

ELECTRONICS FOR IMAGING INC

FORM S-8 POS (Post-Effective Amendment to an S-8 filing)

Filed 09/22/17

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

**POST-EFFECTIVE AMENDMENT NO. 1
TO
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

ELECTRONICS FOR IMAGING, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

94-3086355
(I.R.S. Employer
Identification No.)

6750 Dumbarton Circle
Fremont, California 94555
(Address, including zip code, of Principal Executive Offices)

Electronics For Imaging, Inc. 2009 Equity Incentive Award Plan
Electronics For Imaging, Inc. Amended and Restated 2000 Employee Stock Purchase Plan
Electronics For Imaging, Inc. 2017 Equity Incentive Plan
(Full title of the plan)

Marc Olin
Chief Financial Officer
Electronics For Imaging, Inc.
6750 Dumbarton Circle
Fremont, California 94555
(650) 357-3500
(Name, address and telephone number, including area code, of agent for service)

COPY TO:

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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



Non-accelerated filer



(Do not check if a smaller reporting company)

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 Securities To Be Registered	Amount To Be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount Of Registration Fee
Common Stock, \$0.01 par value per share, issuable under the Electronics For Imaging, Inc. 2009 Equity Incentive Award Plan and, to the extent specified herein, the Electronics For Imaging, Inc. 2017 Equity Incentive Plan	4,600,000 (1)(3) shares	N/A (2)	N/A (2)	N/A (2)
Common Stock, \$0.01 par value per share, issuable under the Electronics For Imaging, Inc. Amended and Restated 2000 Employee Stock Purchase Plan	2,000,000 (1) shares	N/A (2)	N/A (2)	N/A (2)

- (1) This Registration Statement covers, in addition to the number of shares of Electronics For Imaging, Inc., a Delaware corporation (the “Company” or the “Registrant”), common stock, par value \$0.01 per share (the “Common Stock”), stated above, options and other rights to purchase or acquire the shares of Common Stock covered by this Registration Statement and, pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), an additional indeterminate number of shares, options and rights that may be offered or issued pursuant to the Electronics For Imaging, Inc. 2009 Equity Incentive Award Plan (the “2009 Plan”), the Electronics For Imaging, Inc. Amended and Restated 2000 Employee Stock Purchase Plan (the “ESPP”) and the Electronics For Imaging, Inc. 2017 Equity Incentive Plan (the “2017 Plan,” and together with the 2009 Plan and the ESPP, the “Plans”) as a result of one or more adjustments under the Plans to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions.
- (2) The filing fee for the registration of the offer of shares under the Plans (other than the 2017 Plan) was paid in full upon the filing of the Form S-8 Registration Statement on August 1, 2013 (the “2013 Form S-8”). Pursuant to SEC Compliance and Disclosure Interpretation 126.43, no filing fee is required to include the 2017 Plan on the 2013 Form S-8 pursuant to this Post-Effective Amendment No. 1 to Form S-8.
- (3) As described in the “Explanatory Note” below, this Post-Effective Amendment No. 1 to Form S-8 is being filed to provide that a portion of the shares originally registered on the 2013 Form S-8 for issuance under the 2009 Plan may be issued under the 2017 Plan once they are no longer issuable pursuant to the 2009 Plan.

The Exhibit Index for this Registration Statement is at page 7.

EXPLANATORY NOTE

The Company previously filed the 2013 Form S-8 with the Securities and Exchange Commission (the “SEC” or the “Commission”) to register the offer of (i) 4,600,000 shares of Common Stock pursuant to the 2009 Plan and (ii) 2,000,000 shares of Common Stock pursuant to the ESPP.

On April 11, 2017, the Company’s Board of Directors adopted the 2017 Plan. The Company’s stockholders approved the 2017 Plan at the Company’s annual meeting of stockholders held on June 7, 2017 (the “2017 Annual Meeting”). Upon stockholder approval of the 2017 Plan, the Company’s authority to grant new awards under the 2009 Plan terminated, and a total of 1,593,660 shares of Common Stock that had been available for new award grants under the 2009 Plan immediately prior to the 2017 Annual Meeting became available for award grants under the 2017 Plan. As provided in the 2017 Plan, any shares of the Company’s common stock subject to outstanding awards under the 2009 Plan that expire, are cancelled or otherwise terminate without such shares being issued after the 2017 Annual Meeting will be available for award grant purposes under the 2017 Plan. As of the date of the 2017 Annual Meeting, a total of 1,961,218 shares were subject to awards then outstanding under the 2009 Plan. The number of shares available for new award grants under the 2009 Plan immediately prior to the 2017 Annual Meeting and the number of shares that become available for award grants under the 2017 Plan after the 2017 Annual Meeting as a result of the expiration, cancellation or termination of awards outstanding under the 2009 Plan as of the date of the 2017 Annual Meeting are referred to herein as the “Transferred Shares.” Accordingly, the maximum number of shares of Common Stock initially registered for offer pursuant to the 2009 Plan that may become Transferred Shares available for offer under the 2017 Plan is 3,554,878 shares (which is the sum of the 1,593,660 shares that became Transferred Shares in connection with the 2017 Annual Meeting plus the 1,961,218 shares that were subject to awards outstanding under the 2009 Plan as of the date of the 2017 Annual Meeting).

The Company is filing this Post-Effective Amendment No. 1 to Form S-8 pursuant to SEC Compliance and Disclosure Interpretation 126.43 to amend the 2013 Form S-8 to register the offer of the Transferred Shares under the 2017 Plan (as such shares would no longer be issuable under the 2009 Plan).

PART I

INFORMATION REQUIRED IN THE
SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Securities Act Rule 428(b) (1).

PART II

INFORMATION REQUIRED IN THE
REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents of the Company filed with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

- (a) The Company's Annual Report on Form 10-K for its fiscal year ended December 31, 2016, filed with the Commission on February 22, 2017 and as amended by the Form 10-K/A filed by the Company with the Commission on September 11, 2017 (Commission File No. 000-18805);
- (b) The Company's Quarterly Report on Form 10-Q for its fiscal quarter ended March 31, 2017, filed with the Commission on May 2, 2017 and as amended by the Form 10-Q/A filed by the Company with the Commission on September 11, 2017, and the Company's Quarterly Report on Form 10-Q for its fiscal quarter ended June 30, 2017, filed with the Commission on September 11, 2017 (each, Commission File No. 000-18805);
- (c) The Company's Current Reports on Form 8-K, filed with the Commission on June 13, 2017 and August 24, 2017 (each, Commission File No. 000-18805); and
- (d) The description of the Company's Common Stock contained in its Registration Statement on Form 8-A filed with the Commission on August 28, 1992 (Commission File No. 000-18805), and any other amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment 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 a part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with Commission rules shall not be deemed incorporated by reference into this Registration Statement. Any statement contained herein or in a document, all or a portion of which is 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 herein or in any other subsequently filed document which also is 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 amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

Under Section 145 of the General Corporation Law of the State of Delaware, the Registrant has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. The Registrant's Amended and Restated Certificate of Incorporation requires the Registrant to indemnify its directors and officers to the fullest extent permitted by Delaware law. The Registrant's By-laws as amended require the Registrant to indemnify any persons by reason of the fact that he or she is or was a director, officer, employee or agent of the Registrant, or is or was serving at the request of the Registrant, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful; provided that if an action or suit is by or in the right of the Registrant against such director, officer, employee or agent of the Registrant and such person is adjudged to be liable to the Registrant then the Registrant shall only indemnify such person to the extent that the court in which such action or suit is brought shall have determined that such person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

The Registrant has entered into indemnity agreements with each of its directors, officers and general counsel. Such indemnity agreements contain provisions which are in some respects broader than the specific indemnification provisions contained in Delaware law. The Registrant currently carries directors and officers liability insurance, which may insure against officer or director liability arising under the Securities Act of 1933.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index at page 7, which is incorporated herein by reference.

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;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this 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 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 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 this 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.

(h) 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 provisions described in Item 6 above, 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.

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
4.1	<u>Electronics For Imaging, Inc. 2009 Equity Incentive Award Plan. (Filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on June 6, 2013 (Commission File No. 000-18805) and incorporated herein by this reference.)</u>
4.2	<u>Electronics For Imaging, Inc. Amended and Restated 2000 Employee Stock Purchase Plan. (Filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on June 6, 2013 (Commission File No. 000-18805) and incorporated herein by this reference.)</u>
4.3	<u>Electronics For Imaging, Inc. 2017 Equity Incentive Plan. (Filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on June 13, 2017 (Commission File No. 000-18805) and incorporated herein by this reference.)</u>
5.1	<u>Opinion of Company Counsel (opinion re legality of the securities being registered with respect to the 2009 Plan and the ESPP. Filed as Exhibit 5 to the Company's Registration Statement on Form S-8 filed with the Commission on August 1, 2013 (Commission File No. 333-190319) and incorporated herein by this reference).</u>
5.2	<u>Opinion of O'Melveny & Myers LLP (opinion re legality of the Transferred Shares).</u>
23.1	<u>Consent of Independent Registered Public Accounting Firm.</u>
23.2	<u>Consent of Counsel (included in Exhibit 5.2).</u>
24.	<u>Power of Attorney (included in this Registration Statement under "Power of Attorney").</u>

SIGNATURES

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 Form S-8 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Fremont, State of California, on September 21, 2017.

Electronics For Imaging, Inc.

By: /s/ Marc Olin

Marc Olin
Chief Financial Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Guy Gecht and Marc Olin, and each of them, acting individually and without the other, as his or her true and lawful attorneys-in-fact and agents, with full power 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 (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the 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 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 attorneys-in-fact and agents, or either of them individually, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Guy Gecht</u> Guy Gecht	Chief Executive Officer, Director (Principal Executive Officer)	September 21, 2017
<u>/s/ Marc Olin</u> Marc Olin	Chief Financial Officer (Principal Financial and Accounting Officer)	September 21, 2017
<u>/s/ Eric Brown</u> Eric Brown	Director	September 21, 2017
<u>/s/ Gill Cogan</u> Gill Cogan	Director	September 21, 2017
<u>/s/ Thomas Georgens</u> Thomas Georgens	Director	September 21, 2017
<u>/s/ Richard A. Kashnow</u> Richard A. Kashnow	Director	September 21, 2017
<u>/s/ Dan Maydan</u> Dan Maydan	Director	September 21, 2017

O'Melveny & Myers LLP

September 21, 2017

Electronics For Imaging, Inc.
6750 Dumbarton Circle
Fremont, California 94555

Re: *Registration of Securities of Electronics For Imaging, Inc.*

Ladies and Gentlemen:

In connection with the registration of certain shares of Common Stock of Electronics For Imaging, Inc., a Delaware corporation (the "Company"), par value \$0.01 per share (the "Shares"), under the Securities Act of 1933, as amended, pursuant to a Post-Effective Amendment No. 1 to Registration Statement on Form S-8 (the "Form S-8 Amendment"), filed with the Securities and Exchange Commission on or about the date hereof, that may be issued or delivered pursuant to the Electronics For Imaging, Inc. 2017 Equity Incentive Plan (the "2017 Plan"), such Shares having originally been authorized for issuance under the Electronics For Imaging, Inc. 2009 Equity Incentive Award Plan and the maximum number of such Shares being 3,554,878, all as further described in the "Explanatory Note" to the Form S-8 Amendment, you have requested our opinion set forth below.

In our capacity as counsel, we have examined originals or copies of those corporate and other records of the Company we considered appropriate.

On the basis of such examination and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that the Shares have been duly authorized by all necessary corporate action on the part of the Company and, when issued in accordance with such authorization, the provisions of the 2017 Plan and relevant agreements duly authorized by and in accordance with the terms of the 2017 Plan, and upon payment for and delivery of the Shares as contemplated in accordance with the 2017 Plan, and either (a) the countersigning of the certificate or certificates representing the Shares by a duly authorized signatory of the registrar for the Company's Common Stock, or (b) the book-entry of the Shares by the transfer agent for the Company's Common Stock in the name of The Depository Trust Company or its nominee, the Shares will be validly issued, fully paid and non-assessable.

We consent to your filing this opinion as an exhibit to the Form S-8 Amendment.

Respectfully submitted,

/s/ O'Melveny & Myers LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Post-effective Amendment No. 1 to Registration Statement No. 333-190319 on Form S-8 of (i) our report dated February 21, 2017, relating to the consolidated financial statements and financial statement schedule of Electronics For Imaging, Inc. and subsidiaries (the "Company"), appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2016, and (ii) our report dated February 21, 2017, (September 8, 2017 as to the effects of the material weaknesses described in Management's Report on Internal Control Over Financial Reporting (Revised)), (which report expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting because of the material weaknesses) relating to the effectiveness of the Company's internal control over financial reporting, appearing in the Company's Annual Report on Form 10K/A for the year ended December 31, 2016.

/s/ DELOITTE & TOUCHE LLP

San Jose, California
September 21, 2017