

GENTEX CORP
Form S-8
August 20, 2012

As filed with the Securities and Exchange Commission on August 20, 2012

Registration No. _____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

GENTEX CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Michigan
(State or Other Jurisdiction of

Incorporation or Organization)

600 N. Centennial Street

38-2030505
(IRS Employer

Identification Number)

49464

Zeeland, Michigan
(Address of Principal Executive Offices)

(Zip Code)

Gentex Corporation

2012 Amended and Restated Nonemployee Director Stock Option Plan

(Full Title of the Plan)

Copies to:

Steven A. Dykman

Joe Levan

Gentex Corporation

Varnum, LLP

600 N. Centennial Street

333 Bridge Street NW

Zeeland, Michigan

Grand Rapids, Michigan 49504

(Name and Address of Agent for Service)

(616) 772-1800

(Telephone Number, Including Area Code, of Agent for Service)

Indicate by check mark whether the registrant is a large accelerated filer, and 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):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of Securities to be | Amount to be Registered | Proposed Maximum Offering Price Per Share(2) | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee |
|----------------------------------|--------------------------------|---|---|-----------------------------------|
|----------------------------------|--------------------------------|---|---|-----------------------------------|

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| | Registered | | | |
|-------------------------------|-------------------|-------------------|---------|-------------|
| Common Stock, \$.06 par value | | 500,000 shares(1) | \$17.81 | \$8,905,000 |
| | | | | \$1,021 |

- (1) In addition, pursuant to Rule 416(a) under the Securities Act of 1933, this registration statement also covers such indeterminate number of additional shares as may be authorized in the event of an adjustment as a result of an increase in the number of issued shares of Common Stock resulting from the payment of stock dividends or stock splits or certain other capital adjustments.
- (2) Estimated solely for the purpose of calculating the registration fee, the price shown is based upon the price of \$17.81 per share, the average of the high and low sales prices for the Common Stock of Gentex Corporation as reported on the NASDAQ Global Select Market on August 15, 2012, in accordance with Rule 457(c) and (h)(1).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant (also referred to as Gentex) with the Securities and Exchange Commission are incorporated in this registration statement by reference:

- (a) The Registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act).
- (b) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (a) above.
- (c) The description of the Registrant's common stock, \$.06 par value, which is contained in the Registrant's Registration Statement filed under the Exchange Act, including 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 that indicates that all securities offered have been sold or that deregisters all securities remaining unsold shall be deemed to be incorporated by reference in this registration statement and to be a part of this registration statement from the date of filing of such documents.

Item 4. Description of Securities.

The class of securities to be offered is registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Gentex is obligated under its Amended and restated Bylaws, as amended to date, to indemnify its directors and executive officers to the full extent permitted under the Michigan Business Corporation Act (the MBCA). Gentex may similarly indemnify persons who are not directors or executive officers to the extent authorized by Gentex's Board of Directors.

Under Sections 561 through 571 of the MBCA, directors and officers of a Michigan corporation may be entitled to indemnification by the corporation. The MBCA provides for indemnification of directors and officers if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of Gentex or its shareholders (and, if a criminal proceeding, if they had no reasonable cause to believe their conduct was unlawful) against: (a) expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of Gentex) arising out of a position with Gentex (or with some other entity at Gentex' request); and (b) expenses (including attorneys' fees) and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action or suit by or in the right of Gentex, unless the director or officer is found liable to Gentex; provided that an appropriate court could determine that he or she is nevertheless fairly and reasonably entitled to indemnity for reasonable expenses incurred. The MBCA requires indemnification for expenses to the extent that a director or officer is successful in defending against any such action, suit or proceeding.

The MBCA generally requires that the indemnification provided for in (a) and (b) above be made only on a determination that the director or officer met the applicable standard of conduct (i) by a majority vote of a quorum of the board of directors who were not parties or threatened to be made parties to the action, suit or proceeding; (ii) if a quorum cannot be so obtained, by a majority vote of a committee of not less than two disinterested directors; (iii) by independent legal counsel; (iv) by all independent directors not parties or threatened to be made parties to the action, suit or proceeding; or (v) by the shareholders (excluding shares held by interested directors, officers, employees or agents). If the articles

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of incorporation include a provision eliminating or limiting the liability of a director, however, a corporation may indemnify a director for certain expenses and liabilities without a determination that the director met the applicable standards of conduct, unless the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders, violated Section 551 of the MBCA or intentionally committed a criminal act. In connection with an action by or in the right of the corporation, such indemnification may be for expenses (including attorneys' fees) actually and reasonably incurred. In connection with an action, suit or proceeding other than an action, suit or proceeding by or in the right of the corporation, such indemnification may be for expenses (including attorneys' fees) actually and reasonably incurred, and for judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred.

In certain circumstances, the MBCA further permits advances to cover such expenses before a final disposition of the proceeding, upon receipt of an undertaking, which need not be secured and which may be accepted without reference to the financial ability of the person to make repayment, by or on behalf of the director or officer to repay such amounts if it shall ultimately be determined that he or she has not met the applicable standard of conduct. If a provision in the articles of incorporation or bylaws, a resolution of the board or shareholders, or an agreement makes indemnification mandatory, then the advancement of expenses is also mandatory, unless the provision, resolution or agreement specifically provides otherwise.

Indemnification under the MBCA is not exclusive of other rights to indemnification to which a person may be entitled under Gentex' Amended and Restated Bylaws or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources may not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for under the MBCA continues as to a person who ceases to be a director or executive officer.

The MBCA permits Gentex to purchase insurance on behalf of its directors and officers against liabilities arising out of their positions with Gentex (or positions held with another entity at the request of Gentex), whether or not such liabilities would be within the above indemnification provisions. Pursuant to this authority, Gentex maintains such insurance on behalf of its directors and officers.

Gentex has entered into indemnity agreements with each of its directors and executive officers. The agreements provide that Gentex will indemnify the director or executive officer, subject to certain limitations, for expenses and costs, including the satisfaction of a judgment, fine or penalty incurred in, or in any amount paid in settlement of, any proceeding brought by reason of the fact that the indemnitee is or was a director or executive officer of Gentex or is or was serving at the request of Gentex as a director or executive officer or agent of another corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, specifically including, not by way of limitation, any action related to certification of financial and other reports under the federal securities laws, if such expenses and costs may be indemnified under the MBCA. The agreements are designed to provide the maximum protection allowed under federal and Michigan law. Indemnification is dependent upon the director meeting the applicable standards of conduct set forth in the indemnity agreements.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made to the Exhibit Index which appears on Page 6.

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 of 1933;

(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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement; and

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(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 paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

(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 of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. 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 Zeeland, State of Michigan, on this 20th day of August, 2012.

GENTEX CORPORATION

(Registrant)

/s/ Steven A. Dykman
Steven A. Dykman, Vice President-Finance/ Chief
Financial Officer

POWER OF ATTORNEY

KNOW BY ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Fred T. Bauer and Steven A. Dykman, and each of them, as attorney-in-fact and agent, with full power of substitution and re-substitution, for and in the name, place and stead of the undersigned, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, and all post-effective amendments thereto, 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 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 the undersigned might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or any such 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 date indicated.

Date: 8/20/2012

/s/ Fred T. Bauer

Fred T. Bauer, Director and Chief Executive Officer (Principal Executive Officer)

Date: 8/20/2012

/s/ Steven A. Dykman

Steven A. Dykman, Vice President-Finance/ Chief Financial Officer (Principal Accounting and Financial Officer)

Date: 8/20/2012

/s/ Gary Goode

Gary Goode, Director

Date: 8/20/2012

/s/ Arlyn Lanting

Arlyn Lanting, Director

Date: 8/20/2012

/s/ John Mulder

John Mulder, Director

Date: 8/20/2012

/s/ Mark Newton

Mark Newton, Director

Date: 8/20/2012

/s/ Richard Schaum

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Date: 8/20/2012

Richard Schaum, Director
/s/ Fred Sotok

Date: 8/20/2012

Fred Sotok, Director
/s/ Wallace Tsuha

Date: 8/20/2012

Wallace Tsuha, Director
/s/ James Wallace

James Wallace, Director

EXHIBIT INDEX

| Exhibit Number | Document |
|-----------------------|---|
| 4.1 | Registrant's Restated Articles of Incorporation, adopted on August 20, 2004 and as amended to date, were filed as Exhibit 3(a) to Registrant's Report on Form 10-Q dated November 2, 2004, and an Amendment to Registrant's Articles of Incorporation adopted as of May 18, 2012, was filed as Exhibit 3.1(i) to Registrant's Form 8-K dated May 22, 2012, and the same is hereby incorporated herein by reference. |
| 4.2 | Registrant's Bylaws as amended and restated February 27, 2003, was filed as Exhibit 3(b)(1) to Registrant's report on Form 10-Q dated May 5, 2003, and an Amendment to Registrant's Bylaws adopted as of February 16, 2012 was filed as Exhibit 3(b)(ii) to Registrant's Form 8-K dated February 21, 2012 and the same is hereby incorporated herein by reference. |
| 4.3 | A specimen form of certificate for the Registrant's common stock, par value \$.06 per share, was filed as part of a Registration Statement (Registration Number 2-74226C) as Exhibit 3(a), as amended by Amendment No. 3 to such Registration Statement, and the same is hereby incorporated herein by reference. |
| 5 | Opinion of Varnum, LLP. |
| 23.1 | Consent of Ernst & Young LLP. |
| 23.2 | Consent of Varnum, LLP (included in Exhibit 5 and incorporated herein by reference). |
| 24 | Powers of Attorney (included on the signature page to this Registration Statement). |
| 99.1 | Gentex Corporation 2012 Amended and Restated Non-Employee Director Stock Option Plan, effective February 16, 2012 and approved by the shareholders on May 17, 2012, was filed as Exhibit 10(b)(10) to Registrant's Form 10-Q dated August 2, 2012, and the same is hereby incorporated herein by reference. |
| 99.2 | Specimen form of Grant Agreement for the Gentex Corporation 2012 Amended and Restated Non-Employee Director Stock Option Plan, was filed as Exhibit 10(b)(11) to Registrant's Form 10-Q dated August 2, 2012, and the same is hereby incorporated herein by reference. |