

ENERGY FOCUS, INC/DE

Form S-8

August 05, 2015

As filed with the Securities and Exchange Commission on August 5, 2015

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Energy Focus, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of Incorporation)

94-3021850

(I.R.S. Employer

Identification No.)

32000 Aurora Road, Suite B

Solon, Ohio 44139

(440) 715-1300

(Address of Principal Executive Offices)

Energy Focus, Inc. 2014 Stock Incentive Plan

(Full Title of the Plan)

James Tu

Executive Chairman and Chief Executive Officer

Energy Focus, Inc.

32000 Aurora Road, Suite B

Solon, Ohio 44139

(440) 715-1300

(Name and Address of Agent For Service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

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

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 |
|------------------------------------------------------------------------------------------------|----------------------------|-------------------------------------------|-------------------------------------------|----------------------------|
| Common Stock, \$0.0001 par value, pursuant to the Energy Focus, Inc. 2014 Stock Incentive Plan | 600,000                    | \$9.16 (2)                                | 5,496,000                                 | \$638.64                   |
| (1)                                                                                            |                            |                                           |                                           |                            |

Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement also covers an indeterminable number of additional shares of Common Stock that may become issuable pursuant to the anti-dilution provisions of the 2014 Stock Incentive Plan.

(2) This calculation is made solely for the purpose of determining the registration fee pursuant to Rule 457(h) under the Securities Act. The fee is calculated on the basis of the average of the high and low sale prices per share of the Common Stock on the NASDAQ Capital Market as of a date (August 3, 2015) within five business days prior to filing this Registration Statement.

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REGISTRATION OF ADDITIONAL SHARES  
PURSUANT TO GENERAL INSTRUCTION E

This Registration Statement on Form S-8 (the “Registration Statement”) of Energy Focus, Inc. (the “Company” or the “Registrant”) is being filed pursuant to General Instruction E to Form S-8 under the Securities Act of 1933, as amended, to register 600,000 additional shares of the Company’s common stock, \$0.0001 par value per share (the “Common Stock”), under the 2014 Stock Incentive Plan (the “Plan”). This Registration Statement on Form S-8 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 July 15, 2014 (Registration No. 333-197422).

PART II  
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission are incorporated herein by reference:

- (1) The Registrant’s annual report on Form 10-K for the fiscal year ended December 31, 2014, filed with the Commission on March 12, 2015, and Amendment No. 1 to that annual report on Form 10-K/A, filed with the Commission on April 6, 2015.
- (2) The Registrant’s quarterly reports on Form 10-Q for the fiscal quarters ended March 31, 2015, filed with the Commission on May 5, 2015, and June 30, 2015, filed with the Commission on August 5, 2015.
- (3) The Registrant’s current reports on Form 8-K, filed with the Commission on February 5, 2015, February 17, 2015, March 13, 2015 and July 27, 2015.

All reports and other documents filed by the Registrant after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such reports and 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 the purposes of this Registration Statement 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 statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

You may request a copy of these filings, at no cost, by writing or telephoning the Company at the following address: Energy Focus, Inc., 32000 Aurora Road, Suite B, Solon, Ohio 44139; telephone number (440) 715-1300.

Item 8. Exhibits.

| Exhibit Number | Description                                                                       |
|----------------|-----------------------------------------------------------------------------------|
| 5.1            | Opinion of Baker & Hostetler LLP.                                                 |
| 23.1           | Consent of Plante & Moran, PLLC, Independent Registered Public Accounting Firm    |
| 23.2           | Consent of Baker & Hostetler LLP (filed as a part of Exhibit 5.1)                 |
| 24             | Power of Attorney (included in the signature page to this Registration Statement) |



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 Solon, State of Ohio on the 5 day of August, 2015.

ENERGY FOCUS, INC.

Date: August 5, 2015

By: /s/ James Tu

James Tu

Executive Chairman and Chief Executive Officer

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## POWER OF ATTORNEY

We, the undersigned officers and directors of Energy Focus, Inc., hereby severally constitute and appoint James Tu, Eric Hilliard, and Marcia Miller, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him and in his name, place and stead, and 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 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 or necessary to be done in and about the premises, as full 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 hereof.

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

| Signatures                                              | Titles                                                                       | Date           |
|---------------------------------------------------------|------------------------------------------------------------------------------|----------------|
| /s/ James Tu<br>James Tu                                | Executive Chairman and Chief Executive Officer (principal executive officer) | August 5, 2015 |
| /s/ Marcia J. Miller<br>Marcia J. Miller                | Chief Financial Officer (principal financial and accounting officer)         | August 5, 2015 |
| /s/ Ronald D. Black,<br>Ph.D.<br>Ronald D. Black, Ph.D. | Director                                                                     | August 5, 2015 |
| /s/ Simon Cheng<br>Simon Cheng                          | Director                                                                     | August 5, 2015 |
| /s/ William Cohen<br>William Cohen                      | Director                                                                     | August 5, 2015 |
| /s/ Glenda Dorchak<br>Glenda Dorchak                    | Director                                                                     | August 5, 2015 |
| /s/ Marc J. Eisenberg<br>Marc J. Eisenberg              | Director                                                                     | August 5, 2015 |
| /s/ Jiangang Luo                                        | Director                                                                     | August 5, 2015 |

Jiangang Luo

/s/ Michael R. Ramelot     Director  
Michael R. Ramelot

August 5, 2015

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INDEX TO EXHIBITS

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