

INTEVAC INC
Form T-3/A
July 03, 2002

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As filed with the Securities and Exchange Commission on July 3, 2002

Application No. 22-28599

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
AMENDMENT NO. 5 TO
FORM T-3

*For Applications for Qualification of Indentures
under the Trust Indenture Act of 1939*

INTEVAC, INC.

(Name of Applicant)

3560 Basset Street
Santa Clara, California 95054

(Address of principal executive offices)

SECURITIES TO BE ISSUED UNDER THE INDENTURE TO BE QUALIFIED

TITLE OF CLASS	AMOUNT
6½% Convertible Subordinated Notes due 2009	Up to \$30,599,000 principal amount

Approximate date of proposed public offering: As soon as practicable following the qualification of the indenture covered hereby under the Trust Indenture Act of 1939, as amended.

Name and address of agent for service:

Kevin Fairbairn
Intevac, Inc.
3560 Bassett Street
Santa Clara, California 95054
(408) 986-9888

With copies sent to:

Herbert P. Fockler, Esq.
Michael A. Occhiolini, Esq.
Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304

The obligor hereby amends this application for qualification on such date or dates as may be necessary to delay its effectiveness until: (i) the 20th day after the filing of a further amendment which specifically states that it shall supersede this amendment; or (ii) such date as the Securities and Exchange Commission, acting pursuant to Section 307(c) of the Act, may determine upon the written request of the obligor.

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SIGNATURES

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This Amendment No. 5 to Form T-3 amends and restates (a) Sections 2, 5, 7(a) and 8(A) of and (b) the contents of the application for qualification in Intevac's Form T-3 (file no. 22-28599), originally filed on May 8, 2002 (the Form T-3), as amended on May 24, 2002, June 6, 2002, June 14, 2002 and June 21, 2002.

2. Securities Act Exemption Applicable.

Section 2 of the Form T-3 hereby is amended and restated to read as follows:

Pursuant to the terms set forth in the offering circular dated June 21, 2002, as amended and supplemented by the supplement to Offering Circular, dated July 3, 2002 (as amended and supplemented, the Offering Circular), a copy of which is filed as Exhibit T3E (6) hereto, and the related letter of transmittal, a copy of which is filed as Exhibit T3E (2) hereto (which, together with the Offering Circular, constitutes the Exchange Offer), Intevac, Inc. (Intevac or the Applicant or the Company) has proposed to exchange for each \$1,000 principal amount of its 6½% Convertible Subordinated Notes due 2004 (the Existing Notes) \$185 in cash (the Cash Payment) and \$815 principal amount of its new 6½% Convertible Notes due 2009 (the New Notes and, together with the Cash Payment, the Exchange Consideration). The New Notes will be issued in denominations of \$1,000 principal amount or integral multiples thereof. Intevac will pay cash for any fractional portion of a New Note that is less than \$1,000 principal amount as a result of the exchange, after aggregating all Existing Notes tendered. Intevac is offering to exchange all of the outstanding \$37,545,000 aggregate principal amount of Existing Notes under the Exchange Offer. Intevac will pay interest on the Existing Notes that are tendered and accepted for exchange that has accrued to the date of completion of the exchange. The Exchange Offer is conditioned on at least \$30,000,000 principal amount of Existing Notes being tendered in the Exchange Offer. The New Notes are to be issued under the indenture to be qualified hereby (the Indenture). Intevac will extend the Exchange Offer to all holders of its outstanding Existing Notes.

As the Exchange Consideration is proposed to be offered by Intevac to holders of its Existing Notes exclusively and solely in exchange for outstanding Existing Notes, the issuance of the New Notes by Intevac to the holders participating in the Exchange Offer is exempt from registration under the Securities Act of 1933, as amended (the Securities Act), pursuant to the provisions of Section 3(a) (9) thereof. Intevac will not make any sales of the New Notes (i) other than pursuant to the terms of the Exchange Offer, or (ii) by or through an underwriter at or about the same time as the Exchange Offer. No consideration has been or will be given, directly or indirectly, to any broker, dealer, salesman, or other person for soliciting exchanges of the Existing Notes. No holder of the outstanding Existing Notes has made or will be requested to make any cash payment to Intevac in connection with the Exchange Offer.

5. Principal Owners of Voting Securities.

Section 5 of the Form T-3 is amended and restated to read as follows:

The following table lists as of July 1, 2002 (i) the names of persons owning 10 percent or more of the voting securities of Intevac, (ii) the title of the classes of voting securities of Intevac owned by such persons, (iii) the amount of voting securities of Intevac owned by such persons, and (iv) the percentages of voting securities of Intevac owned by such persons.

Col. A Name and Complete Mailing Address	Col. B Title of Class Owned	Col. C Amount Owned(1)	Col. D Percentage of Voting Securities Owned(2)
Foster City LLC 395 Mill Creek Circle Vail, CO 81657	Common Stock	5,600,000	46.4%
Ed Durbin(3) c/o Intevac, Inc. 3560 Bassett Street, Santa Clara, California 95054	Common Stock	5,687,015	46.8%
H. Joseph Smead(4) c/o Intevac, Inc. 3560 Bassett Street, Santa Clara, California 95054	Common Stock	5,642,683	46.7%

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- (1) Except as indicated in the footnotes to this table and pursuant to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of Common Stock. The number of shares owned includes Common Stock of which such individual has the right to acquire beneficial ownership either currently or within 60 days after July 1, 2002, including, but not limited to, upon the exercise of an option or conversion of convertible debt.
 - (2) Percentage of beneficial ownership is based upon the 12,060,003 shares of Common Stock that were outstanding on July 1, 2002. For each individual, this percentage includes shares of Common Stock of which such individual has the right to acquire beneficial ownership either currently or within 60 days of July 1, 2002, including, but not limited to, upon the exercise of an option or conversion of convertible debt; however, such Common Stock is not considered outstanding for the purpose of computing the percentage owned by any other individual as required by General Rule 13d-3(d)(1)(i) under the Securities Exchange Act of 1934.
 - (3) Includes options exercisable for 37,500 shares of Common Stock under the 1995 Plan, 47,515 shares issuable upon conversion of Existing Notes and 5,600,000 shares held by Foster City LLC. Mr. Durbin is a director of the Company and a managing member of Foster City. Mr. Durbin disclaims beneficial ownership in the shares of Common Stock held by Foster City except to the extent of his pecuniary interest therein arising from his interest in Foster City.
 - (4) Includes options exercisable for 27,500 shares of Common Stock under the 1995 Plan and 5,600,000 shares held by Foster City LLC. Dr. Smead is a director of the Company and a managing member of Foster City. Dr. Smead disclaims beneficial ownership in the shares of Common Stock held by Foster City except to the extent of his pecuniary interest therein arising from his interest in Foster City.
- 7. Capitalization.**

Section 7(a) of the Form T-3 is amended and restated to read as follows:

- (a) The capital stock and debt securities of Intevac as of July 1, 2002 were as follows:

Col. A Title of Class	Col. B Amount Authorized	Col. C Amount Outstanding
Common Stock, no par value per share	50,000,000 shares	12,060,003 shares
Undesignated Preferred Stock, no par value per share	10,000,000 shares	0 shares
6 1/2% Convertible Subordinated Notes due 2004	\$57,500,000	\$37,545,000

8. Analysis of Indenture Provisions.

Section 8(A) of the Form T-3 is amended and restated to read as follows:

(A) Events of Default; Withholding of Notice of Default.

Each of the following is an Event of Default under the Indenture:

- (1) default for 30 days in the payment when due of interest on the New Notes;
- (2) default in payment when due of principal on the New Notes;
- (3) default in the payment of the Designated Event Payment in respect of the New Notes on the Designated Event Payment Date, whether or not such payment is prohibited by the subordination provisions of the Indenture;
- (4) failure to provide timely notice of a Designated Event;
- (5) failure for 60 days after notice to comply with any other covenants and agreements contained in the Indenture or the New Notes;
- (6) Intevac or one of its subsidiaries defaults under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by Intevac or any of its subsidiaries or the payment of which is guaranteed by Intevac or any of its subsidiaries, whether such indebtedness or guarantee now exists or is created after the date on which the exchange notes are first authenticated and issued, which default (A) is a payment default caused by a failure to pay when due principal or

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interest on such indebtedness within the grace period provided for in such indebtedness (which failure continues beyond any applicable grace period) or (B) results in the acceleration of such indebtedness prior to its express maturity and, in each case, the principal amount of any such indebtedness, together with the principal amount of any other such indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates \$10 million or more;

(7) Intevac or one of its subsidiaries fails to pay final judgments aggregating in excess of \$10 million, which judgments are not stayed within 60 days after their entry, other than any judgment as to which a reputable insurance company has accepted full liability; and

(8) certain events of bankruptcy or insolvency with respect to Intevac or any of its material subsidiaries.

The trustee may withhold from holders of the New Notes notice of any continuing default or event of default if it determines that withholding notice is in their interest, except a default or event of default relating to the payment of principal or interest or premium.

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Contents of application for qualification.

The contents of the application for qualification hereby is amended and restated to read as follows:

Contents of application for qualification. This application for qualification comprises:

(a) Pages numbered 1 to 8, consecutively.

(b) The statement of eligibility and qualification on Form T-1 of State Street Bank and Trust Company of California, as Trustee under the Indenture.(1)

(c) The following exhibits in addition to those filed as a part of the statement of eligibility and qualification of such Trustee:

Exhibit T3A Amended and Restated Articles of Incorporation of Intevac, as amended.(2)

Exhibit T3B By-Laws of Intevac.(3)

Exhibit T3C The Indenture to be dated as of the closing date of the Exchange Offer by and between Intevac and State Street Bank and Trust Company of California, N.A., as Trustee.(4)

Exhibit T3D Not applicable.

Exhibit T3E (1) Offering Circular dated as of June 21, 2002.(5)

(2) Letter of Transmittal accompanying the Offering Circular.(5)

(3) Letter to Clients.(5)

(4) Letter to Broker-Dealers.(5)

(5) Notice of Guaranteed Delivery.(5)

(6) Supplement to Offering Circular dated July 3, 2002.(4)

(7) Press Release dated June 6, 2002.(6)

(8) Guidelines for Certification of Taxpayer Identification Number on substitute Form W-9.(7)

(9) Press Release dated May 8, 2002.(7)

(10) Investor Presentation.(7)

(11) Press Release dated June 20, 2002.(8)

Exhibit T3F Cross-reference sheet.(1)

(1) Previously filed.

(2) Incorporated by reference to Exhibit 3.1 to Intevac's Registration

Statement on
Form S-1 (file
no. 333-05531),
filed on June 7,
1996.(3) Incorporated
by reference to
Exhibit 3.2 to
Intevac s
Quarterly
Report on
Form 10-Q for
the quarter
ended March 30,
2002, filed on
April 30,
2002.(4) Incorporated
by reference to
Intevac s
Amendment
No. 5 to
Schedule TO
(file
no. 5-48450)
filed on July 3,
2002.(5) Incorporated
by reference to
Intevac s
Amendment
No. 4 to
Schedule TO
(file
no. 5-48450),
filed on June 21,
2002.(6) Incorporated
by reference to
Intevac s
Amendment
No. 2 to
Schedule TO
(file
no. 5-48450),
filed on June 6,
2002.(7) Incorporated
by reference to
Intevac s Tender
Offer Statement
on Schedule TO
(file
no. 5-48450),
filed on May 8,
2002.(8) Incorporated
by reference to
Intevac s
Schedule TO-C,
filed on June 20,
2002.

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SIGNATURES

Pursuant to the requirements of the Trust Indenture Act of 1939, the applicant, Intevac, Inc., a corporation organized and existing under the laws of California, has duly caused this amendment no. 5 to the application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of Santa Clara, and State of California, on the 3rd day of July, 2002.

(SEAL)

INTEVAC, INC.

By: /s/ KEVIN FAIRBAIRN

Name: Kevin Fairbairn

Title: President and Chief Executive Officer

Attest: /s/ CHARLES B. EDDY III

Name: Charles B. Eddy III

Title: Vice President, Finance and
Administration, Chief Financial Officer,
Treasurer and Secretary

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EXHIBIT INDEX

Exhibit T3A	Amended and Restated Articles of Incorporation of Intevac, as amended.(1)
Exhibit T3B	By-Laws of Intevac.(2)
Exhibit T3C	The Indenture to be dated as of the closing date of the Exchange Offer by and between Intevac and State Street Bank and Trust Company of California, N.A., as Trustee.(3)
Exhibit T3D	Not applicable.
Exhibit T3E	(1) Offering Circular dated as of June 21, 2002.(4) (2) Letter of Transmittal accompanying the Offering Circular.(4) (3) Letter to Clients.(4) (4) Letter to Broker-Dealers.(4) (5) Notice of Guaranteed Delivery.(4) (6) Supplement to Offering Circular dated July 3, 2002.(3) (7) Press Release dated June 6, 2002.(5) (8) Guidelines for Certification of Taxpayer Identification Number on substitute Form W-9.(6) (9) Press Release dated May 8, 2002.(6) (10) Investor Presentation.(6) (11) Press Release dated June 20, 2002.(7)
Exhibit T3F	Cross-reference sheet.(8)

(1) Incorporated by reference to Exhibit 3.1 to Intevac's Registration Statement on Form S-1 (file no. 333-05531), filed on June 7, 1996.

(2) Incorporated by reference to Exhibit 3.2 to Intevac's Quarterly Report on Form 10-Q for the quarter ended March 30, 2002, filed on April 30, 2002.(3) Incorporated by reference to Intevac's

Amendment
No. 5 to
Schedule TO
(file
no. 5-48450),
filed on
July 3,
2002.(4) Incorporated
by reference
to Intevac s
Amendment
No. 4 to
Schedule TO
(file
no. 5-48450),
filed on
June 21,
2002.(5) Incorporated
by reference
to Intevac s
Amendment
No. 2 to
Schedule TO
(file
no. 5-48450),
filed on
June 6,
2002.(6) Incorporated
by reference
to Intevac s
Tender Offer
Statement on
Schedule TO
(file
no. 5-48450),
filed on
May 8,
2002.(7) Incorporated
by reference
to Intevac s
Schedule
TO-C, filed
on June 20,
2002.(8) Previously
filed.