

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): February 17, 2021

PHUNWARE, INC.
(Exact name of registrant as specified in its charter)

<u>Delaware</u> (State or other jurisdiction of incorporation)	<u>001-37862</u> (Commission File Number)	<u>26-4413774</u> (IRS Employer Identification No.)
<u>7800 Shoal Creek Blvd, Suite 230-S, Austin, Texas</u> (Address of principal executive offices)		<u>78757</u> (Zip Code)

Registrant's Telephone Number, Including Area Code: (512) 693-4199

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	PHUN	The NASDAQ Capital Market
Warrants to purchase one share of Common Stock	PHUNW	The NASDAQ Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

Item 8.01 Other Events.

On February 17, 2021, Phunware, Inc. (the "Company") issued a press release regarding the Company's previously disclosed underwritten public offering of common stock, par value \$0.0001 per share ("Common Stock"), pursuant to an underwriting agreement (the "Underwriting Agreement") with Northland Securities, Inc. and Roth Capital Partners, LLC (collectively, the "Underwriters"). A copy of such press release is attached hereto as Exhibit 99.1.

Under the terms of the Underwriting Agreement, the Company granted the Underwriters a 30-day option to purchase additional shares of Common Stock to cover over-allotments, if any. The Underwriters partially exercised the over-allotment option to purchase an additional 650,000 shares of Common Stock. In connection therewith, Winstead PC provided the Company with the legal opinion attached hereto as Exhibit 5.1.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<i>Exhibit No.</i>	<i>Exhibit Title</i>
1.1	<u>Underwriting Agreement, dated February 12, 2021 by and among Northland Securities, Inc., Roth Capital Partners, LLC and Phunware, Inc. (Incorporated by reference to Exhibit 1.1 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on February 16, 2021).</u>
5.1	<u>Opinion of Winstead PC.</u>
23.1	<u>Consent of Winstead PC (included in Exhibit 5.1).</u>
99.1	<u>Press Release dated February 18, 2021 titled "Phunware Closes Public Offering of Common Stock"</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: February 18, 2021

Phunware, Inc.

By: /s/ Matt Aune
Matt Aune
Chief Financial Officer

February 17, 2021

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

Ladies and Gentlemen:

We have acted as legal counsel to Phunware, Inc., a Delaware corporation (the "Company"), in connection with the offering and sale by the Company of 650,000 shares (the "Shares") of the Company's common stock, par value \$0.0001 per share ("Common Stock"), covered by the registration statement on Form S-3 (File No. 333-252694) filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act") (as amended, and together with the base prospectus contained therein and prospectus supplement, dated as of February 12, 2021, filed pursuant to Rule 424(b) under the Securities Act in connection with such offering (the "Prospectus Supplement"), the "Registration Statement"), pursuant to the partial exercise of the over-allotment option set forth in that certain Underwriting Agreement, dated as of February 12, 2021 (the "Underwriting Agreement"), by and between the Company, Northland Securities, Inc. and Roth Capital Partners, LLC.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement, including the Prospectus Supplement, (ii) the Underwriting Agreement, (iii) the Certificate of Incorporation of the Company, as currently in effect, (iv) the Amended and Restated Bylaws of the Company, as currently in effect, and (v) certain resolutions adopted by the Board of Directors of the Company and committees thereof with respect to the Underwriting Agreement and the issuance of the Shares. 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 opinion 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 (other than persons signing on behalf of the Company), (iii) the authenticity of all documents 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 opinion 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.

Based on the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, as of the date hereof, we are of the opinion that the Shares have been duly authorized for issuance, and when issued and delivered by the Company and paid for pursuant to the terms of the Underwriting Agreement, the Shares will be validly issued, fully paid and non-assessable.

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 Current Report on Form 8-K to be filed with the Commission in connection with the offering and to the use of our name under the caption "Legal Matters" in the Prospectus Supplement. 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,

WINSTEAD PC

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

Phunware Closes Public Offering of Common Stock

AUSTIN, Texas – Feb. 18, 2021 (GLOBE NEWSWIRE) – Phunware, Inc. (NASDAQ: PHUN) (“Phunware” or “the Company”) a fully-integrated enterprise cloud platform for mobile that provides products, solutions, data and services for brands worldwide, has closed its previously announced underwritten public offering of common stock, effective February 12, 2021.

Phunware sold a total of 11,761,111 shares of its common stock in the offering, after the underwriter’s partial exercise of its overallotment option. Net proceeds to Phunware from the offering were approximately \$24.7 million, after deducting underwriting discounts and commissions and other estimated offering expenses. Northland Securities Inc. and Roth Capital Partners acted as joint book-running managers for the offering.

A registration statement relating to the securities being sold in the offering was declared effective by the Securities and Exchange Commission (“SEC”) on February 11, 2021. A final prospectus supplement related to the offering was filed with the SEC on February 12, 2021 and is available on the SEC’s website located at www.sec.gov. Copies of the final prospectus supplement and the accompanying prospectus relating to the offering may be obtained, when available, from Northland Securities, Inc., Attention: Heidi Fletcher, 150 South Fifth Street, Suite 3300, Minneapolis, MN 55402, or by calling (612) 851-4918, or by emailing hfletcher@northlandcapitalmarkets.com; Roth Capital Partners, LLC, 888 San Clemente Drive, Suite 400, Newport Beach, CA 92660, (800) 678-9147 or by accessing the SEC’s website, www.sec.gov.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

Safe Harbor Clause and Forward-Looking Statements

This press release includes forward-looking statements. All statements other than statements of historical facts contained in this press release, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “expose,” “intend,” “may,” “might,” “opportunity,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this press release are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading “Risk Factors” in our filings with the Securities and Exchange Commission (SEC), including Registration Statement on Form S-3 related to this offering and our reports on Forms 10-K, 10-Q, 8-K and other filings that we make with the SEC from time to time. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether

as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described under “Risk Factors” in our SEC filings may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this press release. In addition, even if our results or operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this press release, those results or developments may not be indicative of results or developments in subsequent periods.

About Phunware, Inc.

Everything You Need to Succeed on Mobile — Transforming Digital Human Experience

Phunware, Inc. (NASDAQ: PHUN), is the pioneer of Multiscreen-as-a-Service (MaaS), an award-winning, fully integrated enterprise cloud platform for mobile that provides companies the products, solutions, data and services necessary to engage, manage and monetize their mobile application portfolios and audiences globally at scale. Phunware’s Software Development Kits (SDKs) include location-based services, mobile engagement, content management, messaging, advertising, loyalty (PhunCoin & Phun) and analytics, as well as a mobile application framework of pre-integrated iOS and Android software modules for building in-house or channel-based mobile application and vertical solutions. Phunware helps the world’s most respected brands create category-defining mobile experiences, with more than one billion active devices touching its platform each month. For more information about how Phunware is transforming the way consumers and brands interact with mobile in the virtual and physical worlds visit www.phunware.com, www.phuncoin.com, www.phuntoken.com, and follow @phunware, @phuncoin and @phuntoken on all social media platforms.

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