

SIERRA WIRELESS INC
Form 40-F
March 10, 2017

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 40-F

o REGISTRATION STATEMENT PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE
ACT OF 1934

OR

ý ANNUAL REPORT PURSUANT TO SECTION 13(a) OR 15(d) OF THE SECURITIES EXCHANGE
ACT OF 1934

For the fiscal year ended December 31, 2016

Commission File No.: 0-30718

SIERRA WIRELESS, INC.
(Exact name of Registrant as specified in its charter)

Canada
(Jurisdiction of incorporation or organization)

Primary Standard Industrial Classification Code (if applicable): 3663

I.R.S. Employer Identification Number (if applicable): Not applicable

13811 Wireless Way, Richmond
British Columbia, Canada V6V 3A4
(604) 231-1100
(Address and telephone number of principal executive offices)

CT Corporation
111 Eighth Avenue
New York, New York 10011
(212) 894-8940
(Agent for service in the United States)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Common Shares, without par value
(Title of Class)

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Name of exchange on which securities are registered:

Toronto Stock Exchange, The Nasdaq Global Market

Securities registered or to be registered pursuant to Section 12(g) of the Act: None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: None

For annual reports, indicate by check mark the information filed with this Form:

Annual Information Form Audited Annual Financial Statements

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: 31,859,960 Common Shares, without par value, as at December 31, 2016

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Indicate by check mark whether the Registrant, by filing the information contained in this Form, is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934 (the “Exchange Act”), If “yes” is marked, indicate the filing number assigned to the Registrant in connection with such Rule.

Yes No

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). Yes No

A. Disclosure Controls and Procedures

Disclosure controls and procedures are defined by the Securities and Exchange Commission (the “Commission”) as those controls and other procedures that are designed to ensure that information required to be disclosed by the Registrant in reports filed or submitted by it under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms.

The Registrant’s Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of the Registrant’s disclosure controls and procedures and have determined that such disclosure controls and procedures were effective as of the end of the period covered by this Annual Report. A discussion of the Registrant’s disclosure controls and procedures can be found in its Management’s Discussion and Analysis of Financial Condition and Results of Operations for the fiscal year ended December 31, 2016, filed as Exhibit No. 1.3 to this Annual Report, under the heading “Disclosure Controls and Procedures”.

B. Management’s Annual Report on Internal Control Over Financial Reporting

See Management’s Discussion and Analysis of Financial Condition and Results of Operations for the fiscal year ended December 31, 2016, filed as Exhibit No. 1.3 to this Annual Report, under the heading “Internal Control Over Financial Reporting — Management’s Annual Report on Internal Control Over Financial Reporting”.

C. Attestation Report of the Registered Public Accounting Firm

The attestation report of Ernst & Young LLP (“EY”), the independent registered public accounting firm of the Registrant, is included in EY’s report, dated March 10, 2017, to the shareholders of the Registrant, which accompanies the Registrant’s audited consolidated financial statements for the fiscal year ended December 31, 2016, filed as Exhibit 1.2 to this Annual Report.

D. Changes in Internal Control Over Financial Reporting

See Management’s Discussion and Analysis of Financial Condition and Results of Operations for the fiscal year ended December 31, 2016, filed as Exhibit No. 1.3 to this Annual Report, under the heading “Internal Control Over Financial

Reporting — Management’s Annual Report on Internal Control Over Financial Reporting”.

E. Notice of Pension Fund Blackout Period

The Registrant was not required by Rule 104 of Regulation BTR to send any notice to any of its directors or executive officers during the fiscal year ended December 31, 2016.

F. Audit Committee Financial Expert

The Registrant’s Board of Directors has determined that Paul G. Cataford is the audit committee financial expert, within the meaning of General Instruction B(8)(b) of Form 40-F. Mr. Cataford is independent within the meaning of Rule 10A-3 under the Exchange Act and as that term is defined by the rules and regulations of The NASDAQ Stock Market LLC. (“NASDAQ”).

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The Commission has indicated that the designation of a person as an audit committee financial expert does not make such person an “expert” for any purpose, impose any duties, obligations or liability on such person that are greater than those imposed on members of the Audit Committee and the Board of Directors who do not carry this designation, or affect the duties, obligations or liability of any other member of the Audit Committee or Board of Directors.

G. Code of Ethics

See Annual Information Form dated March 10, 2017, filed as Exhibit No. 1.1 to this Annual Report, under the heading “Code of Business Conduct”. A copy of the Code of Business Conduct (the “Code”) may be obtained at www.sierrawireless.com. The Registrant will provide a copy of the Code without charge to any person that requests a copy by contacting the Corporate Secretary at the address that appears on the cover of this Annual Report on Form 40-F.

H. Principal Accountant Fees and Services

EY served as the Registrant's principal accountant (the "Principal Accountant") for the year ended December 31, 2016, prior to which KPMG LLP served in this capacity.

Audit Fees

The aggregate fees billed by the Principal Accountant for the fiscal years ended December 31, 2016 and 2015, for professional services rendered by the Principal Accountant for the audit of the Registrant’s annual financial statements or services that are normally provided by the Principal Accountant in connection with statutory and regulatory filings or engagements for such fiscal years were US\$827,654 and US\$957,115, respectively.

Audit-Related Fees

The aggregate fees billed by the Principal Accountant for the fiscal years ended December 31, 2016 and 2015, for assurance and related services rendered by the Principal Accountant that are reasonably related to the performance of the audit or review of the Registrant’s financial statements and are not reported above as audit fees were US\$nil and US\$1,564, respectively.

Tax Fees

The aggregate fees billed by the Principal Accountant for the fiscal years ended December 31, 2016 and 2015, for professional services rendered by the Principal Accountant for tax compliance, tax advice, transfer pricing services, tax planning and other services were US\$nil and US\$8,133 respectively.

Tax fees for 2015 were primarily for general tax consultation and tax compliance matters.

All Other Fees

There were no additional fees billed by the Principal Accountant for the fiscal years ended December 31, 2016 and 2015.

Audit Committee Pre-Approval Policies and Procedures

Since the enactment of the Sarbanes-Oxley Act of 2002 on July 30, 2002, all audit and non-audit services performed by the Registrant’s outside auditors are pre-approved by the audit committee of the Registrant.

I. Off-Balance Sheet Arrangements

The Registrant is not a party to any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on its financial condition, changes in financial condition, revenues or expenses, results of operations,

liquidity, capital expenditures or capital resources that is material to investors.

J. Tabular Disclosure of Contractual Obligations

See Management's Discussion and Analysis of Financial Condition and Results of Operations for the fiscal year ended December 31, 2016, filed as Exhibit No. 1.3 to this Annual Report, under the heading "Liquidity and Capital Resources - Cash Requirements".

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K. Identification of Audit Committee

The Registrant has a separately designated standing audit committee established in accordance with Section 3(a)(58)(A) of the Exchange Act comprised of four individuals: Paul G. Cataford (Chair), Robin A. Abrams, Charles E. Levine and Thomas Sieber. Each of the members of the audit committee is independent, within the meaning of Rule 10A-3 under the Exchange Act and as that term is defined by the rules and regulations of the NASDAQ.

L. Critical Accounting Policies

A discussion of the Registrant's critical accounting policies can be found in its Management's Discussion and Analysis of Financial Condition and Results of Operations for the fiscal year ended December 31, 2016, filed as Exhibit No. 1.3 to this Annual Report, under the heading "Critical Accounting Policies and Estimates".

M. NASDAQ Exemptions

The rules and regulations of the NASDAQ require each listed issuer to provide that a quorum for its shareholders' meetings be at least 33 1/3 percent of the issuer's outstanding shares. The Registrant has been granted an exemption from this requirement because it is contrary to generally accepted business practices in Canada, the Registrant's country of domicile. The Registrant has had the benefit of this exemption in the current and prior years.

In determining whether a requirement is contrary to generally accepted business practices, the NASDAQ rules generally look to the requirements of the primary market in the issuer's country of domicile. The rules and policies of the Toronto Stock Exchange, the primary market in Canada, do not contain quorum requirements, and the Canada Business Corporations Act, the Registrant's governing statute, defers to the quorum requirements contained in an issuer's By-laws. Under the Registrant's By-laws, a quorum for a meeting of the Registrant's shareholders is two persons present in person, each being a shareholder entitled to vote thereat or a duly appointed proxyholder or representative for a shareholder so entitled.

N. Interactive Data File

Concurrent with this filing, the Registrant has submitted to the Commission and posted on its corporate website, an Interactive Data File.

UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

A. Undertaking

The Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the securities registered pursuant to Form 40-F; the securities in relation to which the obligation to file an annual report on Form 40-F arises; or transactions in said securities.

B. Consent to Service of Process

A Form F-X, as amended, signed by the Registrant and the Registrant's agent for service of process with respect to the Common Shares has previously been filed with the Commission. Any change to the name or address of the Registrant's agent for service shall be communicated promptly to the Commission by amendment to the Form F-X referencing the file number of the Registrant.

SIGNATURES

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40-F and has duly caused this annual report to be signed on its behalf by the undersigned, thereto duly authorized.

SIERRA WIRELESS, INC.
(Registrant)

/s/ David G. McLennan
David G. McLennan
Chief Financial Officer and Secretary

Date: March 10, 2017

EXHIBIT INDEX

| Exhibit No. | Document |
|-------------|--|
| 1.1 | Annual Information Form for the fiscal year ended December 31, 2016, dated March 10, 2017 |
| 1.2 | Audited Consolidated Financial Statements for the fiscal year ended December 31, 2016, prepared in accordance with U.S. generally accepted accounting principles |
| 1.3 | Management's Discussion and Analysis of Financial Condition and Results of Operations for the fiscal year ended December 31, 2016 |
| 23.1 | Consent of Ernst & Young LLP |
| 23.2 | Consent of KPMG LLP (former auditor) |
| 31.1 | Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 32.1 | Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 101 | Interactive Data File |