

DIGITAL INSIGHT CORP
Form S-8
November 24, 2003

As filed with the Securities and Exchange Commission on November 24, 2003

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Digital Insight Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0493142
(I.R.S. Employer
Identification No.)

26025 Mureau Road
Calabasas, California 91302
(818) 871-0000

(Address and telephone number of principal executive offices)

Nonqualified Stock Option Agreement

between Digital Insight Corporation and Jeffrey Stiefler

(Full title of the plan)

Elizabeth S.C.S. Murray

Executive Vice President and Chief Financial Officer

Digital Insight Corporation

26025 Mureau Road

Calabasas, California 91302

(Name and address of agent for service)

Telephone number, including area code, of agent for service: (818) 871-0000

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered⁽¹⁾ | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee |
|---|--|--|--|---|
| Common Stock, \$0.001 par value: | 675,000 | \$19.27 | \$13,007,250 | \$1,053 |

- (1) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement covers, in addition to the number of shares of Common Stock stated above, an additional indeterminate number of shares, options and rights which by reason of certain events specified in the Nonqualified Stock Option Agreement between Digital Insight Corporation and Jeffrey Stiefler (the Agreement) may become subject to the Agreement.
- (2) Pursuant to Rule 457(h), the maximum offering price, per share and in the aggregate, and the registration fee were calculated upon the basis of the price at which the options subject to the Agreement may be exercised.

PART I

INFORMATION REQUIRED IN THE
SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 (plan information and registrant information) will be sent or given to Jeffrey Stiefler as specified by Securities Act Rule 428(b)(1). 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 Securities Act Rule 424. These documents, which include the statement of availability required by Item 2 of Form S-8, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Form S-8 (Part II hereof), taken together, 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 Certain Documents by Reference

The following documents of Digital Insight Corporation (the Registrant) filed with the Commission are incorporated herein by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2002;
- (b) The Registrant's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2003, June 30, 2003, and September 30, 2003;
- (c) The Registrant's Current Report on Form 8-K, filed with the SEC on October 24, 2003; and
- (d) The description of the Registrant's Common Stock contained in its Registration Statement on Form 8-A filed on September 27, 1999, and any amendment or report filed for the purpose of updating such description.

All 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 hereof from the date of filing of such documents. Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained

herein or in any other subsequently filed document which 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 amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities

The Registrant's Common Stock, par value \$0.001 per share, is registered pursuant to Section 12 of the Exchange Act and, therefore, the description of securities is omitted.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

The Registrant's Certificate of Incorporation limits the liability of directors to the maximum extent permitted by Delaware law. Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's Board of Directors to grant, indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act. The Company's Bylaws provide for the mandatory indemnification of its directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and the Company has entered into agreements with its officers, directors and certain key employees implementing such indemnification.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index at page 6.

Item 9. Undertakings

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(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 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; and

- (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 paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this 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; and
- (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 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers and controlling persons of the Registrant pursuant to the provisions described in Item 6 above, 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.

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| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|-------------------|
| <u>/s/ Jeffrey E. Stiefler</u> Jeffrey E. Stiefler | Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer) | November 24, 2003 |
| <u>/s/ Elizabeth S.C.S. Murray</u> Elizabeth S.C.S. Murray | Executive Vice President and Chief Financial Officer (Principal Financial Officer) | November 24, 2003 |
| <u>/s/ Kyle McIntosh</u> Kyle McIntosh | Controller (Controller and Principal Accounting Officer) | November 24, 2003 |
| <u>/s/ Henry DeNero</u> Henry DeNero | Director | November 24, 2003 |
| <u>/s/ John Dorman</u> John Dorman | Director | November 24, 2003 |
| <u>/s/ Michael Hallman</u> Michael Hallman | Director | November 24, 2003 |
| <u>/s/ James McGuire</u> James McGuire | Director | November 24, 2003 |
| <u>Robert North</u> Robert North | Director | |
| <u>/s/ Greg Santora</u> Greg Santora | Director | November 24, 2003 |

EXHIBIT INDEX

Exhibit

Number

Description of Exhibit

| | |
|------|---|
| 4 | Nonqualified Stock Option Agreement between Digital Insight Corporation and Jeffrey Stiefler. |
| 5 | Opinion of Counsel (opinion re legality). |
| 23.1 | Consent of Independent Accountants. |
| 23.2 | Consent of Counsel (included in Exhibit 5). |
| 24 | Power of Attorney (included in this Registration Statement under Signatures). |