by reference.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Pursuant to the note to Part I of Form S-8, the information required by Items 1 and 2 of Form S-8 is not filed as a part of this Registration Statement and documents containing the information specified in such Part I have been delivered to participants as specified by Rule 428(b)(1) 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.

The following documents filed with the Securities and Exchange Commission are hereby incorporated by reference:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2019;
- (b) The Company's Quarterly Reports on Form 10-Q for the quarters ended December 31, 2019 and March 31, 2020;
- (c) The Company's Current Reports on Form 8-K filed on November 7, 2019 (Item 5.02 only), December 6, 2019 and, February 28, 2020; and
- (d) The description of the Company's common stock contained in its Registration Statement on Form 8-A filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on July 29, 1987 (File No. 000-16106), including any amendment or report filed to update such description.

All documents subsequently filed (but not furnished) by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the completion or termination of this offering of shares of Common Stock will be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of these documents.

Item 4. Description of Securities.

The Company's common stock is registered under Section 12 of the Exchange Act and, therefore, a description of securities is omitted.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Company is subject to Minnesota Statutes Chapter 302A, the Minnesota Business Corporation Act (the “MBCA”). Section 302A.521 of the MBCA provides in substance that, unless prohibited by its articles of incorporation or bylaws, a corporation must indemnify an officer or director who is made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys’ fees and disbursements, incurred by such person in connection with the proceeding, if certain criteria are met. These criteria, all of which must be met by the person seeking indemnification, are (a) that such person has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys’ fees and disbursements, incurred by the person in connection with the proceeding with respect to the same act or omissions; (b) that such person must have acted in good faith; (c) that no improper personal benefit was obtained by such person and such person satisfied certain statutory conflicts of interest provisions, if applicable; (d) that in the case of a criminal proceeding, such person had no reasonable cause to believe that the conduct was unlawful; and (e) that such person must have acted in a manner such person reasonably believed was in the best interests of the corporation or, in certain limited circumstances, not opposed to the best interests of the corporation. In addition, Section 302A.521, subdivision 3 of the MBCA requires that the Company pay, upon written request, reasonable expenses in advance of final disposition in certain instances. A decision as to required indemnification is made by a majority of the disinterested board of directors present at a meeting at which a disinterested quorum is present, or by a designated committee of disinterested directors, by special legal counsel, by the disinterested shareholders, or by a court.

Article XII of the Company’s bylaws requires the Company to indemnify its present and former officers, directors, committee members, employees and agents for such expenses and liabilities, in such manner, under such circumstances, and to the fullest extent, as required or permitted by the MBCA, as in effect from time to time.

The Company also maintains a director and officer liability insurance policy.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

- [4.1](#) [Clearfield, Inc. 2010 Employee Stock Purchase Plan, as amended \(incorporated by reference to Appendix A to the Company’s Proxy Statement for the 2020 Annual Meeting of Shareholders held on February 27, 2020, filed with the Securities and Exchange Commission on January 14, 2020\)](#)
- [5.1](#) [Opinion of Ballard Spahr LLP](#)
- [23.1](#) [Consent of Ballard Spahr LLP \(included in Exhibit 5.1\)](#)
- [23.2](#) [Consent of Baker Tilly Virchow Krause, LLP, Independent Registered Public Accounting Firm](#)
- [24.1](#) [Power of Attorney \(included on signature page\)](#)

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 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 a 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% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective Registration Statement; and

(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 the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section 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 the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 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.

(c) 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 Brooklyn Park, State of Minnesota, on May 1, 2020.

CLEARFIELD, INC.

By /s/ Cheryl Beranek
Cheryl Beranek, President and Chief Executive Officer

POWER OF ATTORNEY

The undersigned officers and directors of Clearfield, Inc. hereby constitute and appoint Cheryl Beranek and Daniel Herzog, each acting alone, with power to act as our true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for us and in our stead, in any and all capacities to sign any and all amendments (including post-effective amendments) to this Registration Statement and all documents relating thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, 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 necessary or advisable to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitutes, 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 below by the following persons in the capacities indicated on April 30, 2020.

| | |
|---|--|
| <u>/s/ Cheryl Beranek</u> Cheryl Beranek | President and Chief Executive Officer (principal executive officer) and Director |
| <u>/s/ Daniel Herzog</u> Daniel Herzog | Chief Financial Officer (principal financial and accounting officer) |
| <u>/s/ Ronald G. Roth</u> Ronald G. Roth | Director |
| <u>/s/ Patrick F. Goepel</u> Patrick F. Goepel | Director |
| <u>/s/ Roger G. Harding</u> Roger G. Harding | Director |
| <u>/s/ Charles N. Hayssen</u> Charles N. Hayssen | Director |
| <u>/s/ Donald R. Hayward</u> Donald R. Hayward | Director |



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May 1, 2020

Clearfield, Inc.
7050 Winnetka Avenue North, Suite 100
Brooklyn Park, MN 55428

Re: Opinion of Counsel as to Legality of Shares of Common Stock to be Registered under the Securities Act of 1933, as amended

Ladies and Gentlemen:

This opinion is furnished in connection with the Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended, which Clearfield, Inc. (the "Company") is filing with the Securities and Exchange Commission to register 200,000 shares of its Common Stock, \$0.01 par value per share (the "Shares") that may be issued under the Clearfield, Inc. 2010 Employee Stock Purchase Plan (the "Plan").

In connection with this opinion, we have examined such corporate records and other documents, including the Registration Statement, and have reviewed such matters of law as we have deemed relevant hereto, and this opinion is furnished based upon such examination and review.

Based on the foregoing, we are of the opinion that the Shares, when issued in accordance with the terms of the Plan and any relevant agreements thereunder, will be validly issued, fully paid and nonassessable under the current laws of the State of Minnesota.

The foregoing opinion is limited to the laws of the State of Minnesota.

We hereby consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement.

Very truly yours,

BALLARD SPAHR LLP

/s/ Ballard Spahr LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement on Form S-8 of Clearfield, Inc. (the "Company") of our report dated November 15, 2019, relating to the financial statements and the related statements of earnings, shareholders' equity and cash flows, and the effectiveness of internal control over financial reporting, which is included in the Company's annual report on Form 10-K for the year ended September 30, 2019.

/s/ BAKER TILLY VIRCHOW KRAUSE, LLP

Minneapolis, Minnesota
May 1, 2020