

FLIR SYSTEMS INC
Form S-8
January 16, 2004

As filed with the Securities and Exchange Commission on January 16, 2004

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

The Securities Act of 1933

FLIR SYSTEMS, INC.

(Exact name of registrant as specified in charter)

Oregon
(State or other jurisdiction of
incorporation or organization)

93-0708501
(IRS Employer
Identification Number)

16505 SW 72nd Avenue, Portland, Oregon 97224

(503) 684-3731

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

Indigo 1997 Incentive Stock Plan

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Indigo 2001 Incentive Stock Option and Non-Qualified Stock Option Plan

Indigo 2002 Stock Plan

(Full title of the Plan)

Earl R. Lewis

President and Chief Executive Officer

FLIR Systems, Inc.

16505 SW 72nd Avenue, Portland, Oregon 97224

(503) 684-3731

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

With copies to:

Gregory E. Struxness, Esq.

Ater Wynne LLP

222 S.W. Columbia, Suite 1800

Portland, Oregon 97201

(503) 226-1191

CALCULATION OF REGISTRATION FEE

| Title of Securities to Be Registered | Amount to Be Registered | Proposed Maximum Offering Price Per Share | Proposed | Amount of Registration Fee |
|---|-------------------------------|--|--|----------------------------------|
| | | | Maximum Aggregate Offering Price | |
| | 713,366 | \$2.67(2) | \$1,904,687(2) | \$154.09 |

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Common Stock, \$0.01 par value per share approved for
issuance under Indigo System Corporation's option
plans (1)

- (1) All options outstanding under the Indigo Systems Corporation 1997 Incentive Stock Plan, 2001 Incentive Stock Option and Non-Qualified Stock Option Plan and 2002 Stock Plan, (the "Indigo Options"). The Indigo Options were assumed by the Registrant pursuant to the Registrant's acquisition of Indigo Systems Corporation, effective January 6, 2004. Including associated Preferred Stock Purchase Rights. Prior to the occurrence of certain events, the Preferred Stock Purchase Rights will not be evidenced or traded separately from the common stock.
 - (2) Calculated solely for the purpose of this offering under Rule 457(h) of the Securities Act of 1933, as amended, based on the weighted average exercise price for the Indigo Options (rounded to the nearest whole cent), divided by the conversion ratio of .7090 which was used in the merger.
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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents are incorporated by reference into this Registration Statement:

(a) FLIR S Annual Report on Form 10-K for the fiscal year ended December 31, 2002, (the Annual Report) filed with the Securities and Exchange Commission (the SEC) March 10, 2003, which contains audited consolidated financial statements for the most recent fiscal year for which such statements have been filed.

(b) All other reports filed by FLIR 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 Annual Report on Form 10-K referred to in paragraph (a) above.

(c) The description of FLIR s common stock, which is contained in a Registration Statement on Form 8-A filed by FLIR with the SEC on June 15, 1993 and Registration Statement on Form 8-A filed by FLIR with the SEC on June 11, 1999.

In addition, all documents subsequently filed by FLIR pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act of 1934 (the Exchange Act), 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, shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing of such documents. Any statement 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 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

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As an Oregon corporation FLIR is subject to the Oregon Business Corporation Act (OBCA) and the exculpation from liability and indemnification provisions contained therein. Pursuant to Section 60.047(2)(d) of the OBCA, Article IX of FLIR s Second Restated Articles of Incorporation (the Articles) eliminates the personal liability of FLIR s directors to FLIR or its shareholders, except for any liability related to breach of the duty of loyalty, actions

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not in good faith and certain other liabilities. The Articles require FLIR to indemnify its directors and officers to the fullest extent not prohibited by law.

Section 60.387, et seq., of the OBCA allows corporations to indemnify their directors and officers against liability where the director or officer has acted in good faith and with a reasonable belief that actions taken were in the best interests of the corporation or at least not adverse to the corporation's best interests and, if in a criminal proceeding, the individual had no reasonable cause to believe the conduct in question was unlawful. Under the OBCA, corporations may not indemnify against liability in connection with a claim by or in the right of the corporation in which the director or officer was adjudged liable to the corporation, but may indemnify against the reasonable expenses associated with such claims. Corporations may not indemnify against breaches of the duty of loyalty. The OBCA mandates indemnification against all reasonable expenses incurred in the successful defense of any claim made or threatened whether or not such claim was by or in the right of the corporation. Finally, a court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances whether or not the director or officer met the good faith and reasonable belief standards of conduct set out in the statute.

The OBCA also provides that the statutory indemnification provisions are not deemed exclusive of any other rights to which directors or officers may be entitled under a corporation's articles of incorporation or bylaws, any agreement, general or specific action of the board of directors, vote of shareholders or otherwise.

FLIR has entered into indemnity agreements with each of its executive officers and members of its Board of Directors. Each agreement provides for indemnification of the indemnitee to the fullest extent allowed by law.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

| <u>Number</u> | <u>Description</u> |
|---------------|--|
| 4.1 | Indigo 1997 Incentive Stock Plan |
| 4.2 | Indigo 2001 Incentive Stock Option and Non-Qualified Stock Option Plan, as amended |
| 4.3 | Indigo 2002 Stock Plan |
| 5.1 | Opinion of Ater Wynne LLP as to the legality of the securities being registered |
| 23.1 | Consent of Ater Wynne LLP (included in legal opinion filed as Exhibit 5.1) |
| 23.2 | Consent of KPMG LLP |
| 24.1 | Powers of Attorney (included in signature page in Part II of the Registration Statement) |

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes 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% 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 subparagraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those subparagraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) that are incorporated by reference in the registration statement.

(b) The undersigned Registrant hereby undertakes that, for the purpose of determining liability under the Securities Act of 1933, as amended (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.

(c) The undersigned Registrant hereby undertakes 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.

(d) 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 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.

(e) 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 SEC 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 a director, officer or controlling person in connection with 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.

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Angus L. Macdonald

/s/ JOHN D. CARTER

Director

John D. Carter

/s/ MICHAEL T. SMITH

Director

Michael T. Smith

/s/ RONALD L. TURNER

Director

Ronald L. Turner

/s/ STEVEN E. WYNNE

Director

Steven E. Wynne

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