

As filed with the Securities and Exchange Commission on November 1, 2024

No. 333-

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

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

30-1205798

(State or other jurisdiction of
incorporation or organization)

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

1002 West Avenue
Austin, Texas 78701
(512) 693-4199

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Stephen Chen, Interim Chief Executive Officer
Phunware, Inc.
1002 West Avenue
Austin, Texas 78701
(93-4199)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Jeffrey M. McPhaul, Esq.
Alex R. Allemann, Esq.
Winstead PC
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201
(214) 745-5400

Troy Reisner
J. Brendhan Botkin
Phunware, Inc.
1002 West Avenue
Austin, Texas 78701
(512) 693-4199

Approximate date of commencement of proposed sale to the public: **From time to time after the effective date of this Registration Statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. 333-262461

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 Securities Act.

The Registration Statement shall become effective upon filing in accordance with Rule 462(b) promulgated under the Securities Act of 1933, as amended.

EXPLANATORY NOTE AND INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

Pursuant to Rule 462(b) under the Securities Act of 1933, as amended, Phunware, Inc. (the “Registrant”) is filing this Registration Statement on Form S-3 (this “Registration Statement”) with the Securities and Exchange Commission (the “Commission”). This Registration Statement relates to the public offering of securities contemplated by the Registration Statement on Form S-3 (File No. 333-262461) (the “Prior Registration Statement”), which the Registrant filed with the Commission on February 1, 2022, and which the Commission declared effective on February 9, 2022.

The Registrant is filing this Registration Statement for the sole purpose of increasing the aggregate amount of securities offered by the Registrant by a proposed additional aggregate offering price of \$12,425,281. The additional securities that are being registered for issuance and sale are in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price of unsold securities under the Prior Registration Statement. The information set forth in the Prior Registration Statement and all exhibits to the Prior Registration Statement are hereby incorporated by reference into this Registration Statement.

The required opinion and consents are listed on the Exhibit Index below and filed herewith or incorporated by reference herein.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits.

Exhibit No.	Description
5.1	Opinion of Winstead PC.
23.1	Consent of Marcum LLP.
23.2	Consent of Winstead PC (included in Exhibit 5.1).
107	Filing Fee Table

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-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, State of Texas, on November 1, 2024.

PHUNWARE, INC.

By: /s/ Stephen Chen
Stephen Chen
Interim Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities set forth opposite their names and on November 1, 2024.

Name	Title
<u>/s/ Stephen Chen</u> Stephen Chen	Interim Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Troy Reisner</u> Troy Reisner	Chief Financial Officer (Principal Accounting and Financial Officer)
<u>/s/ Elliot Han</u> Elliot Han	Director
<u>/s/ Rahul Mewawalla</u> Rahul Mewawalla	Director

2728 N. Harwood Street
Suite 500
Dallas, TX 75201

214.745.5000 *OFFICE*
214.745.5390 *FAX*
winstead.com

November 1, 2024

Phunware, Inc.
1002 West Avenue
Austin, Texas 78701

Ladies and Gentlemen:

We have acted as legal counsel to Phunware, Inc., a Delaware corporation (the “Company”), in connection with (i) a Registration Statement on Form S-3 (File No. 333-262461), the base prospectus included therein (the “Base Prospectus”) and the related prospectus supplements, as may be further amended by the Company as of the date hereof (each, a “Prospectus Supplement”) (collectively, the “Initial Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”) and declared effective by the Commission on February 9, 2022, relating to the offer and sale, from time to time, for an aggregate offering price of up to \$200,000,000, (a) shares of the Company’s common stock, \$0.0001 par value per share (“Common Stock”), (b) shares of the Company’s preferred stock, \$0.0001 par value per share (“Preferred Stock”), (c) warrants to purchase shares of Common Stock and Preferred Stock (“Warrants”), and (d) units comprised of one or more of shares of Common Stock, shares of Preferred Stock or Warrants in any combination (“Units,” and together with the Common Stock, the Preferred Stock and the Warrants, “Shelf Securities”); and (ii) a second Registration Statement on Form S-3 (the “Rule 462(b) Registration Statement,” and together with the Initial Registration Statement, the “Registration Statement”) filed by the Company with the Commission pursuant to Rule 462(b) of the Securities Act, relating to the offer and sale by the Company of additional Shelf Securities for an aggregate offering price of up to \$12,425,281. Also, in connection with the filing of a Prospectus Supplement, the Company will offer and sell shares of the Company’s Common Stock having an aggregate offering price of up to \$171,520,779, inclusive of shares of the Company’s Common Stock sold prior to the date hereof (the “Equity Distribution Agreement Shares”) pursuant to an Amended and Restated Equity Distribution Agreement dated November 1, 2024 (the “Equity Distribution Agreement”), by and between the Company and Canaccord Genuity LLC (“Canaccord”), as representative of the several agents, and Roth Capital Partners, LLC and The Benchmark Company, LLC (collectively, and together with Canaccord, the “Agents”).

The Shelf Securities and the Equity Distribution Agreement Shares are collectively referred to herein as the “Securities.”

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Initial Registration Statement, (ii) the Rule 462(b) Registration Statement, (iii) the Equity Distribution Agreement, (iv) the Certificate of Incorporation (the “Certificate of Incorporation”) of the Company, as currently in effect; (v) the Amended and Restated Bylaws (the “Bylaws”) of the Company, as currently in effect; and (vi) such other records, certificates and documents as we have deemed appropriate or necessary for the purposes of this opinion. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the

Company and others, and such other documents, certificates and records, as we have deemed necessary or appropriate as a basis for the opinions set forth herein.

In our examination, we have assumed and have not verified (i) the legal capacity of all natural persons; (ii) the genuineness of all signatures; (iii) the authenticity of all documents submitted to us as originals; (iv) the conformity with the originals of all documents submitted to us as copies; (v) the accuracy and completeness of all corporate records and documents made available to us by the Company and (vi) that the foregoing documents, in the form submitted to us for our review, have not been altered or amended in any respect material to our opinions stated herein. We have relied as to factual matters upon a certificate from an officer of the Company and certificates and other documents from public officials and government agencies and departments and we have assumed the accuracy and authenticity of such certificates and documents.

With respect to our opinions as to the Securities, we have also assumed that (i) the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective and will comply with all applicable laws; (ii) all Securities will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and any applicable Prospectus Supplement filed in connection therewith; (iii) with respect to shares of Common Stock offered, there will be sufficient shares of Common Stock authorized under the Company's Certificate of Incorporation and not otherwise reserved for issuance and (iv) with respect to the shares of Preferred Stock offered, the Board of Directors of the Company shall have adopted one or more certificate(s) of designation governing one of more series of Preferred Stock and there will be sufficient shares of Preferred Stock authorized under the Company's Certificate of Incorporation and designated under such certificate(s) of designation and not otherwise reserved for issuance.

With respect to our opinions as to the Shelf Securities, we have also assumed that (i) a Prospectus Supplement, if required, will have been delivered and filed with the SEC describing the Shelf Securities offered thereby; (ii) a definitive purchase, underwriting or similar agreement with respect to any Shelf Securities offered will have been duly authorized and validly executed and delivered by the Company and the other parties thereto and will have been filed either as an exhibit to an amendment to the Registration Statement or incorporated by reference therein; (iii) any Shelf Securities issuable upon conversion, exchange or exercise of any Shelf Security being offered will have been duly authorized, created and, if appropriate, reserved for issuance upon such conversion, exchange or exercise; and (iv) any warrant agreement relating to the Warrants or unit agreement relating to the Units will, in each case, be governed by and construed in accordance with the laws of the State of Texas and will constitute a valid and binding obligation of each party thereto other than the Company.

Based on the foregoing and subject to the limitations, qualifications and assumptions set forth herein, as of the date hereof, we are of the opinion that:

1. All requisite action necessary to make the shares of Common Stock (other than the Equity Distribution Agreement Shares) to be issued under the Registration Statement validly issued, fully paid and nonassessable will have been taken when: (a) the Company's Board of Directors, or a committee thereof duly authorized by the Board of Directors, has adopted appropriate resolutions to authorize the issuance and sale of the Common Stock; (b) the terms of the Common Stock and of the issuance and sale of the shares of Common Stock have been established so as not to violate the Certificate of Incorporation or Bylaws of the Company or any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirements or restrictions imposed by any court or governmental entity having jurisdiction over the Company; and (c) such shares of Common

Stock have been issued and sold for the consideration contemplated by, and otherwise in conformity with, the Registration Statement, as supplemented by a Prospectus Supplement with respect to such issuance and sale, and the acts, proceedings and documents referred to above.

2. All requisite action necessary to make the shares of Preferred Stock to be issued under the Registration Statement validly issued, fully paid and nonassessable will have been taken when: (a) the Company's Board of Directors, or a committee thereof duly authorized by the Board of Directors, has adopted appropriate resolutions to establish the powers, designations, preferences and relative participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, and other terms of such shares of Preferred Stock (each a "Certificate of Designation") as set forth in or contemplated by the Registration Statement, the exhibits thereto and any Prospectus Supplement relating to the Preferred Stock, and to authorize the issuance and sale of such shares of Preferred Stock; (b) a Certificate of Designation with respect to the powers, designations, preferences and relative participation, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, and other terms of such shares of Preferred Stock has been filed with the Secretary of State of the State of Delaware in the form and manner required by law; (c) the terms of the Preferred Stock and of the issuance and sale of the shares of Preferred Stock have been established so as not to violate the Certificate of Incorporation or Bylaws of the Company or any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirements or restrictions imposed by any court or governmental entity having jurisdiction over the Company; and (d) the shares of Preferred Stock have been issued and sold for the consideration contemplated by, and otherwise in conformity with, the Registration Statement, as supplemented by a Prospectus Supplement with respect to such issuance and sale, and the acts, proceedings and documents referred to above.

3. All requisite action necessary to make any Warrants valid, legal and binding obligations of the Company, subject to (i) bankruptcy, insolvency, reorganization, fraudulent transfer, fraudulent conveyance, moratorium and other similar laws of general application affecting the rights and remedies of creditors and (ii) general principles of equity, regardless of whether applied in a proceeding in equity or at law, will have been taken when: (a) the Company's Board of Directors, or a committee thereof or one or more officers of the Company, in each case duly authorized by the Board of Directors, has taken action to approve and establish the terms and form of the Warrants and the documents, including any warrant agreements, evidencing and used in connection with the issuance and sale of the Warrants, and to authorize the issuance and sale of such Warrants; (b) the terms of such Warrants and of their issuance and sale have been established so as not to violate the Certificate of Incorporation, Bylaws or any applicable Certificate of Designation of the Company or any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirements or restrictions imposed by any court or governmental entity having jurisdiction over the Company; (c) any such documents, including any such warrant agreements have been duly executed and delivered by the parties thereto; (d) such Warrants have been duly executed and delivered in accordance with the terms and provisions of the applicable warrant agreement; and (e) such Warrants have been issued and sold for the consideration contemplated by, and otherwise in conformity with, the Registration Statement, as supplemented by a Prospectus Supplement with respect to such issuance and sale, and the acts, proceedings and documents referred to above.

4. All requisite action necessary to make any Units valid, legal and binding obligations of the Company, subject to (i) bankruptcy, insolvency, reorganization, fraudulent transfer, fraudulent conveyance, moratorium and other similar laws of general application affecting the rights and remedies of creditors and (ii) general principles of equity, regardless of whether applied in a proceeding in equity or at law, will have been taken when: (a) the Company's Board of Directors, or a committee thereof or one or more officers of

the Company, in each case duly authorized by the Board of Directors, has taken action to approve and establish the terms and form of the Units and the documents, including any unit agreements, evidencing and used in connection with the issuance and sale of the Units, and to authorize the issuance and sale of such Units; (b) the terms of such Units and of their issuance and sale have been established so as not to violate the Certificate of Incorporation, Bylaws or any applicable Certificate of Designation of the Company or any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirements or restrictions imposed by any court or governmental entity having jurisdiction over the Company; (c) any such unit agreements have been duly executed and delivered by the parties thereto; (d) such Units have been duly executed and delivered in accordance with the terms and provisions of the applicable unit agreement; and (e) such Units have been issued and sold for the consideration contemplated by, and otherwise in conformity with, the Registration Statement, as supplemented by a Prospectus Supplement with respect to such issuance and sale, and the acts, proceedings and documents referred to above.

5. With respect to the Equity Distribution Agreement Shares, the Equity Distribution Agreement Shares have been duly authorized for issuance, and when issued and delivered by the Company and paid for pursuant to the terms of the Equity Distribution Agreement, the Equity Distribution Agreement Shares will be validly issued, fully paid and nonassessable.

For purposes of our opinion above, we express no opinion as to the law of any jurisdiction other than the General Corporation Law of the State of Delaware (including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing). The opinion expressed herein is given as of this date, and we do not undertake to supplement this opinion with respect to any events or changes occurring subsequent to the date hereof.

We hereby consent to the filing of this opinion as an exhibit to the 462(b) Registration Statement and to the use of our name under the caption "Legal Matters" in the 462(b) Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Winstead PC

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated March 15, 2024 relating to the financial statements of Phunware, Inc. incorporated by reference in the Registration Statement on Form S-3 (File No. 333-262461) of Phunware, Inc. We also consent to the reference to us under the heading "Experts" appearing in the Registration Statement of Form S-3 (File No. 333-262461) incorporated by reference in this Registration Statement.

/s/ Marcum llp

Marcum llp
Houston, TX
November 1, 2024

Calculation of Filing Fee Tables

Form S-3
(Form Type)Phunware, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Share	Maximum Aggregate Offering Price	Fee Rate ⁽³⁾	Amount of Registration Fee
Newly Registered Securities								
Fees to Be Paid	Equity	Common Stock, par value \$0.0001 per share	457(o)	(1)	(1)	(1)		
	Equity	Preferred Stock, par value of \$0.0001 per share	457(o)	(1)	(1)	(1)		
	Other	Warrants to purchase Common Stock	457(o)	(1)	(1)	(1)		
	Other	Units	457(o)	(1)	(1)	(1)		
	Unallocated (Universal) Shelf	(2)	457(o)	(1)	(1)	\$12,425,281	0.0001531	\$1,902.31
Total Offering Amounts								\$1,902.31
Total Fees Previously Paid								-
Total Fee Offsets								-
Net Fees Due								\$1,902.31

(1) The Registrant previously registered the offer and sale of certain securities, including its common stock, par value \$0.0001 per share, having a proposed maximum aggregate offering price of \$200,000,000 pursuant to Registration Statement on Form S-3 (File No. 333-262461), which was filed on February 1, 2022 and declared effective by the SEC on February 9, 2022 (the "Prior Registration Statement"). As of the date hereof, a balance of \$62,126,409 of such securities remains unsold under the Prior Registration Statement. In accordance with Rule 462(b) under the Securities Act of 1933, as amended, General

Instruction IV(A) of Form S-3, the Registrant is hereby registering the offer and sale of an additional \$12,425,281 of securities. The additional amount of securities that is being registered for offer and sale represents no more than 20% of the maximum offering price of the remaining securities available to be sold under the Prior Registration Statement.

- (2) There are being registered hereunder such indeterminate number of shares of Common Stock, such indeterminate number of shares of Preferred Stock, such indeterminate number of Warrants to purchase Common Stock and such indeterminate number of Units as shall have an aggregate initial offering price not to exceed \$12,425,281. Any securities registered hereunder may be sold separately or in combination with the other securities registered hereunder.
 - (3) Determined in accordance with Section 6(b) of the Securities Act at a rate equal to \$153.10 per \$1,000,000 of the proposed maximum offering price.
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