

Alphatec Holdings, Inc.
Form S-8
June 09, 2014

As filed with the Securities and Exchange Commission on June 9, 2014
Registration No. 333-_____

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

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

Alphatec Holdings, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization)

20-2463898
(I.R.S. Employer Identification No.)

Alphatec Holdings, Inc.
5818 El Camino Real
Carlsbad, California 92008
(Address of Principal Executive Offices) (Zip Code)

Amended and Restated Alphatec Holdings, Inc. 2005
Employee, Director and Consultant Stock Plan
(Full Title of the Plan)

Ebun S. Garner, Esq.
General Counsel and SVP
Alphatec Holdings, Inc.
5818 El Camino Real
Carlsbad, California 92008
(Name and Address of Agent for Service)
(760) 431-9286
(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 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
(Do not check if a smaller company
reporting company)

CALCULATION OF REGISTRATION FEE

| Title 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 ⁽³⁾ |
|--|--|--|--|---|
| Common Stock, par value \$0.0001 per share | 1,153,932 shares | \$1.89 | \$2,180,931.48 | \$280.90 |
| | 4,646,068 shares | \$1.34 | \$6,225,731.12 | \$801.88 |
| | 5,800,000 shares | | 8,406,662.60 | \$1,082.78 |

The number of shares of common stock, par value \$0.0001 per share (“Common Stock”), stated above consists of the aggregate number of additional shares not previously registered (i) which may be issued upon the exercise of options which have been granted under the Amended and Restated Alphatec Holdings, Inc. 2005 Employee, Director and Consultant Stock Plan (the “2005 Plan”) (1,153,932 shares) and (ii) which may hereafter be issued under the 2005 Plan (4,646,068 shares). In addition, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement also covers such indeterminate number of additional shares of Common Stock as is necessary to eliminate any dilutive effect of any future stock split, stock dividend or similar transaction.

This calculation is made solely for the purpose of determining the registration fee pursuant to the provisions of Rule 457(c) and (h)(1) under the Securities Act as follows: (i) in the case of shares of Common Stock which may be issued upon exercise of outstanding options, the fee is calculated on the basis of the price at which the options may be exercised; and (ii) in the case of shares of Common Stock to be issued in connection with equity awards that have not yet been granted, the fee is calculated on the basis of the average of the high and low sale prices of the Common Stock as reported on The NASDAQ Global Market as of a date (June 5, 2014) within five business days prior to filing this Registration Statement.

(3) Calculated pursuant to Section 6(b) of the Securities Act.

EXPLANATORY NOTE

This Registration Statement registers an aggregate of 5,800,000 additional shares of the Registrant's common stock reserved under the Amended and Restated Alphatec Holdings, Inc. 2005 Employee, Director and Consultant Stock Plan (the "2005 Plan"), consisting of (i) an increase of 4,200,000 shares reserved under the 2005 Plan approved by the stockholders at the Registrant's 2013 Annual Meeting of Stockholders, and (ii) an increase of 1,600,000 shares reserved under the 2005 Plan by operation of the 2005 Plan's "evergreen" provision. This Registration Statement registers additional securities under the 2005 Plan that were previously registered by the Registrant on a registration statement filed on Form S-8 (SEC File No. 333-144293) that remains effective. Except with respect to Items 5 and 6 of Part II below, the information contained in the Registrant's registration statement on Form S-8 (SEC File No. 333-144293) filed with the Securities and Exchange Commission on July 2, 2007 is hereby incorporated by reference pursuant to General Instruction E to Form S-8.

PART II

Item 5. Interests of Named Experts and Counsel.

The validity of the issuance of the shares of common stock registered under this Registration Statement has been passed upon for the Registrant by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., ("Mintz Levin"). Mintz Levin and members of that firm, their families and trusts for their benefit own no shares of common stock of the Registrant, although a member of Mintz Levin owns an aggregate of 16.25 common units in HealthpointCapital, LLC, which has an ownership interest in HGP, LLC and HGP II, LLC, which are the general partners of HealthpointCapital Partners, L.P. and HealthpointCapital Partners II, L.P., respectively. HealthpointCapital, LLC and its affiliates hold approximately 31,992,738 shares or 32.8% of the outstanding common stock of the Registrant as disclosed in their most recent Form 4 filings.

Item 6. Indemnification of Directors and Officers.

The Registrant's amended and restated certificate of incorporation provides that it shall indemnify, to the fullest extent authorized by the Delaware General Corporation Law, each person who is involved in any litigation or other proceeding because such person is or was a director or officer of the Registrant or is or was serving as an officer or director of another entity at the Registrant's request, against all expense, loss or liability reasonably incurred or suffered in connection therewith. The Registrant's amended and restated certificate of incorporation provides that the right to indemnification includes the right to be paid expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that such advance payment will only be made upon delivery to the Registrant of an undertaking, by or on behalf of the director or officer, to repay all amounts so advanced if it is ultimately determined that such director is not entitled to indemnification. If the Registrant does not pay a proper claim for indemnification in full within 60 days after it receives a written claim for such indemnification, the Registrant's amended and restated certificate of incorporation and restated bylaws authorize the claimant to bring an action against the Registrant and prescribe what constitutes a defense to such action.

Section 145 of the Delaware General Corporation Law permits a corporation to indemnify any director or officer of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in right of the corporation) brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reason to believe his or her conduct was unlawful. In a derivative action, (i.e., one brought by or on behalf of the corporation), indemnification may be provided only for expenses actually and

reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not

- 3 -

opposed to, the best interests of the corporation, except that no indemnification shall be provided if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Pursuant to Section 102(b)(7) of the Delaware General Corporation Law, Article Tenth of the Registrant's amended and restated certificate of incorporation eliminates the liability of a director to the Registrant or its stockholders for monetary damages for such a breach of fiduciary duty as a director, except for liabilities arising:

from any breach of the director's duty of loyalty to the Registrant or its stockholders;

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

under Section 174 of the Delaware General Corporation Law; and

from any transaction from which the director derived an improper personal benefit.

As permitted by Section 145 of the Delaware General Corporation Law, the Registrant carries insurance policies insuring its directors and officers against certain liabilities that they may incur in their capacity as directors and officers.

Item 8. Exhibits.

| Exhibit Number | Exhibit Description | Filed with this Report | Incorporated by Reference herein from Form or Schedule | Filing Date | SEC File/ Reg. Number |
|----------------|---|------------------------|--|-------------|-----------------------|
| 5.1 | Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. | X | | | |
| 23.1 | Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1) | X | | | |
| 23.2 | Consent of Independent Public Accounting Firm | X | | | |
| 24.1 | Power of Attorney (included as part of the signature page of this Registration Statement) | X | | | |
| 99.1 | Amended and Restated 2005 Employee, Director and Consultant Stock Plan | | Form S-8 (Exhibit 99.1) | 3/12/2013 | 333-187190 |
| 99.2 | Amendment to the Amended and Restated 2005 Employee, Director and Consultant Stock Plan | | Schedule 14A (Appendix B) | 6/11/2013 | 000-52024 |

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 Carlsbad, State of California, on June 9, 2014.

ALPHATEC HOLDINGS, INC.

By: /s/ JAMES M. CORBETT
James M. Corbett
President, Chief Executive Officer and Director

POWER OF ATTORNEY AND SIGNATURES

We, the undersigned officers and directors of Alphatec Holdings, Inc. (the "Company"), hereby severally constitute and appoint James M. Corbett, Michael O'Neill and Eburn S. Garner, Esq., and each of them singly, our true and lawful attorneys, with full power to them, and to each of them singly, to sign for us and in our names in the capacities indicated below, any and all amendments to this Registration Statement, and all other documents in connection therewith to be filed with the Securities and Exchange Commission, and generally to do all things in our names and on our behalf in such capacities to enable the Company to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission.

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:

| Signature | Title(s) | Date |
|--|--|--------------|
| /s/ JAMES M. CORBETT James M. Corbett | President, Chief Executive Officer and Director (Principal Executive Officer) | June 9, 2014 |
| /s/ MICHAEL O'NEILL Michael O'Neill | Chief Financial Officer, Vice President and Treasurer (Principal Financial Officer and Principal Accounting Officer) | June 9, 2014 |
| /s/ LESLIE H. CROSS Leslie H. Cross | Chairman of the Board of Directors | June 9, 2014 |
| /s/ MORTIMER BERKOWITZ III Mortimer Berkowitz III | Chairman of the Executive Committee of the Board of Directors | June 9, 2014 |
| /s/ ROHIT M. DESAI Rohit M. Desai | Director | June 9, 2014 |
| /s/ JOHN H. FOSTER John H. Foster | Director | June 9, 2014 |
| /s/ JAMES R. GLYNN James R. Glynn | Director | June 9, 2014 |
| /s/ SIRI S. MARSHALL | Director | June 9, 2014 |

Edgar Filing: Alphatec Holdings, Inc. - Form S-8

Siri S. Marshall

/s/ R. IAN MOLSON
R. Ian Molson

Director

June 9, 2014

/s/ STEPHEN E. O'NEIL
Stephen E. O'Neil

Director

June 9, 2014

Alphatec Holdings, Inc.

INDEX TO EXHIBITS FILED WITH FORM S-8 REGISTRATION STATEMENT

| Exhibit Number | Exhibit Description | Filed with this Report | Incorporated by Reference herein from Form or Schedule | Filing Date | SEC File/ Reg. Number |
|----------------|---|------------------------|--|-------------|-----------------------|
| 5.1 | Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. | X | | | |
| 23.1 | Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1) | X | | | |
| 23.2 | Consent of Independent Public Accounting Firm | X | | | |
| 24.1 | Power of Attorney (included as part of the signature page of this Registration Statement) | X | | | |
| 99.1 | Amended and Restated 2005 Employee, Director and Consultant Stock Plan | | Form S-8 (Exhibit 99.1) | 3/12/2013 | 333-187190 |
| 99.2 | Amendment to the Amended and Restated 2005 Employee, Director and Consultant Stock Plan | | Schedule 14A (Appendix B) | 6/11/2013 | 000-52024 |