

AGILYSYS INC  
Form S-8  
July 29, 2011

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

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

**Agilysys, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Ohio**  
(State or Other Jurisdiction of

Incorporation or Organization)

**28925 Fountain Parkway, Solon, Ohio 44139**

(Address of Principal Executive Offices, Including Zip Code)

**34-0907152**  
(I.R.S. Employer

Identification No.)

**Agilysys, Inc. 2011 Stock Incentive Plan**

(Full Title of the Plan)

**Kathleen A. Weigand, Esq.**

**General Counsel and Secretary**

**Agilysys, Inc.**

**28925 Fountain Parkway**

**Solon, Ohio 44139**

**(440) 519-8700**

(Name, Address, and Telephone Number, Including Area Code, of Agent For Service)

Indicate by check mark whether the registrant is a large accelerated filer, an 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  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

| Title of securities<br>to be registered | Amount<br>to be<br>registered | Proposed                                   | Proposed                                   | Amount of<br>registration fee |
|---|-------------------------------|--|--|-------------------------------|
|   |                               | maximum<br>offering price<br>per share (1) | maximum<br>aggregate<br>offering price (1) |                               |
| Common Shares, without par value        | 3,000,000 shares              | \$9.38                                     | \$28,140,000                               | \$3,268                       |

- (1) Estimated in accordance with Rules 457(c) and 457(h) under the Securities Act of 1933, as amended, solely for purposes of calculating the registration fee. The fee with respect to the shares of Common Shares registered on this registration statement is based on the average of the high and low sale prices on July 27, 2011 of the Common Shares as reported on the NASDAQ Global Market.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The documents containing the information specified in Part I of Form S-8 will be sent or given to participants in the Agilysys, Inc. 2011 Stock Incentive Plan (the Plan), as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). Such documents need not be filed with the Securities and Exchange Commission (the Commission) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II of Form S-8, taken together, will 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, which are on file with the Commission, are incorporated herein by reference. All reports and other documents subsequently filed by Agilysys, Inc. (the Company) pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing such documents:

- (a) The Company's Annual Report on Form 10-K for the year ended March 31, 2011; and
- (b) The description of the Company's Common Shares, without par value, set forth in the Company's Registration Statement on Form S-3/A (File No. 333-57359), filed with the Commission on September 15, 1998, including any amendment or report filed for the purpose of updating that description.

**Item 4.** Description of Securities.

Not Applicable.

**Item 5.** Interests of Named Experts and Counsel.

Kathleen A Weigand, who rendered the opinion as to the legality of the Company's Common Shares to be issued pursuant to this registration statement, is employed by the Company as General Counsel and Secretary. Ms. Weigand is the beneficial owner of 27,350 Common Shares and of options to purchase 153,600 Common Shares of the Company (which includes options that are not yet exercisable).

**Item 6.** Indemnification of Directors and Officers.

Section 1701.13(E) of the Ohio Revised Code sets forth the conditions and limitations governing the indemnification of officers, directors and other persons. Section 1701.13(E) provides that a corporation shall have the power to indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation in a similar capacity with another corporation or other entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred in connection therewith if he or she acted in good faith and in a manner that he or she reasonably believed to be in the best interests of the corporation and, with respect to a criminal proceeding, had no reasonable



cause to believe that his or her conduct was unlawful. With respect to a suit by or in the right of the corporation, indemnity may be provided to the foregoing persons under Section 1701.13(E) on a basis similar to that set forth above, except that no indemnity may be provided in respect of any claim, issue or matter as to which such person has been adjudged to be liable to the corporation unless and to the extent that the Court of Common Pleas or the court in which such action, suit or proceeding was brought determines that despite the adjudication of liability but in view of all the circumstances of the case such person is entitled to indemnity for such expenses as the court deems proper. Moreover, Section 1701.13(E) provides for mandatory indemnification of a director, officer, employee or agent of the corporation to the extent that such person has been successful in defense of any such action, suit or proceeding and provides that a corporation shall pay the expenses of an officer or director in defending an action, suit or proceeding upon receipt of an undertaking to repay such amounts if it is ultimately determined that such person is not entitled to be indemnified. Section 1701.13(E) establishes provisions for determining whether a given person is entitled to indemnification, and also provides that the indemnification provided by or granted under Section 1701.13(E) is not exclusive of any rights to indemnity or advancement of expenses to which such person may be entitled under any by-law, agreement, vote of shareholders or disinterested directors or otherwise.

Under certain circumstances provided in the Registrant's Code of Regulations, as amended, and subject to Section 1701.13(E) of the Ohio Revised Code (which sets forth the conditions and limitations governing the indemnification of officers, directors and other persons), the Registrant will indemnify any director or officer or any former director or officer of the Registrant against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her by reason of the fact that he or she is or was such director or officer in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

The Registrant has entered into indemnification agreements (the "Indemnification Agreements") with the current directors and executive officers of the Registrant and expects to enter into similar agreements with any director or executive officer elected or appointed in the future at the time of their election or appointment. Pursuant to the Indemnification Agreements, the Registrant will indemnify a director or executive officer of the Registrant (the "Indemnitee") if the Indemnitee is a party to or otherwise involved in any legal proceeding by reason of the fact that the Indemnitee is or was a director or executive officer of the Registrant, or is or was serving at the request of the Registrant in certain capacities with another entity, against all expenses, judgments, settlements, fines and penalties, actually and reasonably incurred by the Indemnitee, in connection with the defense or settlement of such proceeding. Indemnification is only available if the Indemnitee acted in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Registrant. The same coverage is provided whether or not the suit or proceeding is a derivative action. Derivative actions may be defined as actions brought by one or more shareholders of a corporation to enforce a corporate right or to prevent or remedy a wrong to the corporation in cases where the corporation, because it is controlled by the wrongdoers or for other reasons, fails or refuses to take appropriate action for its own protection. The Indemnification Agreements require payment of expenses to the Indemnitee if the Indemnitee agrees to repay the amounts in the event that it is determined by a court of competent jurisdiction that the Indemnitee is not entitled to indemnification. In addition, the Indemnification Agreements provide various procedures and presumptions in favor of the Indemnitee's right to receive indemnification under the Indemnity Agreement.

Under the Registrant's directors and officers liability insurance policy, each director and certain officers of the Registrant are insured against certain liabilities.

Item 7. Exemption from Registration Claimed.  
Not applicable.

Item 8. Exhibits.  
The Exhibits to this registration statement are listed in the Exhibit Index and are incorporated herein by reference.

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

(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 registration statement is on Form S-8, and 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 Securities Exchange Act of 1934 (the Exchange Act ) that are incorporated by reference in the 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 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, 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 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 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 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 Solon, State of Ohio, on July 29, 2011.

Agilysys, Inc.

By: /s/ Henry R. Bond  
Henry R. Bond  
Chief Financial Officer

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the date indicated.

| Name                                      | Title  |
|---|--|
| /s/ James H. Denny*<br>James H. Denny     | Interim President and Chief Executive Officer, and Director<br><br>(principal executive officer) |
| /s/ Henry R. Bond<br>Henry R. Bond        | Senior Vice President and Chief Financial Officer<br><br>(principal financial officer)           |
| /s/ John T. Dyer<br>John T. Dyer          | Vice President and Controller  |
| /s/ Keith M. Kolerus*<br>Keith M. Kolerus | Chairman of the Board  |
| /s/ R. Andrew Cueva*<br>R. Andrew Cueva   | Director   |
| /s/ Robert A. Lauer*<br>Robert A. Lauer   | Director   |
| /s/ John Mutch*<br>John Mutch             | Director   |

\*By: /s/ Kathleen A. Weigand  
Kathleen A. Weigand  
Attorney-In-Fact  
July 29, 2011

EXHIBIT INDEX

| Exhibit Number | Description of Exhibit   |
|----------------|--|
| 4.1            | Amended Articles of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 (File No. 000-05734). |
| 4.2            | Amended Code of Regulations of the Company (incorporated by reference to Exhibit 3(b) to the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2009 (File No. 000-05734).       |
| 4.3            | Agilysys, Inc. 2011 Stock Incentive Plan (incorporated by reference to Annex D to the Company's definitive proxy statement on Schedule 14A filed on June 28, 2011)                                       |
| 5.1            | Opinion of Counsel   |
| 23.1           | Consent of Independent Registered Public Accounting Firm   |
| 23.2           | Consent of Counsel (included in Exhibit 5.1)   |
| 24.1           | Power of Attorney  |