
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Aterian, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

83-1739858
(I.R.S. Employer
Identification No.)

**37 East 18th Street, 7th Floor
New York, NY 10003**
(Address of Principal Executive Offices) (Zip Code)

Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan
(Full title of the plan)

**Yaniv Sarig
Chief Executive Officer
Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
(347) 676-1681**
(Name, address and telephone number, including area code, of agent for service)

Copies to:

**Joseph A. Risico, Esq.
Chief Legal Officer
Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003**

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

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.

EXPLANATORY NOTE

Aterian, Inc. (the “Registrant”) has prepared this registration statement (this “Registration Statement”) in accordance with the requirements of Form S-8 under the Securities Act to register 9,700,000 additional shares of Common Stock reserved for issuance under the Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan (the “2018 Plan”).

Pursuant to the Registration Statements on Form S-8 (File Nos. 333-232087, 333-251295 and 333-256612) filed by the Registrant with the Securities and Exchange Commission (the “Commission”) on June 13, 2019, December 11, 2020, May 28, 2021 and March 28, 2022 (the “Prior Registration Statements”), the Registrant previously registered an aggregate of 8,137,552 shares of Common Stock under the 2018 Plan.

In accordance with General Instruction E to Form S-8, the contents of the Prior Registration Statements are hereby incorporated by reference.

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 hereby incorporated by reference into this Registration Statement:

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, filed with the Commission on March 16, 2023;
- (b) The Registrant’s Current Reports on Form 8-K filed with the Commission on [January 13, 2023](#), [January 17, 2023](#) and [February 6, 2023](#); and
- (d) The description of the Common Stock set forth in the Registrant’s Registration Statement on [Form 8-A](#) (File No. 001-38937), filed with the Commission on June 11, 2019, including any amendments or reports filed for the purpose of updating such description, including the description of the Common Stock included as [Exhibit 4.9](#) to the Registrant’s Annual Report on [Form 10-K](#) for the year ended December 31, 2022, filed with the Commission on March 16, 2023.

All other reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 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 into this Registration Statement and to be a part of this Registration Statement from the date of the filing of such reports and documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions.

For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

You should rely only on the information provided or incorporated by reference in this Registration Statement or any related prospectus. The Registrant has not authorized anyone to provide you with different information. You should not assume that the information in this Registration Statement or any related prospectus is accurate as of any date other than the date on the front of the document.

You may contact the Registrant in writing or orally to request copies of the above-referenced filings, without charge (excluding exhibits to such documents unless such exhibits are specifically incorporated by reference into the information incorporated into this Registration Statement). Requests for such information should be directed to:

Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
(347) 676-1681
Attn: Chief Executive Officer

ITEM 8. EXHIBITS.

Exhibit Number	Description
3.1	<u>Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on June 14, 2019 and incorporated herein by reference).</u>
3.2	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on April 30, 2021 and incorporated herein by reference).</u>
3.3	<u>Certificate of Correction of Certificate of Amendment to the Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on April 30, 2021 and incorporated herein by reference).</u>
3.4	<u>Second Amended and Restated Bylaws (previously filed as Exhibit 3.3 to the Registrant's Current Report on Form 8-K filed on April 30, 2021 and incorporated herein by reference).</u>
4.1	<u>Form of Common Stock Certificate (previously filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A (File No. 333-231381) filed on May 24, 2019 and incorporated herein by reference).</u>
4.2	<u>Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan (previously filed as Exhibit 10.3 to Registrant's Registration Statement on Form S-8 filed on May 28, 2019 and incorporated herein by reference).</u>
4.3	<u>Form of Stock Option Agreement under the Mohawk Group Holdings, Inc. 2018 Equity Incentive Plan (previously filed as Exhibit 10.17 to the Registrant's Registration Statement on Form S-1 (File No. 333-231381) filed on May 10, 2019 and incorporated herein by reference).</u>
4.4	<u>Form of Restricted Stock Award Agreement under the Mohawk Group Holdings, Inc. 2018 Equity Incentive Plan (previously filed as Exhibit 10.4 to the Registrant's Registration Statement on Form S-8 filed on June 13, 2019 and incorporated herein by reference).</u>
5.1*	<u>Opinion of Croke Fairchild Duarte & Beres LLC.</u>
23.1*	<u>Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.</u>
23.2*	<u>Consent of Croke Fairchild Duarte & Beres LLC (included in Exhibit 5.1).</u>
24.1*	<u>Power of Attorney is contained on the signature page.</u>
107*	<u>Calculation of Filing Fee Table.</u>

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 New York, State of New York, on March 17, 2023.

Aterian, Inc.

By: /s/ Yaniv Sarig

Name: Yaniv Sarig

Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Yaniv Sarig, Arturo Rodriguez and Joseph A. Risico, and each or any one of them, as his or her true and lawful attorneys-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, 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 and necessary to be done in connection therewith, as fully to all intents and purposes as he or she 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 substitutes or substitute, 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.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Yaniv Sarig</u> Yaniv Sarig	President, Chief Executive Officer and Director (Principal Executive Officer)	March 17, 2023
<u>/s/ Arturo Rodriguez</u> Arturo Rodriguez	Chief Financial Officer (Principal Financial and Accounting Officer)	March 17, 2023
<u>/s/ Bari Harlam</u> Bari Harlam	Director	March 17, 2023
<u>/s/ William Kurtz</u> William Kurtz	Director	March 17, 2023
<u>/s/ Susan Lattmann</u> Susan Lattmann	Director	March 17, 2023
<u>/s/ Sarah Liebel</u> Sarah Liebel	Director	March 17, 2023
<u>/s/ Cynthia Williams</u> Cynthia Williams	Director	March 17, 2023

Croke Fairchild Duarte & Beres LLC
180 North La Salle Street, Suite 3400
Chicago, Illinois 60601
March 17, 2023

Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Aterian, Inc., a Delaware corporation (the “**Company**”), in connection with the Registration Statement on Form S-8 (the “**Registration Statement**”) to be filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (“**Securities Act**”), relating to the issuance of up to 9,700,000 shares (the “**Shares**”) of the Company’s common stock, \$0.0001 par value per share (“**Common Stock**”), issuable upon the vesting and exercise of awards to be granted by the Company pursuant to the Company’s Amended and Restated 2018 Equity Incentive Plan (the “**Equity Plan**”).

As such counsel and for purposes of our opinion set forth below, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of such documents, resolutions, certificates and instruments of the Company and corporate records furnished to us by the Company, and have reviewed certificates of public officials, statutes, records and such other instruments and documents as we have deemed necessary or appropriate as a basis for the opinion set forth below, including, without limitation:

- (i) the Registration Statement;
- (ii) the Amended and Restated Certificate of Incorporation of the Company, as amended, as certified by the Office of the Secretary of State of the State of Delaware on March 10, 2023;
- (iii) the Second Amended and Restated Bylaws of the Company as presently in effect, as certified by an officer of the Company on March 14, 2023;
- (iv) the Equity Plan and the forms of award agreements related thereto that were attached as exhibits to the Registration Statement or otherwise incorporated by reference into the exhibits of the Registration Statement;
- (v) a certificate, dated as of March 10, 2023, from the Office of the Secretary of State of the State of Delaware, as to the existence and good standing of the Company in the State of Delaware (the “**Good Standing Certificate**”); and

(vi) the resolutions adopted by the board of directors of the Company regarding the Equity Plan and other matters related thereto, as certified by an officer of the Company on March 14, 2023.

We express no opinion herein as to the laws of any state or jurisdiction other than the General Corporation Law of the State of Delaware and the federal laws of the United States of America.

Based upon and subject to the foregoing, it is our opinion that the Shares, when issued in accordance with the terms of the Equity Plan, will be duly issued and fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Croke Fairchild Duarte & Beres LLC

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 16, 2023, relating to the consolidated financial statements of Aterian, Inc. and subsidiaries, appearing in the Annual Report on Form 10-K of Aterian, Inc. for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

New York, New York
March 17, 2023

Calculation of Filing Fee Table

S-8
(Form Type)

Aterian, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽³⁾	Maximum Aggregate Offering Price ⁽³⁾	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.0001 per share	457(h)	9,700,000 ⁽²⁾	\$0.915	\$8,875,500	0.00011020	\$978.08
Total Offering Amounts					\$8,875,500	—	\$978.08
Total Fees Previously Paid					—	—	—
Total Fee Offsets					—	—	—
Net Fee Due					—	—	\$978.08

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s Common Stock (“Common Stock”) that become issuable under the Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan (the “2018 Plan”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of Common Stock.
- (2) Represents 9,700,000 shares of Common Stock that were automatically added to the shares reserved for future issuance under the 2018 Plan. The 2018 Plan provides that the number of shares reserved for issuance under the 2018 Plan will automatically increase on January 1st each calendar year for ten years, starting on January 1, 2019 and ending on and including January 1, 2028, by the lesser of (a) such number of shares of Common Stock equal to 15% of the number of shares of Common Stock Deemed Outstanding (as defined in the 2018 Plan) on the immediately preceding December 31st, minus the number of shares of Common Stock in the Share Reserve (as defined in the 2018 Plan) as of immediately prior to the increase, and (b) a number determined by the Registrant’s board of directors.
- (3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) of the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price with respect to the shares are calculated based on \$0.915 per share, the average of the high and low prices of the Common Stock, as reported on the Nasdaq Capital Market on March 16, 2023, a date within five business days prior to the filing of this Registration Statement.