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TORQUE ENGINEERING CORP

Form S-8

February 28, 2002

As filed with the Securities and Exchange Commission on February 28, 2002

Registration No. \_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM S-8  
Registration Statement  
Under  
The Securities Act of 1933  
-----

TORQUE ENGINEERING CORPORATION  
(Exact Name of Registrant as Specified in Its Charter)

DELAWARE  
(State or Other Jurisdiction of Incorporation or Organization)

83-0317306  
(I.R.S. Employer Identification No.)

2932 THORNE DRIVE  
ELKHART, INDIANA 46514  
(Address of Principal Executive Offices)

CONSULTING AGREEMENT  
(Full Title of the Plan)

RICHARD D. WEDEL  
2932 THORNE DRIVE  
ELKHART, INDIANA 46514  
(Name and Address of Agent For Service)

(219) 264-2628  
(Telephone Number, Including Area Code, of Agent for Service)

COPY TO:

Clayton E. Parker, Esq.  
Ronald S. Haligman, Esq.  
Kirkpatrick & Lockhart LLP  
201 South Biscayne Boulevard, Suite 2000  
Miami, Florida 33131

CALCULATION OF REGISTRATION FEE

| TITLE OF SECURITIES<br>TO BE REGISTERED | AMOUNT<br>TO BE REGISTERED | PROPOSED MAXIMUM<br>OFFERING PRICE<br>PER SHARE (1) | PROPOSED MAXIMUM<br>AGGREGATE OFFERED<br>PRICE (1) |
|---|----------------------------|---|--|
| -----                                   | -----                      | -----   | -----  |

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|  |                |        |          |
|--|----------------|--------|----------|
| Common Stock, par value \$0.0001 per share | 900,000 shares | \$0.09 | \$81,000 |
|--|----------------|--------|----------|

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- (1) Pursuant to Rule 457(h)(1) of the Securities Exchange Act of 1934, the proposed maximum offering price per share, proposed maximum aggregate offering price and amount of registration fee were computed based upon the average of the high and low prices of the shares of Common Stock on February 25, 2002.

PART I

INFORMATION REQUIRED IN THIS 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 employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Act"). Such documents need not be filed with the Securities and Exchange Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to 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 Act.

PART II

INFORMATION REQUIRED IN THIS REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

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The following documents have been previously filed by Torque Engineering Corporation (the "Company") with the Securities and Exchange Commission (the "Commission") and are hereby incorporated by reference into this Registration Statement as of their respective dates:

(a) The Company's Annual Report on Form 10-KSB for the fiscal year ended December 31, 2000 filed with the Commission on March 29, 2001.

(b) The description of the Company's Common Stock contained in its Registration Statement on Form SB-2 filed with the Commission on December 17, 2001 as amended, pursuant to the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement, but prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered by this Registration Statement have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement. Each document incorporated by reference into this Registration Statement shall be deemed to be a part of this Registration Statement from the date of the filing

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of such document with the Commission until the information contained therein is superseded or updated by any subsequently filed document that is incorporated by reference into this Registration Statement or by any document that constitutes part of the prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended.

ITEM 4. DESCRIPTION OF SECURITIES.  
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Not Applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.  
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Not Applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.  
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The Company will indemnify each director, to the fullest extent permitted by law, from and against any and all claims of any type arising from or related to his past or future acts or omissions as a director or officer of the Company and any of our subsidiaries. In addition, the Company has agreed to advance all expenses of each director as they are incurred and in advance of the final disposition of any claim.

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Pursuant to our Certificate of Incorporation, each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Company or is or was serving at the request of the Company as a director or officer of another corporation, partnership, joint venture trust or other enterprise, shall be indemnified and held harmless by the Company to the fullest extent permitted by Delaware law. The right to indemnification conferred herein shall also include the right to be paid by the corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by Delaware law. The Company's Certificate of Incorporation further eliminates personal liability of a director to the Company or to any of our stockholders for monetary damages for a breach of fiduciary duty as a director to the fullest extent permitted by Delaware law.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.  
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Not applicable.

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ITEM 8. EXHIBITS.  
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| EXHIBIT NO. | DESCRIPTION | LOCATION |
|-------------|-------------|----------|
|-------------|-------------|----------|

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|      |  |                           |
|------|--|---------------------------|
| 5.1  | Opinion of Kirkpatrick & Lockhart LLP re: legality   | Provided herewith         |
| 23.1 | Consent of Kirkpatrick & Lockhart LLP  | Provided herewith (contai |
| 23.2 | Consent of Weinberg & Company, P.A.  | Provided herewith         |
| 24.1 | Power of Attorney  | Provided herewith         |
| 99.1 | Consulting Agreement, dated February 25, 2002 by and between Torque Engineering Corporation and Peter Cardillo | Provided herewith         |

ITEM 9. UNDERTAKINGS.

(a) The undersigned registrant will:

(1) File, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement to:

(i) Include any prospectus required by Section 10(a)(3) of the Act;

(ii) 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 a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) Include any additional or changed 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-3 or Form S-8, and 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 Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) For purposes of determining any liability under the Securities Act, treat each post-effective amendment as 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) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end 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

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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.

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(c) The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report, to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Articles 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(d) 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.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 Elkhart, Indiana, on February 27, 2002.

TORQUE ENGINEERING CORPORATION

By: /s/ Richard D. Wedel

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Printed Name: Richard D. Wedel  
Title: Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Richard D. Wedel, his true and lawful attorney-in-fact and agent, with full power of substitution and revocation, for him and in his name, place and stead, in any and all capacities (until revoked in writing), to sign any and all amendments (including post-effective amendments) to this Registration Statement and to file the same with all exhibits thereto, and other documents in connection therewith, with the

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Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitutes, 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 indicated, which together constitute a majority of the board of directors of the Company.

Date: February 27, 2002 By: /s/ Richard D. Wedel  
-----  
Printed Name: Richard D. Wedel  
Title: Chief Executive Officer and Director  
and Chairman of the Board of Directors

Date: February 27, 2002 By: /s/ Raymond B. Wedel, Jr.  
-----  
Printed Name: Raymond B. Wedel, Jr.  
Title: President and Director

Date: February 27, 2002 By: /s/ I. Paul Arcuri  
-----  
Printed Name: I. Paul Arcuri  
Title: Chief Financial Officer and Director

EXHIBIT LIST

| EXHIBIT NO. | DESCRIPTION  | LOCATION                  |
|-------------|--|---------------------------|
| -----       | -----  | -----                     |
| 5.1         | Opinion of Kirkpatrick & Lockhart LLP re: legality   | Provided herewith         |
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