

SABA SOFTWARE INC  
Form S-8  
December 18, 2009

As filed with the Securities and Exchange Commission on December 18, 2009

Registration No. 333-

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

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

**SABA SOFTWARE, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**DELAWARE**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**94-3267638**  
(IRS Employer  
Identification No.)

**2400 BRIDGE PARKWAY**

**REDWOOD SHORES, CALIFORNIA**  
(Address of Principal Executive Offices)

**94065-1166**  
(Zip Code)

**SABA SOFTWARE, INC. 2009 STOCK INCENTIVE PLAN**

(Full Title of the Plan)

**Peter E. Williams III**

**Executive Vice President, Corporate Development**

**Saba Software, Inc.**

**2400 Bridge Parkway**

**Redwood Shores, California 94065**

(Name and Address of Agent for Service)

**(650) 696-3840**

(Telephone Number, Including Area Code, of Agent for Service)

*With a Copy to:*

**Gavin B. Grover, Esq.**

**Morrison & Foerster LLP**

**425 Market Street**

**San Francisco, California 94105-2482**

**(415) 268-7113**

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.

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(Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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**CALCULATION OF REGISTRATION FEE**

| <b>TITLE OF EACH CLASS<br/>OF SECURITIES TO BE REGISTERED</b> | <b>AMOUNT<br/>TO BE<br/>REGISTERED (1)</b> | <b>PROPOSED<br/>MAXIMUM<br/>OFFERING PRICE<br/>PER SHARE (2)</b> | <b>PROPOSED<br/>MAXIMUM<br/>AGGREGATE<br/>OFFERING<br/>PRICE (2)</b> | <b>AMOUNT OF<br/>REGISTRATION FEE</b> |
|---|--|--|--|---------------------------------------|
| Common Stock, \$0.001 par value                               | 2,900,000                                  | \$4.10   | \$11,890,000.00  | \$664.00                              |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this registration statement includes an indeterminate number of additional shares which may be offered and issued to prevent dilution from stock splits, stock dividends or similar transactions as provided in the Saba Software, Inc. 2009 Stock Incentive Plan.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and (h) under the Securities Act of 1933, as amended, based upon the average of the high and low prices of Saba Software, Inc. common stock reported on the Nasdaq Global Market on December 16, 2009.

**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 and employee plan annual information) will be sent or given to employees as specified by Rule 428 of the Securities Act of 1933, as amended (the Securities Act ). Such documents need not be filed with the Securities and Exchange Commission (the SEC ) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Form S-8 (Part II below), taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. Saba Software, Inc. (the Registrant ) will maintain a file of such documents in accordance with the provisions of Rule 428. Upon request, the Registrant shall furnish the SEC or its staff a copy or copies of all of the documents included in such file.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the SEC are hereby incorporated by reference in this registration statement:

- (a) The Registrant's annual report on Form 10-K for the fiscal year ended May 31, 2009, including the Registrant's audited consolidated financial statements for the fiscal year ended May 31, 2009;
- (b) The description of the Registrant's common stock set forth in the Registrant's registration statement on Form 8-A filed with the SEC on April 5, 2000, and any subsequent amendment or report filed for the purposes of updating such description; and
- (c) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Securities Exchange Act ), since the end of the fiscal year covered by the audited financial statements described in (a) above.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities 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 in this registration statement and to be part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the 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 statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

To the extent that any proxy statement or Form 8-K is incorporated herein by reference, such incorporation shall not include any information contained in such proxy statement or Form 8-K which is not, pursuant to the SEC's rules, deemed to be filed with the SEC or subject to the liabilities of Section 18 of the Securities Exchange Act.

**Item 4. Description of Securities.**

Not applicable.

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

Not applicable.



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

Under Section 145 of the General Corporate Law of the State of Delaware, the Registrant has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. The Registrant's Amended and Restated Bylaws also provide for mandatory indemnification of its directors and executive officers, and permissive indemnification of its employees and agents, to the fullest extent permissible under Delaware law.

The Registrant's Amended and Restated Certificate of Incorporation provides that the liability of its directors for monetary damages shall be eliminated to the fullest extent permissible under Delaware law. Pursuant to Delaware law, this includes elimination of liability for monetary damages for breach of the directors' fiduciary duty of care to the Registrant and its stockholders. These provisions do not eliminate the directors' duty of care and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant, for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for any transaction from which the director derived an improper personal benefit, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws.

The Registrant has entered into agreements with its directors and its executive officers that require the Registrant to indemnify such persons against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person maybe made a party by reason of the fact that such person is or was a director or officer of the Registrant or any of its affiliated enterprises, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

The Registrant has obtained a policy of directors' and officers' liability insurance that insures its directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

**Exhibit**

| <b>No.</b> | <b>Description</b>   |
|------------|--|
| 5.1        | Opinion of Morrison & Foerster LLP.  |
| 10.1*      | Saba Software, Inc. 2009 Stock Incentive Plan.                               |
| 23.1       | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. |
| 23.2       | Consent of Morrison & Foerster LLP (contained in Exhibit 5.1).               |
| 24.1       | Power of Attorney (contained on signature page).                             |

\* Incorporated by reference to the Company's Current Report on Form 8-K filed on November 24, 2009.

**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:

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(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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

(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 periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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 of 1933 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Redwood Shores, state of California, on December 18, 2009.

SABA SOFTWARE, INC.

By: /s/ BOBBY YAZDANI  
**Bobby Yazdani**  
**Chief Executive Officer and**  
**Chairman of the Board**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Bobby Yazdani and William Slater, or each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and re-substitution, for him and in his name, place and stead, in any and all capacities to sign any and all amendments to this registration statement on Form S-8, 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either 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:

| SIGNATURE   | TITLE   | DATE              |
|---|---|-------------------|
| /s/ BOBBY YAZDANI<br><b>Bobby Yazdani</b>               | Chairman and Chief Executive Officer<br>(Principal Executive Officer)   | December 18, 2009 |
| /s/ WILLIAM SLATER<br><b>William Slater</b>             | Chief Financial Officer<br>(Principal Financial and Accounting Officer) | December 18, 2009 |
| /s/ JOE E. KIANI<br><b>Joe E. Kiani</b>                 | Director  | December 18, 2009 |
| /s/ WILLIAM M. KLEIN<br><b>William M. Klein</b>         | Director  | December 18, 2009 |
| /s/ WILLIAM N. MACGOWAN<br><b>William N. MacGowan</b>   | Director  | December 18, 2009 |
| /s/ GEORGE A. DE URIOSTE<br><b>George A. de Urioste</b> | Director  | December 18, 2009 |
| /s/ DOW R. WILSON<br><b>Dow R. Wilson</b>               | Director  | December 18, 2009 |

**INDEX TO EXHIBITS**

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