

MERCURY COMPUTER SYSTEMS INC  
Form S-8  
December 19, 2008

As filed with the Securities and Exchange Commission on December 19, 2008

Registration No. 333-

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

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

**MERCURY COMPUTER SYSTEMS, INC.**

(Exact Name of Registrant as Specified in its Charter)

Massachusetts  
(State of Incorporation)

201 Riverneck Road

04-2741391  
(I.R.S. Employer Identification Number)

**Chelmsford, Massachusetts 01824**

**(978) 256-1300**

**(Address of Principal Executive Offices)**

**MERCURY COMPUTER SYSTEMS, INC.**

**Amended and Restated 2005 Stock Incentive Plan**

**(Full Title of the Plan)**

**Alex A. Van Adzin**

**Vice President, General Counsel, and Corporation Secretary**

**Mercury Computer Systems, Inc.**

**201 Riverneck Road**

**Chelmsford, Massachusetts 01824**

**(978) 256-1300**

**(Name, Address 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

(Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

| <b>Title of Securities to be Registered</b> | <b>Amount<br/>to be<br/>Registered (1)(2)(3)</b> | <b>Proposed</b>                                     | <b>Proposed</b>                                     | <b>Amount of<br/>Registration Fee</b> |
|---|--|---|---|---------------------------------------|
|   |  | <b>Maximum<br/>Offering Price<br/>Per Share (4)</b> | <b>Maximum<br/>Aggregate Offering<br/>Price (4)</b> |                                       |
| Common Stock                                | 1,092,047  | \$4.39  | \$4,794,086.33                                      | \$188.41                              |

- (1) 442,047 shares of the registrant's common stock listed were part of the shares previously registered by the registrant on Form S-8 (File No. 333-101993 filed on December 19, 2002) in connection with the registrant's 1997 Stock Option Plan, as amended. Includes an additional 650,000 shares of the registrant's common stock that were not previously registered.
- (2) This registration statement also covers preferred stock purchase rights (the Rights) which are presently attached to and trade with the registrant's common stock. Any value attributable to the Rights is reflected in the market price of the common stock.
- (3) In addition, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers an indeterminate number of additional shares of common stock to be offered or sold as a result of the anti-dilution provisions of the employee benefit plan described herein, including to prevent dilution resulting from any reorganization, recapitalization, reclassification, stock dividend, stock split or other similar change.
- (4) Calculated in accordance with Rule 457(c) and (h) under the Securities Act solely for the purpose of determining the amount of the registration fee, based on the average of the high and low prices on the NASDAQ Global Select Market on December 15, 2008.

## EXPLANATORY NOTE

This registration statement is being filed solely for the purpose of registering 1,092,047 additional shares of common stock, par value \$0.01 per share ( Common Stock ), of Mercury Computer Systems, Inc. (the Company ) to be offered to participants under the Company s Amended and Restated 2005 Stock Incentive Plan (the 2005 Plan ), originally adopted in 2005. The number of shares of Common Stock reserved and available for issuance under the 2005 Plan includes 4,622,223 shares, which were previously registered with the Securities and Exchange Commission (the Commission ) on Form S-8 (File Nos. 333-129929 filed on November 23, 2005, 333-139019 filed on November 30, 2006 and 333-149046 filed on February 4, 2008) (together, the 2005 Registration Statement ), plus the number of shares underlying any grants previously made under the Company s 1997 Stock Option Plan, as amended (the 1997 Plan ) that are forfeited, canceled or are terminated (other than by exercise) from and after the effective date of the 2005 Plan. An aggregate of 442,047 additional shares have been included in the shares reserved for issuance under the 2005 Plan as a result of the forfeiture, cancellation or termination (other than by exercise) of grants previously made under the 1997 Plan. This registration statement also covers the registration of 650,000 shares of Common Stock added to the 2005 Plan in connection with its amendment and restatement, which was approved by the Company s shareholders on November 17, 2008.

Pursuant to General Instruction E of Form S-8, the contents of the 2005 Registration Statement are incorporated herein by reference, except as otherwise noted below.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents are incorporated herein by reference:

- (a) The Company s annual report on Form 10-K for the fiscal year ended June 30, 2008, as filed with the Commission on September 12, 2008;
- (b) The Company s quarterly report on Form 10-Q for the fiscal quarter ended September 30, 2008, as filed with the Commission on November 10, 2008;
- (c) The Company s current reports on Form 8-K filed with the Commission on July 30, 2008, September 18, 2008, October 24, 2008, and November 20, 2008;
- (d) The description of the Company s common stock contained in the Company s registration statement on Form 8-A dated January 7, 1998, as filed with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the Exchange Act ), including any amendment thereto or report filed for the purpose of updating such description; and
- (e) The description of the Company s preferred stock purchase rights contained in the Company s registration statement on Form 8-A dated December 15, 2005, as filed with the Commission pursuant to Section 12 of the Exchange Act, including any amendment thereto 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 Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents.

#### ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

The validity of the Common Stock offered under this registration statement will be passed upon for the Company by Goodwin Procter LLP, Boston, Massachusetts. Anthony J. Medaglia, Jr., who is Of Counsel at Goodwin Procter LLP, is Assistant Secretary of the Company and owns 28,950 shares of Common Stock and options to purchase an additional 1,010 shares of Common Stock.

**ITEM 8. EXHIBITS.**

| <b>Exhibit</b> | <b>Description</b>   |
|----------------|--|
| 4.1            | Articles of Organization (incorporated herein by reference to Exhibit 3.1 of the Company's annual report on Form 10-K/A for the fiscal year ended June 30, 2002, as filed with the Commission on September 27, 2002).  |
| 4.2            | Articles of Amendment (incorporated herein by reference to Exhibit 3.2 of the Company's quarterly report on Form 10-Q for the fiscal quarter ended December 31, 2004, as filed with the Commission on February 8, 2005).   |
| 4.3            | Articles of Amendment (incorporated herein by reference to Exhibit 1 of the Company's registration statement on Form 8-A, as filed with the Commission on December 15, 2005).  |
| 4.4            | By-laws, as amended through September 22, 2004 (incorporated herein by reference to Exhibit 3.2 of the Company's quarterly report on Form 10-Q for the fiscal quarter ended September 30, 2004, as filed with the Commission on November 1, 2004).   |
| 4.5            | Amendment to By-laws dated December 17, 2007 (incorporated herein by reference to Exhibit 3.1 to the Company's current report on Form 8-K, as filed with the Commission on December 20, 2007).   |
| 4.6            | Amendment to By-laws dated January 21, 2008 (incorporated herein by reference to Exhibit 3.1 to the Company's current report on Form 8-K, as filed with the Commission on January 24, 2008).   |
| 4.7            | Shareholder Rights Agreement, dated as of December 14, 2005, between the Company and Computershare Trust Company, N.A. (formerly known as EquiServe Trust Company, N.A.) (incorporated herein by reference to Exhibit 2 of the Company's registration statement on Form 8-A, as filed with the Commission on December 15, 2005). |
| 4.8*           | Mercury Computer Systems, Inc. Amended and Restated 2005 Stock Incentive Plan.   |
| 5.1*           | Opinion of Goodwin Procter LLP.  |
| 23.1*          | Consent of KPMG LLP.   |
| 23.2           | Consent of Goodwin Procter LLP (contained in the opinion filed as Exhibit 5.1 to this registration statement).   |
| 24.1           | Power of Attorney (included in signature page to this registration statement).   |
| 99.1           | Form of Stock Option Agreement under the 2005 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.1 of the Company's current report on Form 8-K, as filed with the Commission on August 21, 2006).  |
| 99.2           | Form of Restricted Stock Award Agreement under the 2005 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.3 of the Company's current report on Form 8-K, as filed with the Commission on November 16, 2005).  |
| 99.3           | Form of Stock Option Agreement for performance stock options under the 2005 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.1 of the Company's current report on Form 8-K, as filed with the Commission on September 28, 2007).   |
| 99.4           | Form of Deferred Stock Award Agreement under the 2005 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.1 of the Company's quarterly report on Form 10-Q for the fiscal quarter ended March 31, 2006, as filed with the Commission on May 9, 2006).   |

\* Filed herewith

**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 town of Chelmsford, the Commonwealth of Massachusetts on this 19th day of December, 2008.

**MERCURY COMPUTER SYSTEMS, INC.**

By: /s/ Robert E. Hult  
 Robert E. Hult  
 Senior Vice President and Chief Financial Officer

**Power of Attorney**

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints Mark Aslett and Robert E. Hult his true and lawful attorneys-in-fact and agents, each acting alone, with full powers of substitution and resubstitution, for him or in his name, place and stead, in any and all capacities to sign any and all amendments or post-effective amendments to this registration statement (or any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, each acting alone, or his substitute or 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.

| <b>Signature</b>                                 | <b>Title</b>   | <b>Date</b>       |
|--|--|-------------------|
| /s/ Mark Aslett<br>Mark Aslett                   | President, Chief Executive Officer and Director<br>(Principal Executive Officer)   | December 19, 2008 |
| /s/ Robert E. Hult<br>Robert E. Hult             | Senior Vice President and Chief Financial Officer<br>(Principal Financial Officer) | December 19, 2008 |
| /s/ Karl D. Noone<br>Karl D. Noone               | Vice President, Controller<br>(Principal Accounting Officer)                       | December 19, 2008 |
| /s/ Russell K. Johnsen<br>Russell K. Johnsen     | Chairman of the Board of Directors   | December 19, 2008 |
| /s/ George W. Chamillard<br>George W. Chamillard | Director   | December 19, 2008 |
| /s/ William K. O Brien<br>William K. O Brien     | Director   | December 19, 2008 |
| /s/ Lee C. Steele<br>Lee C. Steele               | Director   | December 19, 2008 |

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Lee C. Steele

/s/ Richard P. Wishner

Director

December 19, 2008

Richard P. Wishner

**EXHIBIT INDEX**

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