

PEGASYSTEMS INC  
Form S-8  
September 13, 2011

As filed with the Securities and Exchange Commission on September 13, 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*

**PEGASYSTEMS INC.**

(Exact name of registrant as specified in its charter)

Massachusetts  
(State or other jurisdiction of  
incorporation or organization)

101 Main Street

04-2787865  
(I.R.S. Employer  
Identification No.)

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Cambridge, Massachusetts 02142-1590

(617) 374-9600

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**PEGASYSTEMS INC. AMENDED AND RESTATED 2004 LONG-TERM INCENTIVE PLAN**

(Full title of plan)

**Shawn Hoyt**

**General Counsel and Secretary**

**Pegasystems Inc.**

**101 Main Street**

**Cambridge, Massachusetts 02142-1590**

**(617) 374-9600**

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

*copy to:*

**Robert V. Jahrling, III**

**Choate, Hall & Stewart LLP**

**Two International Place**

**Boston, Massachusetts 02110**

**(617) 248-5000**

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. (Check one):

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Large accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

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CALCULATION OF REGISTRATION FEE

<b>Title of securities to be registered</b>	<b>Amount to be registered (1)</b>	<b>Proposed maximum offering price per share (2)</b>	<b>Proposed maximum aggregate offering price (2)</b>	<b>Amount of registration fee</b>
Common Stock, \$0.01 par value per share	5,000,000 shares	\$36.85	\$184,250,000	\$21,391.43

- (1) Represents 5,000,000 additional shares available for awards under the Pegasystems Inc. Amended and Restated 2004 Long-Term Incentive Plan. 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 the Registrant's Common Stock that become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction.
- (2) Estimated solely for the purpose of calculating the registration fee, in accordance with Rules 457(c) and 457(h)(1) under the Securities Act, 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 September 7, 2011.

**EXPLANATORY NOTE**

This registration statement on Form S-8 is filed by Pegasystems Inc., a Massachusetts corporation (the Company or Registrant ), to register 5,000,000 shares of its common stock, \$0.01 par value per share ( Common Stock ), for issuance pursuant to the Pegasystems Inc. Amended and Restated 2004 Long-Term Incentive Plan (the Amended and Restated Plan ), which shares are in addition to the 7,000,000 shares of Common Stock registered on the Company s registration statement on Form S-8 (the Prior Registration Statement ) filed on June 18, 2004 (File No. 333-116660), so that the aggregate number of awards that may be granted under the Amended and Restated Plan is 12,000,000 shares. The Amended and Restated Plan was described in the Company s definitive Proxy Statement for its 2011 Annual Meeting of Stockholders and was approved at that meeting on July 12, 2011.

This registration statement relates to securities of the same class as that to which the Prior Registration Statement relates and is submitted in accordance with General Instruction E to Form S-8 as promulgated by the Securities and Exchange Commission (the Commission ) regarding Registration of Additional Securities. Pursuant to such instruction, the contents of the Prior Registration Statement are incorporated herein by reference and made part of this registration statement to the extent not modified or superseded hereby or by a subsequently filed document that is incorporated by reference herein or therein. In accordance with the instructional note to Part I of Form S-8, the information specified by Part I of Form S-8 has been omitted from this registration statement.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference**

The following documents of the Company filed with the Commission are hereby incorporated by reference in this registration statement:

(a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2010, including as amended by its Amendment No. 1 on Form 10-K/A, filed under the Securities Exchange Act of 1934, as amended (the Exchange Act);

(b) All other reports filed by the Company pursuant to Sections 13(a) or 15(d) of the Exchange Act since December 31, 2010; and

(c) The description of the Company's Common Stock incorporated by reference into the Company's registration statement on Form 8-A filed with the Commission on June 21, 1996 from the Company's registration statement on Form S-1 initially filed with the Commission on May 15, 1996.

In addition, all documents filed by the Company after the initial filing date of this registration statement pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, and prior to the filing of a post-effective amendment which indicates that all shares registered hereunder have been sold or which deregisters all 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 filing of such documents. 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 herein or in any subsequently filed document which also 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**

Not applicable.

**Item 5. Interests of Named Experts and Counsel**

Not applicable.

**Item 6. Indemnification of Officers and Directors**

Article VII of the Company's Amended and Restated By-Laws provides for indemnification of the Company's directors and officers to the fullest extent permitted under the Massachusetts Business Corporation Act (the MBCA). Section 8.51 of the MBCA provides that a corporation may indemnify a director who is a party to a proceeding because he is a director against liability incurred in the proceeding if he conducted himself in good faith and he reasonably believed that his conduct was in the best interests of the corporation or that his conduct was at least not opposed to the best interests of the corporation, and, in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful. Section 8.52 of the MBCA requires corporations to indemnify any director who was wholly successful in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Section 8.56 of the MBCA provides that a corporation may indemnify and advance expenses to an officer of the corporation who is a party to a proceeding because he is an officer of the corporation to the same extent as a director, and, if he is an officer but not a director, to such further extent as may be provided by the articles of organization, the bylaws, a resolution of the board of directors or contract, except for liability arising out of acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law. Section 8.56

also provides that an officer of the corporation who is not a director is entitled to mandatory indemnification under Section 8.52, and that the officer may apply to a court for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance under those provisions.

In accordance with Section 2.02 of the MBCA, Article VI of the Company's Amended and Restated Articles of Organization provides that no director of the Company shall be liable to the Company or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Company or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for improper distributions under Section 6.40 of the MBCA or (iv) for any transaction in which the director derived an improper personal benefit.

The Company has also entered into a Director Indemnification Agreement with each of its directors (collectively, the Director Indemnification Agreements), pursuant to which the Company has agreed to indemnify each director against certain liabilities that may arise by reason of such director's status or service as a director of the Company, and to advance such director the expenses incurred as a result of a proceeding as to which such director may be indemnified. The Director Indemnification Agreements are intended to provide rights of indemnification to the fullest extent permitted under the MBCA and are in addition to any other rights such directors may have under the Company's Amended and Restated Articles of Organization, its Amended and Restated By-laws and applicable law.

Section 8.57 of the MBCA contains provisions authorizing a corporation to obtain insurance on behalf of any director or officer of the corporation against liabilities, whether or not the corporation would have the power to indemnify against such liabilities. The Director Indemnification Agreements require the Company to maintain directors' and officers' liability insurance with respect to each director for so long as such director continues to serve as a director of the Company and for six (6) years thereafter. The Company also maintains directors' and officers' liability insurance for the benefit of certain of its officers who are not also directors.

#### **Item 7. Exemption from Registration Claimed**

Not applicable.

#### **Item 8. Exhibits**

- 4.1 Restated Articles of Organization of Pegasystems Inc. (filed as Exhibit 99.2 to the Current Report on Form 8-K filed by the Company on June 2, 2005 and incorporated herein by reference)
- 4.2 Amended and Restated Bylaws of Pegasystems Inc. (filed as Exhibit 99.3 to the Current Report on Form 8-K filed by the Company on April 1, 2009 and incorporated herein by reference)
- 5.1 Opinion of Choate, Hall & Stewart LLP as to the legality of the shares being registered.
- 23.1 Consent of Deloitte & Touche LLP
- 23.2 Consent of Choate, Hall & Stewart LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (included in the signature page hereto).
- 99.1 The Pegasystems Inc. Amended and Restated 2004 Long-Term Incentive Plan (filed as Appendix A to the Company's definitive proxy statement on Schedule 14A filed with the Commission on May 23, 2011 and incorporated herein by reference).

**Item 9. Undertakings**

(a) The Company hereby undertakes:

(1) To file, during any period in which offers or sales of the securities offered hereby are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. 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 percent 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 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) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Company 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.

(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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act 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 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 Company of expenses incurred or paid 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 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 of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing a Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Cambridge, Massachusetts on September 13, 2011.

PEGASYSTEMS INC.

By: /s/ Shawn Hoyt  
 Shawn Hoyt  
 General Counsel and Secretary

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Alan Trefler, Craig Dynes and Shawn Hoyt, jointly and severally, his or her true and lawful attorneys-in-fact and agents with full powers of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and all 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 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, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below on the dates indicated by the following persons in the capacities indicated.

Name	Title	Date
/s/ Alan Trefler Alan Trefler	Chief Executive Officer and Chairman of the Board of Directors  <i>(Principal Executive Officer)</i>	September 13, 2011
/s/ Craig Dynes Craig Dynes	Senior Vice President, Chief Financial Officer <i>(Principal Financial Officer)</i>	September 13, 2011
/s/ Efstathios Kouninis Efstathios Kouninis	Vice President of Finance and Chief Accounting Officer  <i>(Principal Accounting Officer)</i>	September 13, 2011
/s/ Peter Gyenes Peter Gyenes	Director	September 13, 2011
/s/ Richard Jones Richard Jones	Director	September 13, 2011

/s/ Steven Kaplan  
Steven Kaplan

Director

September 13, 2011

/s/ James O Halloran  
James O Halloran

Director

September 13, 2011

/s/ William Wyman  
William Wyman

Director

September 13, 2011

**INDEX TO EXHIBITS**

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