

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

Form 8-K

Current Report Pursuant to Section 13 or 15(d) of
the Securities Act of 1934

Date of Report (Date of earliest event reported): **July 16, 2021**

Ocean Power Technologies, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-33417
(Commission
File Number)

22-2535818
(I.R.S. Employer
Identification No.)

28 Engelhard Drive, Suite B
Monroe Township, New Jersey
(Address of principal executive offices)

08831
(Zip Code)

(609) 730-0400
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol (s)	Name of each exchange on which registered
Common Stock \$0.001 Par Value	OPTT	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

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 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Effective July 16, 2021, in connection with his resignation from Ocean Power Technologies, Inc. (the “Company”) on June 18, 2021 (as described in the Company’s Current Report on Form 8-K filed on June 21, 2021), George H. Kirby III, the Company’s former President and Chief Executive Officer, entered into a letter agreement with the Company respecting his resignation. Under the letter agreement, Mr. Kirby will receive one year of base salary as severance and a prorated portion of his cash bonus for fiscal 2021. The Company also agreed to extend the expiration date of his vested stock options for 180 days from June 18, and to reimburse Mr. Kirby for his COBRA premiums until the earlier of June 18, 2022 or the date he becomes eligible for health insurance coverage from new employment. Under the terms of the letter agreement, Mr. Kirby also provided a release of all claims against the Company.

The foregoing description of the letter agreement is qualified in its entirety by reference to the full text of the letter agreement which is filed with this Current Report on Form 8-K as Exhibit 10.1.

Item 9.01 Financial Statements and Exhibits.Exhibits

*10.1 [Letter Agreement between the Company and George H. Kirby III dated effective July 16, 2021.](#)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Ocean Power Technologies, Inc.

Dated: July 16, 2021

/s/ Philipp Stratmann

Philipp Stratmann

President and Chief Executive Officer



June 18, 2021

Via email transmission to kirbygeo@gmail.com

Mr. George H. Kirby III
1 Deer Hill Road
Chester, New Jersey 07930

Dear George:

The purpose of this letter agreement (“Agreement and Release”) is to confirm that by mutual agreement, your employment with Ocean Power Technologies, Inc. (“OPT” or the “Company”) ceased in all capacities at 4:00 pm eastern daylight time on Friday June 18, 2021. This Agreement and Release sets forth the terms of your separation from employment in accordance with the separation provisions contained in your Employment Agreement dated December 29, 2014, (as amended on July 12, 2018) (collectively “the Employment Agreement”) (attached as Exhibit “A”), and the special separation provisions being offered to you in this letter. This Agreement and Release shall serve as the “Notice of Termination” discussed in Paragraph 6(e) of the Employment Agreement. Your termination will be considered a resignation pursuant to Paragraph 6(c)(2) of the Employment Agreement.

1. STANDARD SEPARATION PROVISIONS¹

- a. Your last day of employment will be **Friday, June 18, 2021** (the “Termination Date”).
- b. Effective on the Termination Date you resign from the Company’s Board of Directors (“Board”) and all of its associated committees as well as the Board of Directors of any of the Company’s subsidiaries. You agree to cooperate with the Company to take all actions reasonably necessary or appropriate to effectuate your resignation from the Board and any other positions.
- c. You will receive your accrued and unpaid salary, less applicable withholdings and deductions, through the Termination Date.
- d. You agree that you have no entitlement to any bonus that may be payable with respect to the 2021 fiscal year or any future fiscal years.

¹ The Standard Separation Provisions described in Paragraph 1 will apply regardless of whether you sign this Agreement and Release.

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Tel: 609-730-0400 * Fax: 609-730-0404

- e. You will receive a lump-sum payment, less applicable withholdings and deductions, for the value of the unused vacation time you have accrued and to which you are entitled under the Company's vacation policy (220.4 hours). You are also entitled to reimbursement of any outstanding authorized business expenses, whether previously submitted or not yet submitted, provided that appropriate documentation is submitted in accordance with the Company's business expense reimbursement policy within 15 days of the date of this Agreement.
 - f. You will be given the opportunity to purchase the Medical and Dental Plan coverage for which you are eligible through the Consolidated Omnibus Reconciliation Act (COBRA) for a period of up to 18 months at your own expense. You shall be solely responsible for any COBRA premiums. You will receive the appropriate COBRA application form and information regarding rates and period of coverage in the near future. Please note that at the end of the month within which your last day of employment occurs, your current coverage will be terminated. However, upon the completion and processing of your COBRA application, coverage will be retroactively reinstated.
 - g. You will be provided with information describing your options under the Company 401(k) Savings Plan, your option for continuing life insurance coverage, and the termination of your short term and long-term disability benefits.
 - h. Other than as set forth in Paragraphs a-e above, the Company shall have no other financial obligations to you under any compensation or benefit plan, program or policy and your participation in the Company compensation and benefit plans, programs and policies shall cease as of the Termination Date.
 - i. If the Company receives requests for references from prospective employers, it will provide only dates of employment and positions held.
 - j. You must, within five days of signing this Agreement, return to the Company all Company property, including all notes, reports, plans, keys, security cards and/or identification cards, customer lists, product information and other documents (including all copies) and property including computer equipment, and cellular phones that were created, developed, generated or received by you from the Company during your employment or that are the property of the Company, whether or not such items are confidential to the Company. You acknowledge that there is no personal property in the Company's possession that has not been returned to you.
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- k. You are reminded of your continuing legal and contractual obligations, including without limitation those set forth in the Employment Agreement, not to use or disclose any secret, confidential, or proprietary information or documents of the Company for any purpose following the termination of your employment with the Company. Specifically, you are not to disclose, nor use for your benefit or the benefit of any other person or entity, any information received from OPT or its parent, subsidiaries or affiliated companies (individually or collectively an "OPT Company"), which is confidential or proprietary and: (i) which has not been disclosed publicly by an OPT Company; (ii) which is otherwise not a matter of public knowledge; or (iii) which is a matter of public knowledge but you know or have reason to know that such information became a matter of public knowledge through an unauthorized disclosure. Proprietary or confidential information includes information the unauthorized disclosure or use of which would reduce the value of such information to the Company. Such information includes, without limitation, any Company customer and supplier lists, trade secrets, intellectual property, confidential information about (or provided by) any customer or prospective or former customer or business partner of the Company, information concerning the Company's business or financial affairs (including its books and records, commitments, procedures, plans, strategies, inventions, and prospects), products developed or in development by the Company, securities positions, or current or prospective transactions or business of the Company.

2. SPECIAL SEPARATION PROVISIONS

If you agree to the terms set forth in Paragraph 3 below by timely signing (and not revoking) this Agreement and Release, and in consideration of the obligations you assume in Paragraph 3 and the other agreements made by you under this Agreement and Release (and your continuing obligations under your Employment Agreement, as outlined therein), the Company agrees that in addition to the above you will receive the following consideration:

- a. One year of current base salary (totaling \$391,140 as severance pay). Such amount, which shall be paid out of payroll and is subject to applicable payroll deductions, will be paid in the form of a lump sum paid within seven days following the expiration of the revocation period discussed in Paragraph 6(f)], on condition that you have not revoked the Agreement and Release within the revocation period.
- b. A short-term incentive (STI) cash bonus payment for fiscal year 2021 of 20 percent of current base salary (totaling \$78,228). Such amount, which shall be paid out of payroll and is subject to applicable payroll deductions, will be paid in the form of a lump sum paid within 21 days following the expiration of the revocation period discussed in Paragraph 6(f), on condition that you have not revoked the Agreement and Release within the revocation period.
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- c. The expiration date of any vested stock options held by you will be extended to 180 days after the Termination Date. Any stock options that are not exercised shall be cancelled without payment.
- d. If you timely elect COBRA continuation coverage, the Company shall pay or reimburse the same portion of the monthly premium under COBRA as it pays for group medical coverage for active employees and their eligible dependents (the "COBRA Subsidy") until the earliest of: (i) the last day of the month ending on the date that is 12 months following the Termination Date, (ii) the date you cease to be eligible for COBRA or (iii) the date you first become eligible for health insurance coverage in connection with new employment. You agree to immediately notify the Company of the occurrence of an event in clause (ii) or (iii). You shall be solely responsible for the cost of the remaining monthly COBRA premium. Notwithstanding the foregoing, if the Company determines in its sole discretion that it cannot provide the COBRA Subsidy without potentially violating or causing the Company to incur additional expense as a result of noncompliance with applicable law (including Section 2716 of the Public Health Service Act), the Company instead will pay you a taxable monthly payment in an amount equal to the monthly COBRA Subsidy.

3. WAIVER OF RIGHTS

In exchange for the consideration described in Paragraph 2 above, including all subparts, you agree as follows:

- a. to release and forever discharge the Company, its subsidiaries and affiliates and their parent organizations, predecessors, successors, officers, directors, employees, agents, attorneys, associates and employee benefit plans from all claims, demands or causes of action arising out of facts or occurrences prior to the date of this Agreement and Release, whether known or unknown to you. You agree that this release of claims is intended to be broadly construed so as to resolve any pending and potential disputes between you and the Company that you have up to the date of this Release, whether such disputes are known or unknown to you, including, but not limited to, claims based on express or implied contract; any action arising in tort, including, but not limited to libel, slander, defamation, intentional infliction of emotional distress, or negligence; any or all claims for wrongful discharge; and any and all claims based on the Age Discrimination in Employment Act; Title VII of the Civil Rights Act of 1964 as amended; the Civil Rights Acts of 1866 and 1871; the Employee Retirement Income Security Act; the Family and Medical Leave Act, the Americans With Disabilities Act; the Occupational Safety and Health Act; the Immigration Reform and Control Act; the Fair Labor Standards Act of 1938 as amended; the Occupational Safety and Health Act; Section 806 of the Sarbanes-Oxley Act of 2002, New Jersey Law Against Discrimination – N.J. Rev. Stat. §10:5-1 *et seq.*; New Jersey Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim – N.J. Rev. Stat. §34:15-39.1 *et seq.*; New Jersey Family Leave Act – N.J. Rev. Stat. §34:11B1 *et seq.*; New Jersey Smokers' Rights Law – N.J. Rev. Stat. §34:6B-1 *et seq.*; New Jersey Equal Pay Act – N.J. Rev. Stat. §34:11-56.1 *et seq.*; New Jersey Genetic Privacy Act – N.J. Rev. Stat. Title 10, Ch. 5, §10:5-43 *et seq.*; New Jersey Conscientious Employee Protection Act (Whistleblower Protection) – N.J. Stat. Ann. §34:19-3 *et seq.*; New Jersey Wage Payment and Work Hour Laws; New Jersey Public Employees' Occupational Safety and Health Act – N.J. Stat. Ann. §34:6A-25 *et seq.*; New Jersey Fair Credit Reporting Act; the Millville Dallas Airmotive Plant Job Loss Notification (mini-WARN) Act; New Jersey Fair Credit Reporting Act; New Jersey False Claims Act; New Jersey Civil Rights Act; New Jersey mini-COBRA; New Jersey laws regarding Political Activities of Employees, Lie Detector Tests, Jury Duty, Employment Protection, and Discrimination, and other applicable federal, state or local law, regulation, ordinance or order, and including all claims for, or entitlement to, attorneys' fees. However, the foregoing release is not intended to cover any claim for vested benefits to which you are entitled, if any, under the Company's Pension and Investment Savings Plan. Except as provided for herein, the Company hereby fully and forever releases and discharges you from, and covenants not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings against you with respect to, any matter arising out of or relating to your employment, or the ending thereof, or any acts by you, including any claims and causes of action against Employee which relate to conduct occurring before and up to the date of this Agreement. The foregoing release of you shall not apply to any claims, known or unknown, which arise out of facts which constitute a breach of fiduciary duty, fraud, willful misconduct, breach of this Agreement or a crime under any federal, state, or local statute, law, ordinance or regulation.
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- b. You expressly agree that you shall be responsible for remitting to federal, state and/or local tax authorities your share of any applicable taxes due from the payments set forth in this Agreement and Release, to the extent that such taxes have not been withheld from said payments and remitted on your behalf, and shall hold the Company harmless and indemnify it for any liability, costs and expenses (including attorney's fees arising from your failure to remit your share of any applicable taxes), caused by any tax authority relating in any way to the tax treatment of the payment made pursuant to this Agreement and Release.

 - c. In further consideration of this Agreement and Release, you agree to refrain from any publication or any type of communication, oral or written, of a defamatory or disparaging statement pertaining to the Company, its corporate parent(s) and affiliates, or their respective past, present and future officers, agents, directors, supervisors, employees or representatives, except as otherwise required by law. The Company shall direct its current executive officers and directors not to make any disparaging remarks or otherwise take any action that could reasonably be anticipated to cause damage to your reputation, or otherwise make remarks that may reflect negatively upon you. Notwithstanding the foregoing provision, you and the Company may testify truthfully pursuant to compulsory process. You agree to provide the General Counsel of the Company with written notice within five (5) business days of knowledge of your receipt of any subpoena or other order by court or agency to testify. The breach of this paragraph shall not affect the continuing validity or enforceability of this Agreement and Release.
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- d. If you breach or challenge the enforceability of this Agreement and Release in a court of law or before any administrative agency, except as provided in Paragraph 7, you acknowledge that you will reimburse the Company for any monetary consideration previously received by you under this Agreement and Release, and you agree to pay reasonable attorneys' fees and costs incurred by the Company in the successful enforcement and/or collection of this Agreement and Release. If the Company breaches or challenges the enforceability of this Agreement and Release in a court of law or before any administrative agency, except as provided in Paragraph 7, the Company acknowledges that it will to pay reasonable attorneys' fees and costs incurred by you in the successful enforcement of this Agreement and Release. Note, however, that this provision shall not apply to any charge, complaint, or claim you may make under the Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.*
 - e. You agree that you shall not at any time in the future apply or reapply for work with the Company or any of the entities released in subparagraph (a) hereof, whether as an employee, contractor, or consultant, and that the Company may reject any application you might make without liability, pursuant to this paragraph.
 - f. You shall cooperate reasonably with the Company in its defense of, or other participation in, any administrative, judicial or other proceeding ("Action") arising from any charge, complaint or other action that has been or may be filed against the Company or any of its affiliates. The Company will pay your reasonable expenses for your cooperation, in addition to an hourly rate of \$187.50 per hour for reasonable time spent on your duty to cooperate, subject to complying with the Company's business expense reimbursement policy. You will not be paid the hourly rate for time spent testifying in any proceeding, in order to avoid any appearance of a conflict of interest. You agree, unless precluded by law, to inform the General Counsel of the Company promptly, in writing, but in no event later than five (5) business days of being asked to participate (or otherwise become involved) in any Action involving such claims or potential claims.
4. This Agreement and Release shall not be construed as an admission by the Company of any wrongdoing or any violation of federal, state or local law, and the Company specifically disclaims any wrongdoing against, or liability to you.
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5. You affirm that you have not filed or caused to be filed, and currently are not a party to any claim, complaint, or action against the Company in any forum or form. You further affirm that you have been paid and/or have received all leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits to which you may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits are due to you, except as provided in this Agreement and Release. You furthermore affirm that you have no known workplace injuries or occupational diseases and have been provided and/or have not been denied any leave requested under any applicable family and medical leave laws.
6. You acknowledge and agree as follows:
- a. the payments and other benefits provided to you under Paragraph 2 of this Agreement and Release exceed the nature and scope of that to which you would otherwise have been entitled to receive from the Company and constitute adequate consideration for your promises herein;
 - b. you acknowledge that, before signing this Agreement and Release, you were given a period of at least 21 calendar days to consider this Agreement and Release;
 - c. you waive any right you might have to additional time beyond this 21 day consideration period within which to consider this Agreement and Release;
 - d. you have read and understand this Agreement and Release in its entirety, including the waiver of rights under the Age Discrimination in Employment Act;
 - e. you have been advised by the Company to consult with an attorney before signing this Agreement and Release and this paragraph constitutes such advice in writing;
 - f. for a period of seven (7) calendar days following your execution of this Agreement and Release, you may revoke this Agreement and Release by providing written notification to the Company's General Counsel and Secretary at 28 Engelhard Drive, Suite B, Monroe Township, NJ 08831, with a copy sent via email message to jlawrence@oceanpowertech.com and the Agreement and Release shall not become effective or enforceable until the seven-day revocation period has expired; and
 - g. you enter into this Agreement and Release knowingly and voluntarily, without duress or reservation of any kind, and after having given the matter full and careful consideration.
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7. Nothing in this Agreement prohibits or restricts you (or your attorney), without prior notice to the Company, from filing a charge, complaint, or claim with; providing any information or testimony to; communicating with; or participating in any inquiry, investigation, or proceeding by any government agency regarding any allegations of any possible violation of any federal, state, or local law, rule, or regulation. By executing this Agreement, you waive the right to recover any damages, remedies, or other relief for you personally from the Company in any proceeding before such government agencies or in any proceeding brought by such government agencies on your behalf, except as permitted by law, although nothing in this Agreement prevents you from receiving a monetary award from a government-administered whistleblower award program for providing information directly to a government agency. You may provide information pursuant to any valid subpoena or other court order or legal obligation, provided that you first promptly notify the General Counsel of the Company, in writing, but in no event later than five (5) business days, of the proposed disclosure in order to provide Company a reasonable opportunity to seek a protective order; however this notice provision expressly excludes any grand jury subpoena served on you.
 8. You affirm, covenant, and warrant you are not a Medicare beneficiary and are not currently receiving, have not received in the past, will not have received at the time of payment pursuant to this Agreement, are not entitled to, are not eligible for, and have not applied for or sought Social Security Disability or Medicare benefits. In the event any statement in the preceding sentence is incorrect (for example, but not limited to, if you are a Medicare beneficiary, etc.), the following sentences (i.e., the remaining sentences of this paragraph) apply. You affirm, covenant, and warrant you have made no claim for illness or injury against, nor are you aware of any facts supporting any claim against, the Releasees under which they could be liable for medical expenses incurred by you before or after the execution of this Agreement and Release. Further, you are aware of no medical expenses that Medicare has paid and for which the Releasees are or could be liable now or in the future. You agree and affirm that, to the best of your knowledge, no liens of any governmental entities, including those for Medicare conditional payments, exist. You will indemnify, defend, and hold the Releasees harmless from Medicare claims, liens, damages, conditional payments, and rights to payment, if any, including attorneys' fees, and you further agree to waive any and all future private causes of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A) et seq.
 9. This Agreement and Release contains the entire agreement between you and the Company concerning your separation from employment.
 10. This Agreement and Release shall be construed and enforced in accordance with New Jersey law, to the extent not governed by federal law.
 11. Any legal or equitable actions filed by you or the Company to enforce the terms of this Agreement and Release, or relating to any other legal or equitable issues that arise between you and the Company, shall exclusively be filed in New Jersey State Superior Court (Middlesex County) or the United States District Court for the District of New Jersey (Newark Vicinage).
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12. In the event any portion of this Agreement and Release is deemed to be invalid or unenforceable, that portion will be deemed omitted and the remainder of this Agreement and Release will remain in full force and effect, **except** that if the Release in Paragraph 3 is deemed invalid, you are responsible for repayment of the consideration described in Paragraph 2 if you and the Company cannot agree on a valid general release of all claims (unless the Company, in its sole discretion, determines not to require repayment).
13. This Agreement is intended to comply with, or be exempt from, Section 409A of the Internal Revenue Code, as may be amended, and the regulations and guidance promulgated thereunder ("Section 409A"). To the extent that any amounts payable in accordance with this Agreement are subject to Section 409A, this Agreement shall be interpreted and administered in such a way as to comply with Section 409A to the maximum extent possible. As used in the Agreement, the term "termination of employment," "resignation" or words of similar import shall mean a separation from service with the Company within the meaning of Section 409A. In no event may you, directly or indirectly, designate the calendar year of a payment. Notwithstanding anything herein to the contrary, if payment of any amount subject to Section 409A is triggered by a separation from service that occurs while you are a "specified employee" (as defined by Section 409A), and if such amount is scheduled to be paid within six months after such separation from service, the amount shall accrue without interest and shall be paid the first business day after the end of such six-month period, or, if earlier, within sixty (60) days following Executive's death. You shall be solely responsible for the tax consequences with respect to all amounts payable under this Agreement, and in no event shall the Company have any responsibility or liability if this Agreement does not meet any applicable requirements of Section 409A.
14. This Agreement may be executed in one or more counterparts, which together shall constitute a valid and binding agreement.

If you agree to the terms set forth above, please sign the next page and return the original of the entire document in the envelope provided.

Ocean Power Technologies, Inc.



By: Terence J. Cryan
Chairman of the Board of Directors

Dated: June 18, 2021

PLEASE READ THE FOREGOING AGREEMENT CAREFULLY BEFORE SIGNING. THIS AGREEMENT INCLUDES A RELEASE OF ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, YOU MAY HAVE IN CONNECTION WITH YOUR EMPLOYMENT WITH THE COMPANY INCLUDING, BUT NOT LIMITED TO, THE TERMINATION THEREOF.

A handwritten signature in dark ink, appearing to read "George H. Kirby III". The signature is written in a cursive style with a large, prominent "G" and "K".

George H. Kirby III

Dated: July 9, 2021
