

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

26-4413774

(State or other jurisdiction of
incorporation or organization)

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

**7800 Shoal Creek Blvd, Suite 230-S, Austin, Texas 78757
(512) 693-4199**

(Address of Principal Executive Offices)

2018 Equity Incentive Plan

(Full title of the plan)

Alan S. Knitowski, Chief Executive Officer

Phunware, Inc.

7800 Shoal Creek Blvd, Suite 230-S

Austin, Texas 78757

(512) 693-4199

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

Copies to:

**Alex R. Allemann, Esq.
Jeffrey M. McPhaul, Esq.
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
(512) 370-2800**

**Matt Aune
J. Brendhan Botkin
Phunware, Inc.
7800 Shoal Creek Blvd, Suite 230-S
Austin, Texas 78757
(512) 693-4199**

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.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered⁽¹⁾	Proposed Maximum Offering Price Per Share⁽³⁾	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.0001 per share	5,229,416 ⁽²⁾	\$ 1.19	\$ 6,223,005.04	\$ 678.93
Total	5,229,416	\$ 1.19	\$ 6,223,005.04	\$ 678.93

- (1) This Registration Statement covers up to 5,229,416 shares of common stock (the "Common Stock"), par value \$0.0001 per share, issuable under the Phunware 2018 Equity Incentive Plan (Amended and Restated as of December 4, 2020) (the "2018 Plan"). 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 Common Stock that become issuable under the Registrant's 2018 Plan 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 Common Stock.
 - (2) Represents (i) an increase of 2,500,000 shares of the Registrants Common Stock reserved for future issuances pursuant to the 2018 Plan approved by stockholders of the Registrant at the Company's Annual Meeting of Stockholders held on December 4, 2020 and (ii) 2,729,416 additional shares of the Registrant's Common Stock reserved for future issuance under the 2018 Plan by reason of the automatic increase provision of the 2018 Plan.
 - (3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and Rule 457(h)(1) promulgated under the Securities Act based on the average of the high \$1.27 and low \$1.11 sales prices of the Registrant's Common Stock on December 28, 2020, as reported on the Nasdaq Capital Market.
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EXPLANATORY NOTE

REGISTRATION OF ADDITIONAL SECURITIES

Phunware, Inc. (the "Registrant") is filing this Registration Statement on Form S-8 for the purpose of registering the offer and sale of an additional 5,229,416 shares of Common Stock of the Registrant, par value \$0.0001 per share ("Common Stock"), issuable to eligible persons under the Phunware, Inc. 2018 Equity Incentive Plan (Amended and Restated as of December 4, 2020) (the "2018 Plan"), which Common Stock is in addition to the shares of Common Stock registered on the Registrant's Form S-8 filed by the Company with the U.S. Securities and Exchange Commission (the "SEC") on April 29, 2019 (File No. 333-231104) and Form S-8 filed by the Company with the SEC on January 29, 2020 (File No. 333-236145) (the "Prior Registration Statements"). Accordingly, the contents of the Prior Registration Statements relating to the 2018 Plan, including periodic reports that the Registrant filed after the Prior Registration Statements to maintain current information about the Registrant, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8. The Prior Registration Statements are currently effective.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits.

EXHIBIT INDEX

Exhibit No.	Description
4.1*	<u>Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</u>
4.2*	<u>Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</u>
4.3*	<u>Certificate of Designation (Incorporated by reference to Exhibit 3.3 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on January 2, 2019).</u>
4.4*	<u>Specimen common stock certificate of the Registrant (Incorporated by reference to Exhibit 4.3 of the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on November 6, 2018).</u>
4.5*	<u>Phunware, Inc. 2018 Equity Incentive Plan (Incorporated by reference to Annex D of the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on November 13, 2018).</u>
5.1**	<u>Opinion of Winstead PC.</u>
10.1*	<u>Form of Stock Option Agreement under the 2018 Equity Incentive Plan (Incorporated by reference to Exhibit 10.1 of the Registrant's Form S-8 (File No. 333-231104), filed with the SEC on April 29, 2019).</u>
10.2*	<u>Form of Restricted Stock Unit Award Agreement under the 2018 Equity Incentive Plan (Incorporated by reference to Exhibit 10.2 of the Registrant's Form S-8 (File No. 333-231104), filed with the SEC on April 29, 2019).</u>
23.1**	<u>Consent of Marcum LLP.</u>
23.2**	<u>Consent of Winstead PC (included in Exhibit 5.1).</u>
24.1**	<u>Power of Attorney (included on the signature page to this Registration Statement).</u>
99.1*	<u>Phunware, Inc. 2018 Equity Incentive Plan (Amended and Restated as of December 4, 2020) (Incorporated by reference to Annex A to the Registrant's Schedule 14A (File No. 001-37862) filed with the SEC on October 16, 2020).</u>

* Previously filed.

** Filed herewith.

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 Austin, State of Texas, on January 5, 2021.

PHUNWARE, INC.

By: /s/ Alan S. Knitowski
Alan S. Knitowski
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Alan S. Knitowski and Matt Aune, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to act on, 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 attorney-in-fact, proxy, and agent 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 attorney-in-fact, proxy and agent, or his substitute, 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 set forth opposite their names and on January 5, 2021.

<u>Name</u>	<u>Title</u>
<u>/s/ Alan S. Knitowski</u> Alan S. Knitowski	Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Matt Aune</u> Matt Aune	Chief Financial Officer (Principal Accounting and Financial Officer)
<u>/s/ Keith Cowan</u> Keith Cowan	Director
<u>/s/ Randall Crowder</u> Randall Crowder	Chief Operating Officer and Director
<u>/s/ Eric Manlunas</u> Eric Manlunas	Director
<u>/s/ Lori Tauber Marcus</u> Lori Tauber Marcus	Director
<u>/s/ Blythe Masters</u> Blythe Masters	Director
<u>/s/ Kathy Tan Mayor</u> Kathy Tan Mayor	Director
<u>/s/ George Syllantavos</u> George Syllantavos	Director

January 5, 2021

Phunware Inc.
7800 Shoal Creek Boulevard
Suite 230-S
Austin, Texas 78757

Ladies and Gentlemen:

We have acted as counsel to Phunware Inc., a Delaware corporation (the "Company"), in connection with the filing with the Securities and Exchange Commission (the "SEC") of a registration statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of up to 5,229,416 shares (the "Shares") of the Company's common stock, par value \$0.0001 per share ("Common Stock"), to be issued by the Company pursuant to the Phunware, Inc. 2018 Equity Incentive Plan (Amended and Restated as of December 4, 2020) (the "Plan").

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement, (ii) the Plan, (iii) the Certificate of Incorporation (the "Certificate of Incorporation") of the Company, as currently in effect; (iv) the Amended and Restated Bylaws (the "Bylaws") of the Company, as currently in effect, and (v) 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 of such corporate records of the Company and have made such examinations of law and other investigations as we have deemed relevant.

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, certificates and instruments submitted to us as originals; (iv) the conformity with the originals of all documents supplied 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 certificates from officers 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. We have also assumed that, at or prior to the time of the issuance and delivery of any Shares, that there will not have occurred any change in law, change in the Company's Certificate of Incorporation, or further action by the Company's board of directors, in each case affecting the validity of the issuance of the Shares.

With respect to our opinions as to the Shares, 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 Shares will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the Plan; and (iii) with respect to Shares offered, there will be sufficient shares of Common Stock authorized under the Company's Certificate of Incorporation and not otherwise reserved for issuance.

Based on the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares have been duly authorized and, when issued in accordance with the terms of and for legal consideration in excess of par value in the circumstances contemplated by the Plan (and the agreements and awards duly adopted thereunder and in accordance therewith), assuming, in each case, that the individual issuances, grants or awards under the Plan are duly authorized by all necessary corporate action of the Company, will be validly issued, fully paid and non-assessable.

Our opinions herein are expressed solely as to the Delaware General Corporation Law (including, to the extent applicable, Delaware statutory and constitutional provisions and reported judicial decisions interpreting these laws). We express no opinion as to the laws of any other jurisdiction. 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 of this letter. The opinion expressed in this letter is provided as a legal opinion only and not as any guarantee or warranty of the matters discussed herein, and such opinion is strictly limited to the matters stated herein, and no other opinion may be implied therefrom.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are “experts” within the meaning of Section 11 of the Securities Act or within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

WINSTEAD PC

By: /s/ Alex R. Allemann
Alex R. Allemann
Authorized Signatory

Independent Registered Public Accounting Firm's Consent

We consent to the incorporation by reference in this Registration Statement of Phunware, Inc. (the "Company") on Form S-8 of our report dated March 30, 2020, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Phunware, Inc. as of December 31, 2019 and 2018 and for each of the two years in the period ended December 31, 2019, which report appears in the Annual Report on Form 10-K of the Company for the year ended December 31, 2019.

Our report on the consolidated financial statements refers to a change in the method of accounting for revenue in 2019 due to the adoption of the guidance in ASC 606, Revenue from Contracts with Customers.

/s/ Marcum LLP

Marcum LLP
Houston, TX
January 5, 2021