

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

**FORM S-8
REGISTRATION STATEMENT**

*Under
The Securities Act of 1933*

Square, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

80-0429876
(I.R.S. Employer
Identification Number)

1455 Market Street, Suite 600
San Francisco, CA 94103
(Address of principal executive offices, including zip code)

2015 Equity Incentive Plan
2015 Employee Stock Purchase Plan
(Full title of the plan)

Jack Dorsey
Chief Executive Officer
Square, Inc.
1455 Market Street, Suite 600
San Francisco, CA 94103
(415) 375-3176
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Tony Jeffries
Lisa Stimmell
Wilson Sonsini Goodrich &
Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 493-9300
Facsimile: (650) 493-6811

Sivan Whiteley
Square, Inc.
1455 Market Street, Suite 600
San Francisco, California 94103
Telephone: (415) 375-3176
Facsimile: (855) 204-8795

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
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 7(a)(2)(B) of the Securities Act.

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 |
|--|-----------------------------|---|---|----------------------------|
| Class A common stock, \$0.0000001 par value per share: | | | | |

| | | | | |
|------------------------------------|----------------|-------------|--------------------|--------------|
| —2015 Equity Incentive Plan | 20,852,400 (2) | \$75.32 (4) | \$1,570,602,768.00 | \$190,357.06 |
| —2015 Employee Stock Purchase Plan | 4,170,480 (3) | \$64.03 (5) | \$267,035,834.40 | \$32,364.75 |
| TOTAL: | 25,022,880 | | \$1,837,638,602.40 | \$222,721.81 |

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “**Securities Act**”), this Registration Statement shall also cover any additional shares of the Registrant’s Class A common stock (“**Class A common stock**”) that become issuable under the Registrant’s 2015 Equity Incentive Plan, as amended and restated, (“**2015 Plan**”) and the Registrant’s 2015 Employee Stock Purchase Plan, as amended and restated, (“**2015 ESPP**”) by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Class A common stock.
- (2) Reflects an automatic increase to the number of shares of Class A common stock reserved for issuance pursuant to future awards under the 2015 Plan, which annual increase is provided for in the 2015 Plan.
- (3) Reflects an automatic increase to the number of shares of Class A common stock reserved for issuance under the 2015 ESPP, which annual increase is provided for in the 2015 ESPP.
- (4) Estimated in accordance with Rule 457(c) and (h) of the Securities Act solely for the purpose of calculating the registration fee on the basis of \$75.32 per share, which is the average of the high and low prices of Class A common stock, as reported on the New York Stock Exchange, on February 21, 2019.
- (5) Estimated in accordance with Rule 457(c) and (h) of the Securities Act solely for the purpose of calculating the registration fee on the basis of 85% of \$75.32 per share, which is the average of the high and low prices of Class A common stock, as reported on the New York Stock Exchange, on February 21, 2019. Pursuant to the 2015 ESPP, the purchase price of the shares of Class A common stock reserved for issuance thereunder will be at least 85% of the lower of the fair market value of a share of Class A common stock on the first trading day of the offering period or on the exercise date.

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement on Form S-8 (this “**Registration Statement**”) in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the “**Securities Act**”), and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the equity benefit plans covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Square, Inc. (the “**Registrant**”) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the “**Commission**”):

(1) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed with the Commission on February 27, 2019 (the “**Annual Report**”);

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), since the end of the fiscal year covered by the Annual Report (other than the portions of these documents not deemed to be filed); and

(3) The description of the Registrant’s Class A common stock contained in the Registrant’s Registration Statement on Form 8-A (File No. 001-37622) filed with the Commission on November 6, 2015, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that 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 filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document 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 subsequently filed document which also 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 superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a corporation’s board of directors to grant, and authorizes a court to award, indemnity to officers, directors, and other corporate agents.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law, the Registrant's amended and restated certificate of incorporation includes provisions that may eliminate the personal liability of its directors and officers for monetary damages for breach of their fiduciary duty as directors and officers.

In addition, as permitted by Section 145 of the Delaware General Corporation Law, the amended and restated certificate of incorporation and amended and restated bylaws of the Registrant provide that:

- The Registrant shall indemnify its directors and officers for serving the Registrant in those capacities or for serving other business enterprises at the Registrant's request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if 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 Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- The Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- The Registrant will not be obligated pursuant to its amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors or brought to enforce a right to indemnification.
- The rights conferred in the amended and restated certificate of incorporation and amended and restated bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees, and agents and to obtain insurance to indemnify such persons.
- The Registrant may not retroactively amend the bylaw provisions to reduce its indemnification obligations to directors, officers, employees, and agents.

The Registrant's policy is to enter into separate indemnification agreements with each of its directors and executive officers that provide the maximum indemnity allowed to directors and officers by Section 145 of the Delaware General Corporation Law and also to provide for certain additional procedural protections. The Registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

These indemnification provisions and the indemnification agreements entered into between the Registrant and its executive officers and directors may be sufficiently broad to permit indemnification of the Registrant's executive officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit Number | Exhibit Description | Form | Incorporated by Reference | | Filing Date |
|----------------|---|-------|---------------------------|---------|-------------------|
| | | | File No. | Exhibit | |
| 4.1 | Amended and Restated Certificate of Incorporation of the Registrant | 8-K | 001-37622 | 3.1 | November 24, 2015 |
| 4.2 | Amended and Restated Bylaws of the Registrant | 8-K | 001-37622 | 3.1 | November 3, 2017 |
| 4.3 | Form of Class A common stock certificate of the Registrant. | S-1/A | 333-207411 | 4.1 | November 6, 2015 |
| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, P.C. | | | | |
| 23.1 | Consent of KPMG LLP, Independent Registered Public Accounting Firm. | | | | |
| 23.2 | Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1 hereto). | | | | |
| 24.1 | Power of Attorney (included on the signature page hereto). | | | | |
| 99.1 | Square, Inc. 2015 Equity Incentive Plan, as amended and restated, and related form agreements. | 10-Q | 001-37622 | 10.1 | August 2, 2017 |
| 99.2 | Square, Inc. 2015 Employee Stock Purchase Plan, as amended and restated, and related form agreements. | 10-K | 001-37622 | 10.3 | March 10, 2016 |

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:

(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 Commission 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; and

(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 information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this 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 Section 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 Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 of 1933 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 San Francisco, State of California, on February 27, 2019.

SQUARE, INC.

By: /s/ Jack Dorsey

Jack Dorsey
President, Chief Executive Officer, and Chairman

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Jack Dorsey, Amrita Ahuja and Sivan Whiteley, and each of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments), 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 for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their, his or her 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 and on the dates indicated:

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|-------------------|
| <u>/s/ Jack Dorsey</u> Jack Dorsey | President, Chief Executive Officer, and Chairman (Principal Executive Officer) | February 27, 2019 |
| <u>/s/ Amrita Ahuja</u> Amrita Ahuja | Chief Financial Officer (Principal Financial Officer) | February 27, 2019 |
| <u>/s/ Ajmere Dale</u> Ajmere Dale | Chief Accounting Officer (Principal Accounting Officer) | February 27, 2019 |
| <u>/s/ Roelof Botha</u> Roelof Botha | Director | February 27, 2019 |
| <u>/s/ Paul Deighton</u> Paul Deighton | Director | February 27, 2019 |
| <u>/s/ Randy Garutti</u> Randy Garutti | Director | February 27, 2019 |
| <u>/s/ Jim McKelvey</u> Jim McKelvey | Director | February 27, 2019 |
| <u>/s/ Mary Meeker</u> Mary Meeker | Director | February 27, 2019 |
| <u>/s/ Anna Patterson</u> Anna Patterson | Director | February 27, 2019 |
| <u>/s/ Naveen Rao</u> Naveen Rao | Director | February 27, 2019 |

| Signature | Title | Date |
|---|--------------|-------------------|
| <hr/> <i>/s/</i> Ruth Simmons Ruth Simmons | Director | February 27, 2019 |
| <hr/> <i>/s/</i> Lawrence Summers Lawrence Summers | Director | February 27, 2019 |
| <hr/> <i>/s/</i> David Viniar David Viniar | Director | February 27, 2019 |

February 27, 2019

Square, Inc.
1455 Market Street, Suite 600
San Francisco, CA 94103

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "Registration Statement") to be filed by Square, Inc., a Delaware corporation, with the Securities and Exchange Commission on or about the date hereof, in connection with the registration under the Securities Act of 1933, as amended, of an aggregate of 25,022,880 shares of Class A common stock, par value \$0.0000001 per share, consisting of: (i) 20,852,400 shares of Class A common stock reserved for issuance under the 2015 Equity Incentive Plan, as amended and restated, and (ii) 4,170,480 shares of Class A common stock reserved for issuance under the 2015 Employee Stock Purchase Plan, as amended and restated (which plans are referred to herein as the "Plans" and which shares of Class A common stock are collectively referred to herein as the "Shares").

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when issued and sold in the manner referred to in the Plans and pursuant to the agreements that accompany the Plans, will be legally and validly issued, fully paid, and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

AUSTIN BEIJING BOSTON BRUSSELS HONG KONG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN DIEGO SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, DC WILMINGTON, DE

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Square, Inc.:

We consent to the use of our report with respect to the consolidated financial statements and the effectiveness of internal control over financial reporting incorporated by reference herein.

Our report on the effectiveness of internal control over financial reporting as of December 31, 2018, contains an explanatory paragraph that our audit of internal control over financial reporting as of December 31, 2018 excluded an evaluation of the internal control over financial reporting of Weebly, Inc.

Our report on the consolidated financial statements refers to the adoption of Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers*, effective January 1, 2018.

/s/ KPMG LLP

San Francisco, California
February 27, 2019