

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

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



CARDLYTICS, INC.

(Exact Name of Registrant as Specified in its Charter)

675 Ponce de Leon Avenue NE, Suite 6000

Atlanta, Georgia 30308

(Address of principal executive offices) (Zip code)

26-3039436

(I.R.S. Employer
Identification No.)

Delaware

(State or other jurisdiction of
incorporation or organization)

2018 Equity Incentive Plan

2018 Employee Stock Purchase Plan

(Full title of the plan)

Kirk L. Somers

Cardlytics, Inc.

675 Ponce de Leon Avenue NE, Suite 6000

Atlanta, Georgia 30308

(Name and address of agent for service)

(888) 798-5802

(Telephone number, including area code, of agent for service)

Copies to:

Nicole C. Brookshire

Mark Ballantyne

Cooley LLP

500 Boylston Street

Boston, Massachusetts 02116

(617) 937-2300

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 |
|--|--|---|---|----------------------------|
| Common Stock, par value \$0.0001 per share | | | | |
| 2018 Equity Incentive Plan | 1,123,312 (2) | \$19.72 (4) | \$22,151,712.64 | \$2,684.79 |
| 2018 Employee Stock Purchase Plan | 224,662 (3) | \$16.76 (5) | \$3,765,335.12 | \$456.39 |
| Total | 1,347,974 | | \$25,917,047.76 | \$3,141.18 |

- (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 the Registrant's Common Stock that become issuable under the 2018 Equity Incentive Plan (the "2018 Plan") and the 2018 Employee Stock Purchase Plan (the "2018 ESPP") set forth herein 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 the Registrant's Common Stock.
- (2) Represents additional shares of Common Stock reserved for future issuance under the 2018 Plan.
- (3) Represents additional shares of Common Stock reserved for future issuance under the 2018 ESPP.
- (4) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) promulgated under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are calculated using the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Global Market on May 17, 2019.
- (5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) promulgated under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are calculated using the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Global Market on May 17, 2019, multiplied by 85%, which is the percentage of the price per share applicable to purchases under the 2018 ESPP.

EXPLANATORY NOTE

Pursuant to General Instruction E of Form S-8, Cardlytics, Inc. (the "Registrant") is filing this Registration Statement with the Securities and Exchange Commission (the "Commission") to register 1,347,974 additional shares of its common stock under the 2018 Plan and the 2018 ESPP, pursuant to the provisions of the 2018 Plan and the 2018 ESPP providing for an automatic increase in the number of shares common stock reserved and available for issuance under the 2018 Plan and the 2018 ESPP on January 1, 2019. 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 the Form S-8 has been omitted from this Registration Statement.

PART II

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The contents of the earlier registration statement related to the 2018 Plan and the 2018 ESPP, previously filed with the Commission on February 9, 2018 (File No. 333-222965) are incorporated herein by reference and made a part of this Registration Statement.

ITEM 8. EXHIBITS

| Exhibit Number | Description |
|---------------------|---|
| 4.1 ⁽¹⁾ | Amended and Restated Certificate of Incorporation of the Registrant |
| 4.2 ⁽²⁾ | Amended and Restated Bylaws of the Registrant |
| 4.3 ⁽³⁾ | 2018 Equity Incentive Plan and Forms of Stock Option Agreement, Notice of Exercise and Stock Option Grant Notice thereunder |
| 4.4 ⁽⁴⁾ | 2018 Employee Stock Purchase Plan |
| 4.5 ⁽⁵⁾ | Specimen stock certificate evidencing shares of Common Stock |
| 5.1 ⁽⁶⁾ | Opinion of Cooley LLP |
| 23.1 ⁽⁶⁾ | Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm |
| 23.2 ⁽⁶⁾ | Consent of Cooley LLP (included in Exhibit 5.1) |
| 24.1 ⁽⁶⁾ | Power of Attorney (included on the signature page of this Form S-8) |

- (1) Previously filed as Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 12, 2018, and incorporated by reference herein.
- (2) Previously filed as Exhibit 3.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 12, 2018, and incorporated by reference herein.
- (3) Previously filed as Exhibit 10.2 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 29, 2018, and incorporated by reference herein.
- (4) Previously filed as Exhibit 10.3 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 29, 2018, and incorporated by reference herein.
- (5) Previously filed as Exhibit 4.1 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 29, 2018, and incorporated by reference herein.
- (6) Filed herewith

ITEM 9. UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

(a) 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;

(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% 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)(i) and (a)(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 Exchange Act that are incorporated by reference in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) 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.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
3. Insofar as indemnification for liabilities arising under the Securities Act 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 Securities 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 Securities Act and will be governed by the final adjudication of such issue.

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 Atlanta, State of Georgia, on May 21, 2019.

CARDLYTICS, INC.

By: /s/ Scott D. Grimes

Scott D. Grimes

Chief Executive Officer

POWER OF ATTORNEY

Know All Persons By These Presents, that each person whose signature appears below constitutes and appoints Scott D. Grimes and Lynne M. Laube, and each or any one of them, his 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 (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 their or his or her substitutes or substitute, 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.

| Signature | Title | Date |
|---|--|--------------|
| <u>/s/ Scott D. Grimes</u> Scott D. Grimes | Chief Executive Officer and Director <i>(Principal Executive Officer)</i> | May 21, 2019 |
| <u>/s/ David T. Evans</u> David T. Evans | Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i> | May 21, 2019 |
| <u>/s/ Lynne M. Laube</u> Lynne M. Laube | Chief Operating Officer and Director | May 21, 2019 |
| <u>/s/ David L. Adams</u> David L. Adams | Director | May 21, 2019 |
| <u>/s/ John V. Balen</u> John V. Balen | Chairman of the Board of Directors | May 21, 2019 |
| <u>/s/ Mark A. Johnson</u> Mark A. Johnson | Director | May 21, 2019 |
| <u>/s/ John Klinck</u> John Klinck | Director | May 21, 2019 |
| <u>/s/ Aimée Lopic</u> Aimée Lopic | Director | May 21, 2019 |
| <u>/s/ Tony Weisman</u> Tony Weisman | Director | May 21, 2019 |
| <u>/s/ Bryce Youngren</u> Bryce Youngren | Director | May 21, 2019 |

May 21, 2019

Cardlytics, Inc.
675 Ponce de Leon Avenue NE, Suite 6000
Atlanta, Georgia 30308

Ladies and Gentlemen:

You have requested our opinion, as counsel to Cardlytics, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to 1,347,974 shares of the Company's Common Stock, par value \$0.0001 per share, consisting of (i) 1,123,312 shares (the "**2018 Plan Shares**") issuable pursuant to the Company's 2018 Equity Incentive Plan (the "**2018 Plan**") and (ii) 224,662 shares (together with the 2018 Plan Shares, the "**Shares**"), issuable pursuant to the Company's 2018 Employee Stock Purchase Plan (together with the 2018 Plan, the "**Plans**").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the related prospectuses, (b) the Company's Amended and Restated Certificate of Incorporation and the Company's Amended and Restated Bylaws, each as currently in effect, (c) the Plans, and (d) the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness of such documents. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not sought independently to verify such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plans, the Registration Statement and the related prospectuses, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Nicole C. Brookshire

Nicole C. Brookshire

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 5, 2019, relating to the consolidated financial statements of Cardlytics, Inc. appearing in the Annual Report on Form 10-K of Cardlytics, Inc. for the year ended December 31, 2018.

/s/ DELOITTE & TOUCHE LLP

Atlanta, Georgia

May 21, 2019

May 21, 2019

Cardlytics, Inc.
675 Ponce de Leon Avenue NE, Suite 6000
Atlanta, Georgia 30308

Ladies and Gentlemen:

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In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the related prospectuses, (b) the Company's Amended and Restated Certificate of Incorporation and the Company's Amended and Restated Bylaws, each as currently in effect, (c) the Plans, and (d) the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness of such documents. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not sought independently to verify such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

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We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Nicole C. Brookshire

Nicole C. Brookshire