

SONOSITE INC
Form S-8
June 06, 2011

As filed with the Securities and Exchange Commission on June 6, 2011

Registration No. 333-

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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

Washington
(State or Other Jurisdiction
of Incorporation or
Organization)

91-1405022
(I.R.S. Employer
Identification No.)

21919 30th Drive S.E.
Bothell, WA 98021-3904
(Address of Principal Executive Offices) (Zip Code)

Options to purchase shares and restricted stock units granted under the
VisualSonics Inc. 2010 Equity Incentive Plan and assumed by the Registrant
(Full Title of the Plan)

Kevin M. Goodwin
President and Chief Executive Officer

SonoSite, Inc.
21919 30th Drive S.E.
Bothell, WA 98021-3904
(Name and Address of Agent For Service)

(425) 951-1200
(Telephone Number, including area code, of agent for service)

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Copies to:
Stephen M. Graham, Esq.
Alan Smith, Esq.
Fenwick & West LLP
1191 Second Avenue, 10th Floor
Seattle, WA 98101
Telephone: (206) 389-4510
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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. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
In respect of assumed stock options: Common Stock, \$0.01 par value per share (2)	287,750 (2)	\$27.45 (3)	\$7,898,737.50 (3)	\$917.04 (3)
In respect of assumed restricted stock units: Common Stock, \$0.01 par value per share (4)	345,689 (4)	\$34.91 (5)	\$12,068,002.99 (5)	\$1,401.10 (5)
TOTAL	633,439	N/A	N/A	\$2,318.14

- (1) This Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable in respect of the securities identified in the above table by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the outstanding shares of the Registrant's common stock.
- (2) Represents shares subject to issuance upon the exercise of stock options outstanding under the VisualSonics Inc. 2010 Equity Incentive Plan, assumed by the Registrant on June 30, 2010 pursuant to an Share Purchase Agreement by and among the Registrant, VisualSonics Inc., the shareholders of VisualSonics Inc., and VenGrowth Private Equity Partners Inc. as the Shareholders' Agent, dated as of May 26, 2010 (the "Purchase Agreement").
- (3) Calculated solely for the purposes of this offering under Rule 457(h) of the Securities Act of 1933, as amended, on the basis of the weighted average exercise price of the outstanding options.
- (4) Represents shares subject to issuance in connection with restricted stock units outstanding under the VisualSonics Inc. 2010 Equity Incentive Plan, assumed by the Registrant on June 30, 2010 pursuant to the Share Purchase Agreement.
- (5) Calculated solely for the purposes of this offering under Rule 457(c) and (h) of the Securities Act of 1933, as amended, on the basis of the average of the high and low prices of the Registrant's common stock as reported on The NASDAQ Global Select Market on May 25, 2011.

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PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

SonoSite, Inc. (the “Registrant”) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the “Commission”):

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2010 filed with the Commission on March 16, 2011 pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”);
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant’s Annual Report referred to in (a) above; and
- (c) The description of the Registrant’s Common Stock contained in the Registrant’s Registration Statement on Form 10 filed with the Commission on February 13, 1998, together with two amendments to such Form 10 filed on March 19, 1998 and March 31, 1998, under Section 12(g) of the Exchange Act, and any other amendments or reports filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers 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 such documents, except as to specific sections of such statements as set forth therein. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K prior or subsequent to the date hereof shall not be incorporated by reference into this Registration Statement. Any statement contained in a document 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 in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Article VI of the Registrant's Restated Articles of Incorporation (the “Articles”) provides that the Registrant may indemnify and hold harmless to the fullest extent permitted by the Washington Business Corporation Act (the “WBCA”) or other applicable law each person who was or is made a party to or is threatened to be made a party to or is involved (including, without limitation, as a witness) in any actual or threatened action, suit or other proceeding, whether civil, criminal, derivative, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Registrant or, being or having been such a director, officer, employee or agent, he or she is

or was serving at the request of the Registrant as a director, officer, employee, agent, trustee or in any other capacity of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action or omission in an official capacity or in any other capacity while serving as a director, officer, employee, agent, trustee or in any other capacity, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, Employee Retirement Income Security Act of 1974 ("ERISA") excise taxes or penalties and amounts to be paid in settlement) actually or reasonably incurred or suffered by such person in connection therewith. Such indemnification may continue as to a person who has ceased to be a director, officer, employee or agent of the Registrant and shall inure to the benefit of his or her heirs and personal representatives.

The Registrant may pay the expenses of a director, officer, employee or agent of the Registrant incurred in defending any such proceeding in advance of the final disposition of any such proceeding; provided, however, that the payment of such expenses in advance of the final disposition of a proceeding shall be made to or on behalf of a director, officer, employee or agent only upon delivery to the Registrant of an undertaking, by or on behalf of such director, officer, employee or agent, to repay all amounts so advanced if it shall ultimately be determined that such director, officer, employee or agent is not entitled to be indemnified under the Registrant's Restated Articles of Incorporation or otherwise, which undertaking may be unsecured and may be accepted without reference to financial ability to make repayment.

No indemnification shall be provided under the Registrant's Restated Articles of Incorporation to any such person if the Registrant is prohibited by the provisions of the WBCA or other applicable law as then in effect from paying such indemnification. The WBCA (Sections 23B.08.500 through 23B.08.600 of the Revised Code of Washington) authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act").

The WBCA includes a provision (Section 23B.08.320 of the Revised Code of Washington) that permits a corporation to limit a director's liability to the corporation or its shareholders for monetary damages for his or her acts or omissions as a director, except in certain circumstances involving intentional misconduct, self-dealing or illegal corporate loans or distributions, or any transaction from which the director personally benefits. Article V of the Registrant's Restated Articles of Incorporation contains provisions implementing, to the fullest extent permitted by Washington law, such limitations on a director's liability to the Registrant and its shareholders.

The Registrant has entered into indemnification agreements with each of its directors, certain officers and other persons performing similar functions. These agreements, among other things, require the Registrant to indemnify each director and officer to the fullest extent permitted by Washington law, including indemnification for expenses such as attorneys' fees, costs, judgments, fines, ERISA excise taxes or penalties, witness fees, and settlement amounts incurred by the director or officer in any action or proceeding, including any action by or in the right of the Registrant, arising out of the person's services as a director or officer of the Registrant, any subsidiary of the Registrant or any other company or enterprise to which the person provides services at the Registrant's request. The Registrant believes that its charter provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

In addition, the Registrant maintains an insurance policy insuring its directors and officers for certain acts or omissions while acting in their official capacities.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit Filing Date	
3.1	Restated Articles of Incorporation of SonoSite, Inc., as currently in effect.	S-1	333-7141573.1	October 3, 1999	
3.2	Amended and Restated Bylaws of SonoSite, Inc., as currently in effect.	10-Q	333-7141573.2	November 9, 2010	
5.1	Opinion and Consent of Fenwick & West llp.				X
23.1	Consent of Independent Registered Public Accounting Firm.				X
23.2	Consent of Fenwick & West llp (contained in Exhibit 5.1).				X
24	Power of Attorney (incorporated by reference to Page II-4 of this Registration Statement).				X
99.1	VisualSonics Inc. 2010 Equity Incentive Plan.				X
99.2	Form of SonoSite, Inc. Stock Option Assumption Agreement.				X
99.3	Form of SonoSite, Inc. Restricted Stock Unit Assumption Agreement.				X

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 this 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 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 percent 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 clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those clauses 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 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; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered that 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 Section 15(d) of the Exchange Act that is incorporated by reference into 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.

C. 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 indemnification provisions summarized in Item 6, 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.

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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 Bothell, State of Washington, on June 6, 2011.

SonoSite, Inc.

By: /s/ Kevin M. Goodwin

Kevin M. Goodwin
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned officers and directors of SonoSite, Inc., a Washington corporation, do hereby constitute and appoint Kevin M. Goodwin, President and Chief Executive Officer, and Marcus Smith, Senior Vice President and Chief Financial Officer, and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms that all said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts. This Power of Attorney is not granted by any individual who executes this document in the State of New York, and no existing powers of attorney are revoked hereby.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Robert G. Hauser, M.D.	Chairman of the Board	June 3, 2011
/s/ Kevin M. Goodwin	President and Chief Executive Officer (Principal Executive Officer)	June 3, 2011
/s/ Marcus Y. Smith		June 3, 2011

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Senior Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

/s/ Carmen L. Diersen	Director	June 3, 2011
/s/ Steven R. Goldstein, M.D.	Director	June 3, 2011
/s/ Paul V. Haack	Director	June 3, 2011
/s/ Rodney F. Hochman, M.D.	Director	June 3, 2011
/s/ Richard O. Martin, Ph.D.	Director	June 3, 2011
/s/ William G. Parzybok, Jr.	Director	June 3, 2011

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