

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

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ARCHER AVIATION INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

85-2730902
(I.R.S. Employer Identification No.)

190 West Tasman Drive
San Jose, CA
(Address of principal executive offices)

95134
(Zip code)

Amended and Restated 2021 Equity Incentive Plan
2021 Employee Stock Purchase Plan
(Full titles of the plans)

Adam Goldstein
Chief Executive Officer and Director
Archer Aviation Inc.
190 West Tasman Drive
San Jose, CA 95134
(Name and address of agent for service)

(650) 272-3233
(Telephone number, including area code, of agent for service)

Copies to:

Patrick V. Grilli
Ran D. Ben-Tzur
Joshua W. Damm
Fenwick & West LLP
801 California Street
Mountain View, CA 94041
(650) 988-8500

Andy Missan
Eric Lentell
Archer Aviation Inc.
190 West Tasman Drive
San Jose, CA 95134
(650) 272-3233

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	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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.

REGISTRATION OF ADDITIONAL SHARES PURSUANT TO GENERAL INSTRUCTION E

Archer Aviation Inc. (the “Registrant”) is filing this Registration Statement with the Securities and Exchange Commission (the “Commission”) to register (a) 15,320,111 additional shares of Class A common stock, par value \$0.0001 per share (the “Class A Common Stock”) available for issuance under the Registrant’s Amended and Restated 2021 Equity Incentive Plan (the “Amended and Restated 2021 Plan”), pursuant to the provision of the Amended and Restated 2021 Plan providing for an annual automatic increase in the number of shares reserved for issuance under the Amended and Restated 2021 Plan and (b) 2,679,473 additional shares of Class A Common Stock available for issuance under the Registrant’s 2021 Employee Stock Purchase Plan (the “Purchase Plan”), pursuant to the provision of the Purchase Plan providing for an annual automatic increase in the number of shares reserved for issuance under the Purchase Plan.

In accordance with General Instruction E of Form S-8, and only with respect to the Class A Common Stock that is issuable under the Amended and Restated 2021 Plan and the Purchase Plan, this Registration Statement hereby incorporates by reference the contents of the Registrant’s Registration Statements on Form S-8 filed with the Commission on [December 8, 2021](#) (Registration No. 333-261547), [March 14, 2022](#) (Registration No. 333-263544), [July 1, 2022](#) (Registration No. 333-265955) and [March 15, 2023](#) (File No. 333-270569), to the extent not superseded hereby. In accordance with the instructional note to Part I of Form S-8 as promulgated by the Commission, the information specified by Part I of Form S-8 has been omitted from this Registration Statement.

Part II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated by reference into this Registration Statement (other than information in such filings that was “furnished” under applicable Commission rules rather than “filed”):

- (a) The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2023, filed with the Commission on [February 29, 2024](#), pursuant to Section 13(a) of the Exchange Act;
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant’s Annual Report on Form 10-K referred to in (a) above; and
- (c) The description of the Registrant’s common stock which is contained in the Registration Statement on [Form 8-A filed on October 27, 2020 \(File No. 001-39668\)](#) under Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than information in such filings that was “furnished” under applicable Commission rules rather than “filed”) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and 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 purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that 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 5. Interests of Named Experts and Counsel.

As of the date of this prospectus, individuals associated with Fenwick & West LLP beneficially owned 11,505 shares of the Registrant’s Class A Common Stock.

ITEM 8. Exhibits.

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
4.1	Amended and Restated Certificate of Incorporation of Archer Aviation Inc.	8-K	001-39668	3.1	September 22, 2021	
4.2	Amended and Restated Bylaws of Archer Aviation Inc.	8-K	001-39668	3.1	February 7, 2023	
4.3	Specimen Class A Common Stock Certificate	S-1/A	333-249289	4.2	October 21, 2020	
5.1	Opinion of Fenwick & West LLP					X
23.1	Consent of PricewaterhouseCoopers LLP					X
23.2	Consent of Fenwick & West LLP (included in Exhibit 5.1 hereto)					X
24.1	Power of Attorney (included on signature page hereto)					X
99.1	Archer Aviation Inc. Amended and Restated 2021 Equity Incentive Plan	8-K	001-39668	10.1	June 15, 2022	
99.2	Form of Stock Option Grant Package under Amended and Restated 2021 Equity Incentive Plan	8-K	001-39668	10.9	September 22, 2021	
99.3	Form of RSU Grant Package under Amended and Restated 2021 Equity Incentive Plan	8-K	001-39668	10.10	September 22, 2021	
99.2	Archer Aviation Inc. 2021 Employee Stock Purchase Plan	8-K	001-39668	10.11	September 22, 2021	
107	Filing Fee Table					X

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 the City of San Jose, State of California, on this 29th day of February, 2024.

ARCHER AVIATION INC.

By: /s/ Adam Goldstein

Adam Goldstein

Chief Executive Officer and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Adam Goldstein and Mark Mesler, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place and stead, in any and all capacities, 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 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 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 his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, 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/ Adam Goldstein</u> Adam Goldstein	Chief Executive Officer and Director (Principal Executive Officer)	February 29, 2024
<u>/s/ Mark Mesler</u> Mark Mesler	Chief Financial Officer (Principal Financial and Accounting Officer)	February 29, 2024
<u>/s/ Deborah Diaz</u> Deborah Diaz	Director	February 29, 2024
<u>/s/ Fred Diaz</u> Fred Diaz	Director	February 29, 2024
<u>/s/ Oscar Munoz</u> Oscar Munoz	Director	February 29, 2024
<u>/s/ Barbara Pilarski</u> Barbara Pilarski	Director	February 29, 2024
<u>/s/ Maria Pinelli</u> Maria Pinelli	Director	February 29, 2024
<u>/s/ Michael Spellacy</u> Michael Spellacy	Director	February 29, 2024



801 California Street
Mountain View, CA 94041

650.988.8500
Fenwick.com

February 29, 2024

Archer Aviation Inc.
190 West Tasman Drive
San Jose, California 95134

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

As counsel to Archer Aviation Inc., a Delaware corporation (the “*Company*”), we have examined the Registration Statement on Form S-8 (the “*Registration Statement*”) to be filed by the Company with the Securities and Exchange Commission (the “*Commission*”) on or about February 29, 2024, in connection with the registration under the Securities Act of 1933, as amended (the “*Securities Act*”), of an aggregate of 17,999,584 shares (the “*Shares*”) of the Company’s Class A Common Stock, \$0.0001 par value per share (the “*Class A Common Stock*”), subject to issuance by the Company (a) upon the exercise or settlement of awards to be granted under the Company’s Amended and Restated 2021 Equity Incentive Plan (the “*Amended and Restated 2021 Plan*”) and (b) pursuant to purchase rights to acquire shares of Class A Common Stock to be granted under the Company’s 2021 Employee Stock Purchase Plan (the “*Purchase Plan*”, and together with the Amended and Restated 2021 Plan, the “*Plans*”).

As to matters of fact relevant to the opinions rendered herein, we have examined such documents, certificates and other instruments which we have deemed necessary or advisable, including a certificate addressed to us and dated the date hereof executed by the Company. We have not undertaken any independent investigation to verify the accuracy of any such information, representations or warranties or to determine the existence or absence of any fact, and no inference as to our knowledge of the existence or absence of any fact should be drawn from our representation of the Company or the rendering of the opinion set forth below. We have not considered parol evidence in connection with any of the agreements or instruments reviewed by us in connection with this letter.

In our examination of documents for purposes of this letter, we have assumed, and express no opinion as to, the genuineness and authenticity of all signatures on original documents, the authenticity and completeness of all documents submitted to us as originals, that each document is what it purports to be, the conformity to originals of all documents submitted to us as copies or facsimile copies, the absence of any termination, modification or waiver of or amendment to any document reviewed by us (other than as has been disclosed to us), the legal competence or capacity of all persons or entities (other than the Company) executing the same and (other than the Company) the due authorization, execution and delivery of all documents by each party thereto. We have also assumed the conformity of the documents filed with the Commission via the Electronic Data Gathering, Analysis and Retrieval System (“*EDGAR*”), except for required EDGAR formatting changes, to physical copies submitted for our examination.

The opinions in this letter are limited to the existing General Corporation Law of the State of Delaware now in effect. We express no opinion with respect to any other laws.

Based upon, and subject to, the foregoing, it is our opinion that the Shares, when issued and sold by the Company in accordance with the terms (including, without limitation, payment and authorization provisions) of the applicable Plan and the applicable form of award agreement thereunder, against the Company's receipt of payment therefor (in an amount and type of consideration not less than the par value per Share), and duly registered on the books of the transfer agent and registrar for the Shares in the name or on behalf of the holders thereof, will be validly issued, fully paid and non-assessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the prospectuses constituting a part thereof and any amendments thereto. We do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

This opinion is intended solely for your use in connection with the issuance and sale of the Shares subject to the Registration Statement and is not to be relied upon for any other purpose. In providing this letter, we are opining only as to the specific legal issues expressly set forth above, and no opinion shall be inferred as to any other matter or matters. This opinion is rendered on, and speaks only as of, the date of this letter first written above, and does not address any potential change in facts or law that may occur after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention, whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

/s/ Fenwick & West LLP

FENWICK & WEST LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of Archer Aviation Inc. of our report dated February 29, 2024 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Archer Aviation Inc.'s Annual Report on Form 10-K for the year ended December 31, 2023.

/s/ PricewaterhouseCoopers LLP

Irvine, California

February 29, 2024

Calculation Of Filing Fee Tables

Form S-8
(Form Type)Archer Aviation Inc.
(Exact Name of Registrant as Specified in its Charter)

Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Class A Common Stock, par value \$0.0001 per share	Rule 457(c) and Rule 457(h)	15,320,111 ⁽²⁾	\$5.02 ⁽³⁾	\$76,906,957.22	0.00014760	\$11,351.47
Equity	Class A Common Stock, par value \$0.0001 per share	Rule 457(c) and Rule 457(h)	2,679,473 ⁽⁴⁾	\$4.27 ⁽⁵⁾	\$11,441,349.71	0.00014760	\$1,688.75
Total Offering Amounts					\$88,348,306.93		\$13,040.22
Total Fee Offsets⁽⁶⁾							-
Net Fee Due							\$13,040.22

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “*Securities Act*”), this Registration Statement shall also cover any additional shares of Class A common stock, par value \$0.0001 per share (the “*Class A Common Stock*”), that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected that results in an increase to the number of outstanding shares of Archer Aviation Inc.’s (the “*Registrant*”) Class A Common Stock.
- (2) Represents additional shares of Class A Common Stock to be registered and available for grant under the Registrant’s Amended and Restated 2021 Equity Incentive Plan (the “*Amended and Restated 2021 Plan*”) resulting from the annual automatic increase in shares available for issuance under the Amended and Restated 2021 Plan pursuant to the provision of the Amended and Restated 2021 Plan providing for an annual automatic increase in the number of shares reserved for issuance under the Amended and Restated 2021 Plan.
- (3) Estimated pursuant to Rules 457(c) and 457(h) under the Securities Act, solely for the purposes of calculating the registration fee and based on the average of the high and low prices of the Registrant’s Class A Common Stock as reported on the New York Stock Exchange on February 22, 2024, which date is within five business days prior to the filing of this Registration Statement.
- (4) Represents additional shares of Class A Common Stock to be registered and available for grant under the Registrant’s 2021 Employee Stock Purchase Plan (the “*Purchase Plan*”) resulting from the annual automatic increase in shares available for issuance under the Purchase Plan pursuant to the provision of the Purchase Plan providing for an annual automatic increase in the number of shares reserved for issuance under the Purchase Plan.
- (5) Estimated pursuant to Rules 457(c) and 457(h) under the Securities Act, solely for the purposes of calculating the registration fee and based on the average of the high and low prices of the Registrant’s Class A Common Stock as reported on the New York Stock Exchange on February 22, 2024, which date is within five business days prior to the filing of this Registration Statement, multiplied by 85%, which is the percentage of the price per share applicable to purchases under the Purchase Plan.
- (6) The Registrant does not have any fee offsets.