

MITEK SYSTEMS INC

Form S-8

March 27, 2019

As filed with the Securities and Exchange Commission on March 27, 2019

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

MITEK SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware

87-0418827

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification No.)

600 B Street, Suite 100

San Diego, California 92101

(Address, including zip code, of Principal Executive Offices)

Stock Option Agreement

Conditional Stock Option Agreement

Performance Stock Option Agreement

Restricted Stock Unit Award Agreement

Conditional Restricted Stock Unit Award Agreement

(for Stand Alone Inducement Awards to Max Carnecchia)

(Full titles of the plans)

Jason L. Gray

Chief Legal Officer

Mitek Systems, Inc.

600 B Street, Suite 100

San Diego, California 92101

(619) 269-6800

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

Copy to:

Carl Sanchez, Esq.

Paul Hastings LLP

4747 Executive Drive, 12th Floor

San Diego, California 92121

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 Accelerated filer
Non-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.

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, \$0.001 par value per share	972,179 ⁽²⁾	\$9.50 ⁽⁴⁾	\$9,235,700.50 ⁽⁴⁾	\$1,119.37
Common Stock, \$0.001 par value per share	94,738 ⁽³⁾	\$12.14 ⁽⁵⁾	\$1,150,119.32 ⁽⁵⁾	\$139.39

Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers any additional shares of common stock, par value \$0.001 per share (the "Common Stock"), of Mitek Systems, Inc., a Delaware corporation (the "Company" or the "Registrant"), that may be offered or issued under the inducement award agreements to prevent dilution resulting from stock splits, stock dividends or similar transactions.

Represents 972,179 shares of Common Stock issuable upon the vesting and exercise of stock option awards granted as employment inducement awards to Scipio Maximus Carnecchia, the Company's Chief Executive Officer pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules.

Represents 94,738 shares of Common Stock issuable upon the vesting of restricted stock unit awards granted as employment inducement awards to Scipio Maximus Carnecchia pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules.

Calculated pursuant to Rule 457(h)(1) of the Securities Act, solely for purposes of computing the amount of the registration fee, based on the exercise price of the stock option awards granted to Scipio Maximus Carnecchia.

Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c). The price per share and aggregate offering price are based upon \$12.14, the average of the high and low prices of the Registrant's Common Stock on March 25, 2019 as reported on the NASDAQ Capital Market.

INTRODUCTORY NOTES

This registration statement registers an aggregate of 1,066,917 shares of Common Stock that may be issued and sold upon the vesting of restricted stock unit awards and the vesting and exercise of stock option awards granted by the Company as employment inducement awards to Scipio Maximus Carnecchia, the Company's Chief Executive Officer, pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules. These awards have been made pursuant to, and are subject to the terms and conditions of: (i) that certain Stock Option Agreement, dated as of November 6, 2018, between the Company and Mr. Carnecchia; (ii) that certain Conditional Stock Option Agreement, dated as of November 6, 2018, between the Company and Mr. Carnecchia; (iii) that certain Performance Stock Option Agreement, dated as of November 6, 2018, between the Company and Mr. Carnecchia; (iv) that certain Restricted Stock Unit Award Agreement, dated as of November 6, 2018, between the Company and Mr. Carnecchia; and (v) that certain Conditional Restricted Stock Unit Award Agreement, dated as of November 6, 2018, between the Company and Mr. Carnecchia, each of which is attached as an exhibit hereto.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

ITEM 1. PLAN INFORMATION.

Not required to be filed with this registration statement.*

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.

Not required to be filed with this registration statement.*

* The documents containing the information specified in this Part I will be sent or given to Mr. Carnecchia as specified by Rule 428(b)(1) under the Securities Act. In accordance with the Note to Part I of Form S-8, such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the "Commission") either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

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

- (a) The Registrant's Annual Report on Form 10-K for its fiscal year ended September 30, 2018, filed with the Commission on December 14, 2018;
- (b) The Registrant's Quarterly Report on Form 10-Q for its fiscal quarter ended December 31, 2018, filed with the Commission on February 8, 2019.
- (c) The Registrant's Current Reports on Form 8-K, filed with the Commission on October 23, 2018, November 5, 2018, November 7, 2018, November 21, 2018, November 23, 2018, November 26, 2018, December 10, 2018, December 11, 2018, December 24, 2018, January 29, 2019, February 28, 2019, and March 8, 2019; and
- (d) The description of the Common Stock contained in the Registrant's Registration Statement on Form SB-2 (File No. 333-07787), initially filed with the Commission on July 9, 1996, including any subsequent amendment or report filed for the purpose of amending such description.

All reports and other documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, are incorporated by reference in this Registration Statement and are a part hereof from the date of filing of such reports and other documents, except as to any portion of any such report or other document furnished under current Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions. Any statement contained in a report or other 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 other subsequently filed report or other 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.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant's restated certificate of incorporation, as amended, eliminates the personal liability of the directors of the Registrant for monetary damages for breach of fiduciary duties as a director of the Registrant to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the Delaware General Corporation Law (the "DGCL").

Paragraph (7) of subsection (b) of Section 102 of the DGCL does not permit the elimination or limitation of the liability of any director for (i) any breach of the directors' duty of loyalty to the Registrant or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) unlawful dividends or distributions or (iv) any transaction from which the director derived an improper personal benefit.

The Registrant's second amended and restated bylaws permit the Registrant to indemnify its directors, officers, employees and agents to the fullest extent permitted by Section 145 of the DGCL. Section 145 of the DGCL provides that a director, officer, employee or agent of the Registrant who was or is a party or is 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 such person is or was a director, officer, employee or agent of the Registrant shall be indemnified and held harmless by the Registrant to the fullest extent authorized by the DGCL against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the conduct was unlawful. If it is determined that the conduct of such person meets these standards, such person may be indemnified for expenses incurred and amounts paid in connection with such proceeding if actually and reasonably incurred in connection therewith.

If such a proceeding is brought by or on behalf of the Registrant (i.e., a derivative suit), such person may be indemnified against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred by such person in connection with the defense or settlement of such proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registrant. There can be no indemnification with respect to any matter as to which such person is adjudged to be liable to the Registrant unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application 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 Registrant may advance all expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the Registrant in defending a proceeding in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such officer or director to repay all amounts so advanced if it is ultimately determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified by the Registrant.

The indemnification rights and advancement of expenses provided in Section 145 of the DGCL are not exclusive of additional rights to indemnification for breach of fiduciary duties to the Registrant and its stockholders or advancement of expenses to the extent any such additional rights are authorized in the Registrant's restated certificate of incorporation, and are not exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

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The Registrant has entered into a separate Indemnification Agreement (the “Indemnification Agreement”) with each of its directors and executive officers (each, an “Indemnitee”). Under the Indemnification Agreement, each Indemnitee is entitled to be indemnified against all expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of such Indemnitee in connection with any claims, proceedings or other actions brought against such Indemnitee as a result of

the Indemnitee's service to the Registrant, provided that the Indemnitee (i) acted in good faith; (ii) reasonably believed the action was in the Registrant's best interest; and (iii) in criminal proceedings, reasonably believed his or her conduct was not unlawful. Additionally, the Indemnification Agreement entitles the Indemnitee to contribution of expenses from the Registrant in any proceeding in which the Registrant is jointly liable with such Indemnitee, but for which indemnification is not otherwise available.

The Indemnification Agreement also entitles each Indemnitee to advancement of expenses incurred by an Indemnitee in connection with any claim, proceeding or other action in advance of the final adjudication of any such claim, proceeding or other action, provided that the Indemnitee agrees to reimburse the Registrant for all such advances if it shall ultimately be determined that the Indemnitee is not entitled to indemnification.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following is a list of exhibits filed as part of this Registration Statement, which are incorporated herein:

Exhibit No.	Exhibit Description
4.1	Restated Certificate of Incorporation of Mitek Systems, Inc., as amended (incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on December 5, 2014).
4.2	Second Amended and Restated Bylaws of Mitek Systems, Inc. (incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on November 10, 2014).
4.3	Specimen Common Stock Certificate of Mitek Systems, Inc. (incorporated by reference to the Registrant's Registration Statement on Form S-3 (File No. 333-177965) filed with the Commission on November 14, 2011).
4.10	Stock Option Agreement, dated as of November 6, 2018, between Scipio "Max" Carnecchia and Mitek Systems, Inc. (incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on November 6, 2018).
4.11	Conditional Stock Option Agreement, dated as of November 6, 2018, between Scipio "Max" Carnecchia and Mitek Systems, Inc. (incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on November 6, 2018).
4.13	Performance Stock Option Agreement, dated as of November 6, 2018, between Scipio "Max" Carnecchia and Mitek Systems, Inc. (incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on November 6, 2018).
4.14	Restricted Stock Unit Award Agreement, dated as of November 6, 2018, between Scipio "Max" Carnecchia and Mitek Systems, Inc. (incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on November 6, 2018).
4.15	Conditional Restricted Stock Unit Award Agreement, dated as of November 6, 2018, between Scipio "Max" Carnecchia and Mitek Systems, Inc. (incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on November 6, 2018).
5.1*	Opinion of Paul Hastings LLP.
23.1*	Consent of Paul Hastings LLP (contained in Exhibit 5.1 to this Registration Statement).

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23.2* Consent of Independent Registered Public Accounting Firm, Mayer Hoffman McCann, P.C.

24.1* Power of Attorney (contained on the signature page of this Registration Statement).

*Filed herewith.

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 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 a 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) of this section 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 Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

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

(3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 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 this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) 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 the 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 San Diego, State of California, on this 27th day of March, 2019.

MITEK SYSTEMS, INC.

By: /s/ Jeffrey C. Davison
 Jeffrey C. Davison
 Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints, jointly and severally, Bruce E. Hansen and Jason L. Gray as his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Registration Statement on Form S-8 (including post-effective amendments), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his or her substitute or substitutes, may do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ Scipio M. Carnecchia Scipio M. Carnecchia	Chief Executive Officer, Director (Principal Executive Officer)	March 27, 2019
/s/ Jeffrey C. Davison Jeffrey C. Davison	Chief Financial Officer (Principal Financial Officer)	March 27, 2019
/s/ Bruce E. Hansen Bruce E. Hansen	Chairman of the Board, Director	March 27, 2019
/s/ William K. Aulet William K. Aulet	Director	March 27, 2019
/s/ Kenneth D. Denman Kenneth D. Denman	Director	March 27, 2019
/s/ James C. Hale James C. Hale	Director	March 27, 2019
/s/ Alex W. Hart Alex W. Hart	Director	March 27, 2019
/s/ Jane J. Thompson Jane J. Thompson	Director	March 27, 2019

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23.2*	<u>Consent of Independent Registered Public Accounting Firm, Mayer Hoffman McCann P.C.</u>
24.1*	<u>Power of Attorney (contained on the signature page of this Registration Statement).</u>

* Filed herewith.