

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

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

AEYE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

37-1827430
(I.R.S. Employer
Identification No.)

One Park Place, Suite 200
Dublin, California
(Address of Principal Executive Offices)

94568
(Zip Code)

AEye, Inc. 2021 Equity Incentive Plan
AEye, Inc. 2022 Employee Stock Purchase Plan
(Full title of the plans)

Blair LaCorte
Chief Executive Officer
One Park Place, Suite 200
Dublin, California 94568
(925) 400-4366

(Name, address and telephone number, including area code, of agent for service)

With copies to:

Christopher Forrester
Shearman & Sterling LLP
1460 El Camino Real, 2nd Floor
Menlo Park, California 94025
(650) 838-3772

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.

Large accelerated filer
Non-accelerated filer

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.

EXPLANATORY NOTE

This Registration Statement is filed by AEye, Inc. (the “Registrant”) for the purposes of (i) registering, pursuant to General Instruction E to Form S-8, 7,743,413 additional shares of the Registrant’s common stock, \$0.0001 par value per share (the “Common Stock”) under the AEye, Inc. 2021 Equity Incentive Plan (the “2021 EIP”) pursuant to the provisions of the 2021 EIP, which provides for annual automatic increases in the number of shares of Common Stock reserved for issuance under the 2021 EIP and (ii) registering 2,000,000 shares of Common Stock that may be offered under the AEye, Inc. 2022 Employee Stock Purchase Plan (the “2022 ESPP”), which was approved by our stockholders at the 2022 Annual Meeting of Stockholders held on May 10, 2022.

In accordance with General Instruction E of Form S-8, and only with respect to the Common Stock issuable under the 2021 EIP, this Registration Statement hereby incorporates by reference the contents of the Registrant’s Registration Statement on Form S-8 filed with the Securities and Exchange Commission (the “Commission”) on October 29, 2021 (Registration No. 333-260601), to the extent not superseded hereby.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the “Note” to Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the 2021 EIP and in the 2022 ESPP as required by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by the Registrant with the Commission are incorporated by reference in this Registration Statement:

- (a) The Registrant’s annual report on [Form 10-K](#) for the fiscal year ended December 31, 2021 filed with the Commission on March 28, 2022 (the “2021 10-K”), which includes audited financial statements for the Registrant’s latest fiscal year;
- (b) The Registrant’s definitive proxy statement on [Schedule 14A](#) for the 2022 Annual Meeting of Stockholders, filed with the Commission on March 31, 2022;
- (c) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), since the end of the fiscal year covered by the audited financial statements described in (a) above; and
- (d) The description of the Registrant’s Common Stock contained in the 2021 10-K, and any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the shares of Common Stock offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document that is not deemed filed under such provisions.

For purposes of 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 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 superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

See the description of the Registrant's Common Stock contained in the 2021 10-K.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law ("DGCL") permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Registrant's Second Amended and Restated Certificate of Incorporation (the "Amended Charter") provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The Amended Charter provides that the Registrant will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Registrant), by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at the Registrant's request as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (all such persons being referred to as an "Indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such proceeding. Expenses must be advanced to an Indemnitee under certain circumstances.

The Registrant has entered into indemnification agreements with each of its directors and officers. These indemnification agreements may require the Registrant, among other things, to indemnify its directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of the Registrant's directors or officers, or any of its subsidiaries or any other company or enterprise to which the person provides services at the Registrant's request.

The Registrant maintains a general liability insurance policy that covers certain liabilities of directors and officers of the Registrant's corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>Date</u>	<u>Number</u>	<u>Filed Herewith</u>
4.1	Second Amended and Restated Certificate of Incorporation of AEye, Inc.	8-K	8/23/2021	3.1	
4.2	Amended and Restated Bylaws of AEye, Inc.	8-K	8/23/2021	3.2	
5.1	Opinion of Shearman & Sterling LLP.				X
10.1#	AEye, Inc. 2021 Equity Incentive Plan.	8-K	10/29/2021	10.1	
10.2#	AEye, Inc. 2022 Employee Stock Purchase Plan.				X
23.1	Consent of Deloitte & Touche LLP.				X
23.2	Consent of Shearman & Sterling LLP (included in Exhibit 5.1).				X
24.1	Power of Attorney (included on the signature page).				X
107	Filing Fee Table				X

Management contract or compensatory plan

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 the 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 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(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) of this section do not apply if the information required to be included in a post-effective amendment by those clauses is contained in 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 the 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 Section 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 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 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, 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.

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 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dublin, State of California on the 18th day of May, 2022.

AEYE, INC.

By: /s/ Blair LaCorte
Blair LaCorte
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Blair LaCorte and Robert Brown as his or her true and lawful attorneys-in-fact and agents, each of whom may act alone, 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 on Form S-8, and to sign any related registration statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended, and all post-effective amendments 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 he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or their 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 indicated on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Blair LaCorte</u> Blair LaCorte	Chief Executive Officer and Director (Principal Executive Officer)	May 18, 2022
<u>/s/ Robert Brown</u> Robert Brown	Chief Financial Officer and Treasurer (Principal Financial Officer)	May 18, 2022
<u>/s/ Luis C. Dussan</u> Luis C. Dussan	Director	May 18, 2022
<u>/s/ Wen H. Hsieh</u> Wen H. Hsieh	Director	May 18, 2022
<u>/s/ Prof. Dr. Bernd Gottschalk</u> Prof. Dr. Bernd Gottschalk	Director	May 18, 2022
<u>/s/ Timothy J. Dunn</u> Timothy J. Dunn	Director	May 18, 2022
<u>/s/ Carol DiBattiste</u> Carol DiBattiste	Director	May 18, 2022
<u>/s/ Sue Zeifman</u> Sue Zeifman	Director	May 18, 2022

SHEARMAN & STERLING LLP

1460 EL CAMINO REAL 2ND FLOOR

MENLO PARK, CA 94025

+1.650.838.3600

May 18, 2022

AEye, Inc.
One Park Place, Suite 200
Dublin, CA 94568

Ladies and Gentlemen:

We are acting as counsel for AEye, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing by the Company of a registration statement on Form S-8 (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to (i) up to 7,743,413 additional shares of common stock, \$0.0001 par value per share, of the Company (the "EIP Shares") that may be delivered from time to time pursuant to the AEye, Inc. 2021 Equity Incentive Plan (the "2021 EIP") and (ii) up to 2,000,000 shares of common stock of the Company (the "ESPP Shares," together with EIP Shares, the "Shares") that may be delivered from time to time pursuant to the AEye, Inc. 2022 Employee Stock Purchase Plan (the "2022 ESPP," together with 2021 EIP, the "Plans"). In connection with the foregoing, we have reviewed originals or copies identified to our satisfaction of the following documents:

- (a) The Registration Statement;
- (b) The certificate of incorporation and by-laws of the Company, in each case as amended, if applicable; and
- (c) Originals or copies of such other corporate records of the Company, certificates of public officials and of officers of the Company, and agreements and other documents as we have deemed necessary as a basis for the opinions expressed below.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents, certificates and instruments submitted to us as originals and the conformity with originals of all documents submitted to us as copies.

Our opinion set forth below is based on the text of the Plans as referenced in the Exhibit Index to the Registration Statement.

Our opinion expressed below is limited to the General Corporation Law of the State of Delaware, and we do not express any opinion herein concerning any other law.

Based upon and subject to the foregoing and having regard for such legal considerations as we have deemed relevant, we are of the opinion that authorized but not previously issued Shares which may be delivered under the Plans have been duly authorized by the Company and, when (a) issued and delivered by the Company in accordance with the terms of the applicable Plan and (b) paid for in full in accordance with the terms of the applicable Plan, will be validly issued, fully paid and non-assessable.

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Shearman & Sterling LLP is a limited liability partnership organized in the United States under the laws of the state of Delaware, which laws limit the personal liability of partners.

This opinion letter speaks only as of the date hereof. We expressly disclaim any responsibility to advise you of any development or circumstance of any kind, including any change of law or fact that may occur after the date of this opinion letter that might affect the opinions expressed herein.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby concede that we come within the category of persons whose consent is required by the Securities Act or the General Rules and Regulations of the Commission promulgated thereunder.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose without our prior written consent.

Very truly yours,

/s/ Shearman & Sterling LLP
Shearman & Sterling LLP

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AEYE, INC.
2022 EMPLOYEE STOCK PURCHASE PLAN

The purpose of the AEye, Inc. 2022 Employee Stock Purchase Plan (the “Plan”) is to provide eligible employees of AEye, Inc. (the “Company”) and each Designated Company (as defined below) with opportunities to purchase shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”). 2,000,000 shares of Common Stock in the aggregate have been approved and reserved for this purpose, plus on January 1, 2023 and each January 1 thereafter through (and including) January 1, 2032, the number of shares of Common Stock reserved and available for issuance under the Plan shall be cumulatively increased by the lesser of (a) one percent of the number of shares of Common Stock issued and outstanding calculated on a fully-diluted basis on the immediately preceding December 31; or (b) such lesser number of shares as the Administrator shall approve.

The Plan includes two components: a Code Section 423 Component (the “423 Component”) and a non-Code Section 423 Component (the “Non-423 Component”). It is intended for the 423 Component to constitute an “employee stock purchase plan” within the meaning of Section 423(b) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), and the 423 Component shall be interpreted in accordance with that intent. Under the Non-423 Component, which does not qualify as an “employee stock purchase plan” within the meaning of Section 423(b) of the Code, options shall be granted pursuant to rules, procedures, or sub-plans adopted by the Administrator designed to achieve tax, securities laws, or other objectives for eligible employees. Except as otherwise provided herein, the Non-423 Component shall operate and be administered in the same manner as the 423 Component.

Unless otherwise defined herein, capitalized terms in this Plan shall have the meaning ascribed to them in Section 28.

1. Administration. The Plan shall be administered by the person or persons (the “Administrator”) appointed by the Company’s Board of Directors (the “Board”) for such purpose. The Administrator has full authority at any time to: (a) adopt, alter, and repeal such rules, guidelines, and practices for the administration of the Plan and for its own acts and proceedings as it shall deem advisable; (b) interpret and construe the terms and provisions of the Plan; (c) make all determinations it deems advisable for the administration of the Plan, including to accommodate the specific requirements of local laws, regulations, and procedures for jurisdictions outside the United States; (d) decide all disputes arising in connection with the Plan; and (e) otherwise supervise the administration of the Plan. All interpretations and decisions of the Administrator shall be final and binding on all persons, including the Company and the Participants. No member of the Board or individual exercising administrative authority with respect to the Plan shall be liable for any action or determination made in good faith with respect to the Plan or any option granted hereunder.

2. Offerings. The Company shall make one or more offerings to eligible employees to purchase Common Stock under the Plan (“Offerings”) consisting of one or more Purchase Periods. Unless otherwise determined by the Administrator, the initial Offering shall begin on November 1, 2022 and shall end on October 31, 2024 (the “Initial Offering”) and the next two Offerings shall commence on the first trading day on or following each of May 1, 2023 and November 1, 2023 and shall end on October 31, 2024. Thereafter, unless otherwise determined by the Administrator, subsequent Offerings shall begin on the first trading day on or after each May 1 and November 1 and shall end on the last trading day on or before the first following October 31 and April 30, respectively. The Administrator may, in its discretion, designate a different period for any Offering, provided that no Offering shall exceed 27 months in duration. Unless the Administrator otherwise determines, each Offering shall be divided into equal six-month Purchase Periods, except that the first Purchase Period in the Initial Offering shall commence on November 1, 2022 and shall end on the last trading day on or before April 30, 2023.

3. Eligibility. All individuals classified as employees on the payroll records of the Company and each Designated Company are eligible to participate in any one or more of the Offerings under the Plan, provided that, unless otherwise determined by the Administrator, as of the first day of the applicable Offering (the “Offering Date”) they are customarily employed by the Company or a Designated Company for more than 20 hours a week and for more than five months in any calendar year; *provided, however*, that employees who are employed for 20 hours or less a week or for five months or less in any calendar year may be eligible to participate in the Plan if required by applicable law or regulations. Notwithstanding any other provision herein, individuals who are not contemporaneously classified as employees of the Company or a Designated Company for purposes of the Company’s or applicable Designated Company’s payroll system are not considered to be eligible employees of the Company or any Designated Company and shall not be eligible to participate in the Plan. In the event any such individuals are reclassified as employees of the Company or a Designated Company for any purpose, including, without limitation, common law or statutory employees, by any action of any third party, including, without limitation, any government agency, or as a result of any private lawsuit, action or administrative proceeding, such individuals shall, notwithstanding such reclassification, remain ineligible for participation. Notwithstanding the foregoing, the exclusive means for individuals who are not contemporaneously classified as employees of the Company or a Designated Company on the Company’s or Designated Company’s payroll system to become eligible to participate in this Plan is through an amendment to this Plan, duly executed by the Company, which specifically renders such individuals eligible to participate herein. Notwithstanding any other provision herein, the Administrator may determine that select employees of a Designated Company that would otherwise be eligible to participate in any one or more of the Offerings under the Plan but are restricted or limited from so participating due to applicable law are ineligible to participate in any one or more of the Offerings under the Plan.

4. Participation.

(a) Participants on Effective Date. Each eligible employee at the time of the adoption of the Plan shall be deemed to be a Participant at such time. If an eligible employee is deemed to be a Participant pursuant to this Section 4(a), such individual shall be deemed not to have authorized payroll deductions and shall not purchase any Common Stock hereunder unless he or she thereafter authorizes payroll deductions by submitting an enrollment form (in the manner described in Section 4(c)) within 60 days of the commencement of the Initial Offering. If such a Participant does not authorize payroll deductions by submitting an enrollment form within 60 days of the commencement of the Initial Offering, that Participant shall be deemed to have withdrawn from the Plan.

(b) Participants in Subsequent Offerings. An eligible employee who is not a Participant in any prior Offering may participate in a subsequent Offering by submitting an enrollment form (in the manner described in Section 4(c)) at least 15 business days before the Offering Date (or by such other deadline as shall be established by the Administrator for the Offering).

(c) Enrollment. The enrollment form (which may be in an electronic format or such other method as determined by the Company in accordance with the Company's practices) shall (a) state a whole percentage to be deducted from an eligible employee's Compensation per pay period, (b) authorize the purchase of Common Stock in each Offering in accordance with the terms of the Plan, and (c) specify the exact name or names in which shares of Common Stock purchased for such individual are to be issued pursuant to Section 10. An employee who does not enroll in accordance with these procedures shall be deemed to have waived the right to participate. Unless a Participant files a new enrollment form or withdraws from the Plan, such Participant's deductions and purchases shall continue at the same percentage of Compensation for future Offerings, provided he or she remains eligible.

(d) Notwithstanding the foregoing, participation in the Plan shall neither be permitted nor denied contrary to the requirements of the Code.

5. Employee Contributions. Each eligible employee may authorize payroll deductions at a minimum of one (1) percent up to a maximum of ten (10) percent of such employee's Compensation for each pay period. The Company shall maintain book accounts showing the amount of payroll deductions made by each Participant for each Purchase Period. No interest shall accrue or be paid on payroll deductions, except as may be required by applicable law. If payroll deductions for purposes of the Plan are prohibited or otherwise problematic under applicable law (as determined by the Administrator in its discretion), the Administrator may require Participants to contribute to the Plan by such other means as determined by the Administrator. Any reference to "payroll deductions" in this Section 5 (or in any other section of the Plan) shall similarly cover contributions by other means made pursuant to this Section 5.

6. Deduction Changes. Except in the event of a Participant increasing his or her payroll deduction from zero (0) percent during the first Offering as specified in Section 4(a) or as may be determined by the Administrator in advance of an Offering, a Participant may not increase or decrease his or her payroll deduction during any Offering, but may increase or decrease his or her payroll deduction with respect to the next Offering (subject to the limitations of Section 5) by filing a new enrollment form at least 15 business days before the next Offering Date (or by such other deadline as shall be established by the Administrator for the Offering). The Administrator may, in advance of any Offering, establish rules permitting a Participant to increase, decrease or terminate his or her payroll deduction during an Offering.

7. Withdrawal. A Participant may withdraw from participation in the Plan by submitting to the Company a revised enrollment form indicating his or her election to withdraw (in accordance with such procedures as may be established by the Administrator). The Participant's withdrawal shall be effective as of the next business day or as of a later date determined by the Administrator. Following a Participant's withdrawal, the Company shall promptly refund such individual's entire account balance under the Plan to him or her (after payment for any Common Stock purchased before the effective date of withdrawal). Partial withdrawals are not permitted. Such an employee may not begin participation again during the remainder of the Offering, but may enroll in a subsequent Offering in accordance with Section 4.

8. Grant of Options. On each Offering Date, the Company shall grant to each Participant in the Plan an option ("Option") to purchase, on the last day of a Purchase Period (the "Exercise Date") and at the Option Price hereinafter provided for, the lowest of (a) a number of shares of Common Stock determined by dividing such Participant's accumulated payroll deductions on such Exercise Date by the Option Price (as defined herein); (b) a number of shares determined by dividing \$15,000 by the Fair Market Value of a Common Stock on the Offering Date; or (c) such other lesser maximum number of shares as shall have been established by the Administrator in advance of the Offering; provided, however, that such Option shall be subject to the limitations set forth below. Each Participant's Option shall be exercisable only to the extent of such Participant's accumulated payroll deductions on the Exercise Date. The purchase price for each share purchased under each Option (the "Option Price") shall be 85 percent of the Fair Market Value of a Common Stock on the Offering Date or the Exercise Date, whichever is less.

Notwithstanding the foregoing, no Participant may be granted an Option hereunder if such Participant, immediately after the Option was granted, would be treated as owning stock possessing five (5) percent or more of the total combined voting power or value of all classes of stock of the Company or any Parent or Subsidiary. For purposes of the preceding sentence, the attribution rules of Section 424(d) of the Code shall apply in determining the stock ownership of a Participant, and all stock which the Participant has a contractual right to purchase shall be treated as stock owned by the Participant. In addition, no Participant may be granted an Option which permits his or her rights to purchase stock under the Plan, and any other employee stock purchase plan of the Company and its Parents and Subsidiaries, to accrue at a rate which exceeds \$25,000 of the fair market value of such stock (determined on the option grant date or dates) for each calendar year in which the Option is outstanding at any time. The purpose of the limitation in the preceding sentence is to comply with Section 423(b)(8) of the Code and shall be applied taking Options into account in the order in which they were granted.

9. Exercise of Option and Purchase of Shares. Each employee who continues to be a Participant in the Plan on the Exercise Date shall be deemed to have exercised his or her Option on such date and shall acquire from the Company such number of whole shares of Common Stock reserved for the purpose of the Plan as his or her accumulated payroll deductions on such date shall purchase at the Option Price, subject to any other limitations contained in the Plan. Unless otherwise determined by the Administrator in advance of an Offering, any amount remaining in a Participant's account after the purchase of shares on an Exercise Date of an Offering solely by reason of the inability to purchase a fractional share shall be carried forward to the next Purchase Period and, if such Exercise Date is the final Exercise Date of an Offering, shall be carried forward to the next Offering; any other balance remaining in a Participant's account at the end of an Offering shall be refunded to the Participant promptly.

10. Issuance of Certificates. Certificates representing shares of Common Stock purchased under the Plan may be issued only in the name of the employee, in the name of the employee and another person of legal age as joint tenants with rights of survivorship, or in the name of a broker authorized by the employee to be his, her or their, nominee for such purpose.

11. Rights on Termination or Transfer of Employment. If a Participant's employment terminates for any reason before the Exercise Date for any Offering, no payroll deduction shall be taken from any pay due and owing to the Participant and the balance in the Participant's account shall be paid to such Participant or, in the case of such Participant's death, to the legal representative of his or her estate as if such Participant had withdrawn from the Plan under Section 7. An employee shall be deemed to have terminated employment, for this purpose, if the corporation that employs him or her, having been a Designated Company, ceases to be a Subsidiary or Affiliate, or if the employee is transferred to any corporation other than the Company or a Designated Company. Unless otherwise determined by the Administrator, a Participant whose employment transfers between, or whose employment terminates with an immediate rehire (with no break in service) by, Designated Companies or a Designated Company and the Company shall not be treated as having terminated employment for purposes of participating in the Plan or an Offering; provided, however, that if a Participant transfers from an Offering under the 423 Component to an Offering under the Non-423 Component, the exercise of the Participant's Option shall be qualified under the 423 Component only to the extent that such exercise complies with Section 423 of the Code. If a Participant transfers from an Offering under the Non-423 Component to an Offering under the 423 Component, the exercise of the Participant's Option shall remain non-qualified under the Non-423 Component. Further, an employee shall not be deemed to have terminated employment for purposes of this Section 11, if the employee is on an approved leave of absence where the employee's right to reemployment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise provides in writing.

12. Special Rules and Sub-Plans. Notwithstanding anything herein to the contrary, the Administrator may adopt special rules or sub-plans applicable to the employees of a particular Designated Company, whenever the Administrator determines that such rules are necessary or appropriate for the implementation of the Plan in a jurisdiction where such Designated Company has employees, regarding, without limitation, eligibility to participate in the Plan, handling and making of payroll deductions or contribution by other means, establishment of bank or trust accounts to hold payroll deductions, payment of interest, conversion of local currency, obligations to pay payroll tax, withholding procedures and handling of share issuances, any of which may vary according to applicable requirements; provided that if such special rules or sub-plans are inconsistent with the requirements of Section 423(b) of the Code, the employees subject to such special rules or sub-plans shall participate in the Non-423 Component.

13. Optionees Not Stockholders. Neither the granting of an Option to a Participant nor the deductions from his or her pay shall result in such Participant becoming a holder of the shares of Common Stock covered by an Option under the Plan until such shares have been purchased by and issued to him or her.

14. Rights Not Transferable. Rights under the Plan are not transferable by a Participant other than by will or the laws of descent and distribution, and are exercisable during the Participant's lifetime only by the Participant.

15. Application of Funds. All funds received or held by the Company under the Plan may be combined with other corporate funds and may be used for any corporate purpose, unless otherwise required under applicable law.

16. Adjustment in Case of Changes Affecting Common Stock. In the event of a subdivision of outstanding shares of Common Stock, the payment of a dividend in Common Stock or any other change affecting the Common Stock, the number of shares approved for the Plan and the share limitation set forth in Section 8 shall be equitably or proportionately adjusted by the Board in its sole discretion to give proper effect to such event.

17. Change in Control. Each outstanding purchase right shall automatically be exercised, immediately prior to the effective date of any Change in Control, by applying the payroll deductions of each Participant for the Purchase Period in which such Change in Control occurs to the purchase of whole shares of Common Stock at the Option Price, with the Exercise Date being the date immediately prior to the effective date of such Change in Control. Any such purchase shall be subject to any other limitations contained in the Plan. The Company shall use its best efforts to provide at least ten (10) days' prior written notice of the occurrence of any Change in Control, and Participants shall, following the receipt of such notice, have the right to terminate their outstanding purchase rights prior to the effective date of the Change in Control. Notwithstanding the foregoing provisions of this Section 17 to the contrary, the Administrator may in its discretion determine that any outstanding purchase rights shall be terminated prior to the effective date of a Change in Control, in which case all payroll deductions for the Purchase Period in which such purchase rights are terminated shall be promptly refunded.

18. Amendment of the Plan. The Board may at any time and from time to time amend the Plan in any respect, except that without the approval within 12 months of such Board action by the stockholders, no amendment shall be made increasing the number of shares approved for the Plan or making any other change that would require stockholder approval in order for the 423 Component of the Plan, as amended, to qualify as an "employee stock purchase plan" under Section 423(b) of the Code.

19. Insufficient Shares. If the total number of shares of Common Stock that would otherwise be purchased on any Exercise Date plus the number of shares purchased under previous Offerings under the Plan exceeds the maximum number of shares issuable under the Plan, the shares then available shall be apportioned among Participants in proportion to the amount of payroll deductions accumulated on behalf of each Participant that would otherwise be used to purchase Common Stock on such Exercise Date.

20. Termination of the Plan. The Plan may be terminated at any time by the Board. Upon termination of the Plan, all amounts in the accounts of Participants shall be promptly refunded. The Plan shall automatically terminate on the ten-year anniversary of the Registration Date.

21. Governmental Regulations. The Company's obligation to sell and deliver Common Stock under the Plan is subject to the completion of any registration or qualification of the Common Stock under any U.S. or non-U.S. local, state or federal securities or exchange control law, or under rulings or regulations of the SEC or of any other governmental regulatory body, and to obtaining any approval or other clearance from any U.S. and non-U.S. local, state or federal governmental agency, which registration, qualification, or approval the Company shall, in its absolute discretion, deem necessary or advisable. The Company is under no obligation to register or qualify the Common Stock with the SEC or any other U.S. or non-U.S. securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of such stock.

22. Governing Law. This Plan and all Options and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without regard to conflict of law principles.

23. Issuance of Shares. Shares may be issued upon exercise of an Option from authorized but unissued Common Stock, from shares held in the treasury of the Company, or from any other proper source.

24. Tax Withholding. Participation in the Plan is subject to any applicable U.S. and non-U.S. federal, state, or local tax withholding requirements on income the Participant realizes in connection with the Plan. Each Participant agrees, by entering the Plan, that the Company or any Subsidiary or Affiliate may, but shall not be obligated to, withhold from a Participant's wages, salary, or other compensation at any time the amount necessary for the Company or any Subsidiary or Affiliate to meet applicable withholding obligations, including any withholding required to make available to the Company or any Subsidiary or Affiliate any tax deductions or benefits attributable to the sale or disposition of Common Stock by such Participant. In addition, the Company or any Subsidiary or Affiliate may, but shall not be obligated to, withhold from the proceeds of the sale of Common Stock or any other method of withholding that the Company or any Subsidiary or Affiliate deems appropriate to the extent permitted by U.S. Treasury Regulation Section 1.423-2(f) with respect to the 423 Component. The Company shall not be required to issue any Common Stock under the Plan until such obligations are satisfied.

25. Code Section 409A. The 423 Component of the Plan is exempt from the application of Section 409A of the Code and any ambiguities herein shall be interpreted to so be exempt from Section 409A of the Code. The Non-423 Component is intended to be exempt from the application of Section 409A of the Code as options granted thereunder are intended to constitute "short term deferrals" and any ambiguities herein shall be interpreted such that those options shall so be exempt from Section 409A of the Code. In furtherance of the foregoing and notwithstanding any provision in the Plan to the contrary, if the Administrator determines that an option granted under the Plan may be subject to Section 409A of the Code or that any provision in the Plan would cause an option under the Plan to be subject to Section 409A of the Code, the Administrator may amend the terms of the Plan and/or of an outstanding option granted under the Plan, or take such other action the Administrator determines is necessary or appropriate, in each case, without the Participant's consent, to exempt any outstanding option or future option that may be granted under the Plan from or to allow any such options to comply with Section 409A of the Code, but only to the extent any such amendments or action by the Administrator would not violate Section 409A of the Code. Notwithstanding the foregoing, the Company shall have no liability to a Participant or any other party if the option to purchase Common Stock under the Plan that is intended to be exempt from or compliant with Section 409A of the Code is not so exempt or compliant or for any action taken by the Administrator with respect thereto. The Company makes no representation that the option to purchase Common Stock under the Plan is compliant with Section 409A of the Code.

26. Notification Upon Sale of Shares Under 423 Component. Each Participant agrees, by entering the 423 Component of the Plan, to give the Company prompt notice of any disposition of shares purchased under the Plan where such disposition occurs within two years after the date of grant of the Option pursuant to which such shares were purchased or within one year after the date such shares were purchased.

27. Effective Date and Stockholder Approval. The Plan was adopted by the Board on March 15, 2022, and approved by stockholders on May 10, 2022, to become effective on November 1, 2022, which approval occurred within the period ending twelve (12) months after the date the Plan was adopted by the Board.

28. Definitions.

“*Affiliate*” means any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under the common control with, the Company.

“*Change in Control*” means any one of the following: (a) any person or entity, including a “group” as defined in Section 13(d)(3) of the Securities Exchange Act of 1934 other than the Company or a wholly-owned Subsidiary thereof or any employee benefit plan of the Company or any of its Subsidiaries, becomes the beneficial owner of the Company’s securities having 50% or more of the combined voting power of the then outstanding securities of the Company that may be cast for the election of directors of the Company (other than as a result of an issuance of securities initiated by the Company in the ordinary course of business). For the avoidance of doubt, no such transaction shall trigger a Change in Control while AEye, Inc. continues to hold, directly or indirectly, 50% or more of the combined voting power of the then outstanding securities of the Company that may be cast for the election of directors of the Company; (b) as the result of, or in connection with, any cash tender or exchange offer, merger or other business combination, sale of assets or contested election, or any combination of the foregoing transactions, less than a majority of the combined voting power of the then outstanding securities of the Company or any successor corporation or entity entitled to vote generally in the election of the directors of the Company or the directors of such successor corporation or entity after such transaction is held in the aggregate by the holders of the Company’s securities entitled to vote generally in the election of the directors of the Company immediately prior to such transaction; (c) during any period of two consecutive years, individuals who at the beginning of any such period constitute the Board cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by the Company’s shareholders, of each director of the Company first elected during such period was approved by a vote of a majority of the directors of the Company then still in office who were directors of the Company at the beginning of any such period; or (d) the shareholders of the Company approve a plan of complete liquidation of the Company or the sale or disposition by the Company of all or substantially all of the Company’s assets, other than a liquidation of the Company into a wholly-owned subsidiary.

“*Compensation*” means the amount of base pay, prior to salary reduction (such as pursuant to Sections 125, 132(f) or 401(k) of the Code), but excluding overtime, commissions, incentive or bonus awards, allowances and reimbursements for expenses such as relocation allowances or travel expenses, income or gains related to Company stock options or other share-based awards, and similar items. The Administrator shall have the discretion to determine the application of this definition to Participants outside the United States.

“*Designated Company*” means any present or future Subsidiary or Affiliate that has been designated by the Administrator to participate in the Plan. The Administrator may so designate any Subsidiary or Affiliate, or revoke any such designation, at any time and from time to time, either before or after the Plan is approved by the stockholders, and may further designate such companies or Participants as participating in the 423 Component or the Non-423 Component. The Administrator may also determine which Affiliates or eligible employees may be excluded from participation in the Plan, to the extent consistent with Section 423 of the Code or as implemented under the Non-423 Component, and determine which Designated Company or Companies shall participate in separate Offerings (to the extent that the Company makes separate Offerings). For purposes of the 423 Component, only the Company and its Subsidiaries may be Designated Companies; provided, however, that at any given time, a Subsidiary that is a Designated Company under the 423 Component shall not be a Designated Company under the Non-423 Component.

“*Fair Market Value*” means, with respect to a Common Stock, the fair market value thereof as of the relevant date of determination, as determined in accordance with the valuation methodology approved by the Board (based on objective criteria) from time to time and applied consistently. In the absence of any alternative valuation methodology approved by the Board, Fair Market Value shall be equal to the closing selling price of a Common Stock on the trading day immediately preceding the date on which such valuation is made on the Nasdaq Stock Market or such established national securities exchange as may be designated by the Board (and if listed on more than one securities exchange, and the closing price on another securities exchange is higher, then the highest of such closing prices) or, in the event that the Common Stock are not listed for trading on the Nasdaq Stock Market or such other national securities exchange as may be designated by the Board but are quoted on an automated system, in any such case on the valuation date (or if there were no sales on the valuation date, the average of the highest and lowest quoted selling prices as reported on said composite tape or automated system for the most recent day during which a sale occurred). Notwithstanding the foregoing, if the date for which the Fair Market Value of a Common Stock is determined is the Registration Date, the Fair Market Value of a Common Stock shall be the “Price to the Public” (or equivalent) set forth on the cover page for the final prospectus relating to the Company’s Initial Public Offering.

“*Parent*” means a “parent corporation” with respect to the Company, as defined in Section 424(e) of the Code.

“*Participant*” means an individual who is eligible as determined in Section 3 and who has complied with the provisions of Section 4.

“*Purchase Period*” means a period of time specified within an Offering beginning on the Offering Date or on the next day following an Exercise Date within an Offering and ending on an Exercise Date. An Offering may consist of one or more Purchase Periods.

“*Subsidiary*” means a “subsidiary corporation” with respect to the Company, as defined in Section 424(f) of the Code.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 28, 2022, relating to the financial statements of AEye, Inc., appearing in the Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ DELOITTE & TOUCHE LLP

San Francisco, California
May 18, 2022

Calculation of Filing Fee Tables

Form S-8

(Form Type)

AEye, Inc.

(Exact Name of Registrant as Specified in its Charter)

Table 1 – Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered (1)	Proposed Maximum Offering Price per Unit (2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock, par value \$0.0001 per share	Other (2)	7,743,413 (3)	\$4.30	\$33,296,675.90	\$0.0000927	\$3086.60
Equity	Common stock, par value \$0.0001 per share	Other (2)	2,000,000 (4)	\$4.30	\$8,600,000.00	\$0.0000927	\$797.22
Total Offering Amounts					\$41,896,675.90	\$0.0000927	\$3883.82
Total Fee Offsets							—
Net Fee Due							\$3883.82

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall also cover any additional shares of common stock, par value \$0.0001 per share (the “Common Stock”) of AEye, Inc. (the “Registrant”) that may become issuable under the terms of the AEye, Inc. 2021 Equity Incentive Plan (the “2021 EIP”) or the AEye, Inc. 2022 Employee Stock Purchase Plan (the “2022 ESPP”), as applicable, by reason of any share split, share dividend, 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 Common Stock.
- (2) Estimated pursuant to Rules 457(c) and 457(h) under the Securities Act, solely for the purposes of calculating the registration fee and based on the average of the high and low prices of the Common Stock as reported on The Nasdaq Stock Market LLC on May 12, 2022, which date is within five business days prior to the filing of this registration statement.
- (3) Represents additional shares of the Common Stock reserved for issuance under the 2021 EIP resulting from the annual 5% automatic increase in the number of authorized shares of Common Stock reserved for issuance under the 2021 EIP. The increase was effective as of January 1, 2022.
- (4) Represents shares of Common Stock currently reserved for issuance under the 2022 ESPP.