

ADVANCED PHOTONIX INC
Form S-8
October 30, 2007

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

ADVANCED PHOTONIX, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State of Other Jurisdiction of Incorporation or Organization)

33-0325826
(I.R.S. Employer Identification No.)

2925 Boardwalk, Ann Arbor, Michigan 48104
(Address of Principal Executive Offices) (Zip Code)

2007 EQUITY INCENTIVE PLAN
(Full Title of the Plan)

**Richard D. Kurtz, Chief Executive Officer and President,
Advanced Photonix, Inc., 2925 Boardwalk, Ann Arbor, Michigan 48104**
(Name and Address of Agent For Service)

(734) 864-5600
Telephone Number, Including Area Code, of Agent For Service.

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(3)
Class A Common Stock	2,500,000 shares	\$2.73	\$6,825,000	\$209.53

(1) Pursuant to Rule 416(c) under the Securities Act of 1933, this Registration Statement covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

(2) Estimated solely for the purpose of calculating the registration fee. Pursuant to Rule 457(h)(1) under the Securities Act of 1933, the proposed maximum price per share, the proposed maximum aggregate offering price and the amount of registration fee have been computed on the basis of the average of the high and low prices of the Class A Common Stock reported on the American Stock Exchange on October 23, 2007.

(3) Calculated pursuant to Section 6(b) of the Securities Act of 1933, as amended, as follows: \$30.70 per \$1 million of proposed maximum aggregate offering price.

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 (the "SEC") are incorporated by reference into this Registration Statement:

- (a) The Annual Report of Advanced Photonix, Inc. (the "Company") for the fiscal year ended March 31, 2007 on Form 10-K filed pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), filed with the SEC on June 29, 2007.
- (b) All other reports of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year ended March 31, 2007.
- (c) The description of the Company's Class A Common Stock contained in the Registration Statement on Form 8-A filed with the SEC on January 16, 1991.

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 have been sold or which deregisters all securities then 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.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation -- a "derivative action"), if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal actions or proceedings, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action, and the DGCL requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The DGCL provides that it is not exclusive of other indemnification that may be granted by a corporation's by-laws, disinterested director vote, stockholder vote, agreement or otherwise. Additionally, Section 102(b)(7) of the DGCL permits a provision in the certificate of incorporation of each corporation organized thereunder, such as the Company, eliminating or limiting, with certain exceptions, the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

The Company's Charter and Bylaws provide for indemnification of officers and directors for claims that arise in connection with their performance of services as officers and directors to the fullest extent permitted by the DGCL. The right to indemnification includes the right to be paid by the Company for expenses incurred in defending any such proceeding in advance of its final disposition. The right to indemnification under the Company's By-laws and Certificate of Incorporation is not exclusive of any other right that any person may have or may acquire under any statute, agreement or otherwise.

The Company carries directors' and officers' liability insurance that covers certain liabilities and expenses of the Company's directors and officers.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibit Exhibit
No.

- 4.1 The Company's Certificate of Incorporation, as amended, defining the rights of holders of the Company's Common Stock. (Incorporated herein by reference to Exhibit 3.1 to the Registration Statement on Form S-1 dated November 23, 1990 and amendment to the Certificate of Incorporation from Annual Report on Form 10-K dated March 31, 1996.)
- 4.2 The Company's By-Laws, as amended defining the rights of holders of the Company's Common Stock. (Incorporated herein by reference to Exhibit 3(ii) to the Current Report on Form 8-K dated June 8, 2005.)
- 4.3 The 2007 Equity Incentive Plan approved by Stockholders on August 24, 2007. (Incorporated herein by reference to Exhibit A to the Company's Proxy Statement relating to its 2007 Annual Meeting of Stockholders filed June 16, 2007 on Form 14A.)
- 4.4 Form of Director Restricted Stock Agreement under the 2007 Equity Incentive Plan.
- 4.5 Form of Employee Restricted Stock Agreement under the 2007 Equity Incentive Plan.
- 4.6 Form of Employee Stock Option Agreement under the 2007 Equity Incentive Plan.
- 5.1 Opinion of Dornbush Schaeffer Strongin & Venaglia, LLP as to the legality of the securities issued under the 2007 Equity Incentive Plan.
- 23.1 Consent of Farber Hass Hurley & McEwen, LLP, independent certified public accountants to the Company.

23.2 Consent of Dornbush Schaeffer Strongin & Venaglia, LLP, counsel to the Company (contained in Exhibit 5.1).

24.1 Power of Attorney (included on the signature pages of this Registration Statement)

Item 9. Undertakings.

(a) The undersigned Company 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 of 1933, 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;

(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 hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the 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 periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company'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 Company pursuant to the foregoing provisions, or otherwise, the Company 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 payment by the Company of expenses paid or incurred by a director, officer or controlling person of the Company 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 Company 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.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company 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 Ann Arbor and State of Michigan, on the 30th day of October 2007.

ADVANCED PHOTONIX, INC.

By: /s/Richard D. Kurtz

Richard D. Kurtz,
Chairman of the Board,
Chief Executive Officer,
President and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Richard D. Kurtz and Robin F. Risser, and each of them, his or her true and lawful attorney-in-fact and agent, 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) 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 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 each might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them 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.

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SIGNATURE

TITLE

DATE

**PRINCIPAL EXECUTIVE
OFFICER:**

/s/Richard D. Kurtz
Richard D. Kurtz

Chairman of the Board,
Chief Executive Officer,
President and Director

October 30, 2007

**PRINCIPAL FINANCIAL
AND
ACCOUNTING OFFICER:**

/s/Robin F. Risser
Robin F. Risser

Chief Financial Officer
and Director

October 30, 2007

DIRECTORS:

/s/Lance Brewer
Lance Brewer

Director

October 30, 2007

/s/M. Scott Farese
M. Scott Farese

Director

October 30, 2007

/s/Donald Pastor
Donald Pastor

Director

October 30, 2007

/s/Stephen P. Soltwedel
Stephen P. Soltwedel

Director

October 30, 2007

EXHIBIT INDEX

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