

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): **January 31, 2022**

**PHUNWARE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**001-37862**

(Commission File Number)

**30-1205798**

(IRS Employer Identification No.)

**7800 Shoal Creek Blvd, Suite 230-S, Austin, Texas**

(Address of principal executive offices)

**78757**

(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 1.01 Entry Into a Material Definitive Agreement.**

On January 31, 2022, Phunware, Inc. (the “Company”) entered into an At Market Issuance Sales Agreement (the “Sales Agreement”) with H.C. Wainwright & Co., LLC (“Wainwright”), pursuant to which the Company may offer and sell, from time to time, shares of our common stock, par value \$0.0001 per share, for aggregate gross proceeds of up to \$100,000,000, through or to Wainwright, as agent or principal.

Sales of shares of common stock under the Sales Agreement will be made pursuant to the Company’s shelf registration statement on Form S-3 (File No. 333-262461) and a related prospectus, as supplemented by a prospectus supplement (the "Registration Statement"), filed with the Securities and Exchange Commission.

The Company is not obligated to sell any shares of common stock under the Sales Agreement. Each time the Company wishes to issue and sell shares of common stock under the Sales Agreement, we will notify Wainwright of the number of shares to be issued, the dates on which such sales are anticipated to be made, any limitation on the number of shares to be sold in any one day and any minimum price below which sales may not be made. Once we have so instructed Wainwright, unless Wainwright declines to accept the terms of such notice, Wainwright has agreed to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of The Nasdaq Stock Market LLC to sell such shares up to the amount specified on such terms.

Under the terms of the Sales Agreement, Wainwright may sell shares by any method that is deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended. Wainwright’s obligations to sell shares under the Sales Agreement are subject to satisfaction of certain conditions, including customary closing conditions for transactions of this nature. The Company will pay Wainwright a commission of up to 3.0% of the gross proceeds of the sale price per share for shares of our common stock sold through or to Wainwright pursuant to the Sales Agreement. The Company has agreed to provide Wainwright with customary indemnification and contribution rights and to reimburse Wainwright for certain specified expenses.

The offering of shares of common stock pursuant to the Sales Agreement will terminate upon the earlier of (i) the sale of all shares of common stock subject to the Sales Agreement and (ii) the termination of the Sales Agreement as permitted therein. The Company and Wainwright may each terminate the Sales Agreement at any time upon five days’ prior written notice.

The foregoing summary of the Sales Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Sales Agreement, which was filed with the SEC as Exhibit 1.2 to our Registration Statement on February 1, 2022 and is incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any shares under the Sales Agreement, nor shall there be any sale of such shares in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

**1.02 Termination of a Material Definitive Agreement.**

As previously disclosed on April 7, 2021, the Company entered into an At Market Issuance Sales Agreement (the “April 2021 ATM Sales Agreement”) with B. Riley Securities, Inc. (“B. Riley”), as sales agent, pursuant to which the Company could offer and sell, from time to time, through B. Riley shares of its common stock, par value \$0.0001 per share.

On February 4, 2022, the Company delivered written notice to B. Riley that it had elected to terminate the April 2021 ATM Sales Agreement effective as of February 9, 2022, five (5) days after delivery of the notice. The Company will not incur any material early termination penalties in connection with the termination of the April 2021 ATM Sales Agreement.

A copy of the April 2021 ATM Sales Agreement was filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 7, 2021. The description of the April 2021 ATM Sales Agreement contained in this Current Report on Form 8-K does not purport to be complete and is qualified in its entirety by reference to the copy of the April 2021 ATM Sales Agreement filed as Exhibit 10.1 to the Current Report on Form 8-K filed on April 7, 2021.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<i>Exhibit No.</i>	<i>Exhibit Title</i>
10.1*	<a href="#">At Market Issuance Sales Agreement by and between Phunware, Inc. and HC Wainwright &amp; Co., LLC dated January 31, 2022 (Incorporated by reference to Exhibit 1.2 of the Registrant's Form S-3 (File No. 333-262461) filed with the SEC on February 1, 2022).</a>
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

\* Previously filed

