

EBAY INC  
Form S-8  
June 05, 2009

As filed with the Securities and Exchange Commission on June 5, 2009

Registration No. 333-\_\_\_\_\_

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**eBay Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State of Incorporation)

**77-0430924**  
(I.R.S. Employer Identification No.)

**2145 Hamilton Avenue**

**San Jose, California 95125**

(Address of principal executive offices)

**eBay Inc. 2008 Equity Incentive Award Plan, as amended and restated**

**eBay Inc. Amended and Restated 1998 Employee Stock Purchase Plan**

(Full title of the plan)

**Michael R. Jacobson**

**Senior Vice President, Legal Affairs, General Counsel and Secretary**

**eBay Inc.**

**2145 Hamilton Avenue**

**San Jose, California 95125**

**(408) 376-7400**

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

Indicate by a check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller

reporting company

reporting company)  
**CALCULATION OF REGISTRATION FEE**

| Title of Securities<br>to be Registered   | Amount to be<br>Registered (1)              | Proposed Maximum                | Proposed Maximum                | Amount of<br>Registration Fee |
|---|---|---------------------------------|---------------------------------|-------------------------------|
|   |   | Offering<br>Price per Share (2) | Aggregate<br>Offering Price (2) |                               |
| Common Stock, par value \$0.001 per share | 50,000,000 shares(3)<br>3,529,775 shares(4) | \$17.94                         | \$960,324,163.50                | \$53,586.09                   |

(1)

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Pursuant to Rule 416(a), under the Securities Act of 1933, as amended (the Securities Act ), this registration statement shall also cover any additional shares of common stock which become issuable under the eBay Inc. 2008 Equity Incentive Award Plan, as amended and restated, or the eBay Inc. Amended and Restated 1998 Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that results in an increase or decrease in the number of outstanding shares of the registrant's common stock.

- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act of 1933, as amended. The offering price per share and aggregate offering price are based upon the average of the high and low prices of the registrant's common stock on June 3, 2009 as reported on the Nasdaq Global Select Market for an additional 53,529,775 shares available for grant pursuant to our 2008 Equity Incentive Award Plan, as amended and restated and our Amended and Restated 1998 Employee Stock Purchase Plan.
- (3) Additional shares that are available for grant under the eBay Inc. 2008 Equity Incentive Award Plan, as amended and restated, and approved by the registrant's stockholders at the registrant's Annual Meeting of Stockholders held on April 29, 2009.
- (4) Additional shares that are available for issuance pursuant to the evergreen provision of the eBay Inc. Amended and Restated 1998 Employee Stock Purchase Plan, which was originally approved by the registrant's stockholders on August 14, 1998, as amended by the amendment approved by the registrant's stockholders on June 14, 2007.

**EXPLANATORY NOTE**

We are registering an additional 50,000,000 shares of our common stock under the eBay Inc. 2008 Equity Incentive Award Plan, as amended (the 2008 Plan ), with the filing of this registration statement on Form S-8. The Company s stockholders approved the addition of these shares to the 2008 Plan at the Company s Annual Meeting of Stockholders held on April 29, 2009.

In addition, the eBay Inc. Amended and Restated 1998 Employee Stock Purchase Plan (the ESPP ) reserved a total of 7,200,000 shares of our common stock for issuance when it was originally adopted and approved by our stockholders on August 14, 1998. The evergreen provision of the ESPP provides that the total number of shares reserved for issuance under the ESPP shall be increased on each January 1 by the total number of shares purchased under the ESPP in the preceding calendar year, provided that the aggregate number of shares reserved for issuance under the ESPP may not exceed 36,000,000 shares. The amendment to the ESPP approved by our stockholders on June 14, 2007 did not change the evergreen provision. We initially registered 7,200,000 shares of our common stock reserved for issuance under the ESPP on a registration statement on Form S-8 filed with the Securities and Exchange Commission (the Commission ) on September 24, 1998, and subsequently registered an additional 2,768,564 shares and 6,235,813 shares reserved for issuance under the evergreen provision of the ESPP on registration statements on Form S-8 filed with the Commission on August 4, 2004 and February 8, 2008, respectively. We are registering an additional 3,529,775 shares that have been reserved for issuance pursuant to the evergreen provision of the ESPP with the filing of this registration statement on Form S-8. All historical share numbers in this registration statement have been adjusted to give retroactive effect to all of our stock splits effected prior to the date hereof.

**PART I. INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

**ITEM 1. PLAN INFORMATION**

The document(s) containing the information specified in Item 1 will be sent or given to employees as specified in Rule 428(b)(1) and are not required to be filed as part of this registration statement.

**ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION**

The document(s) containing the information specified in Item 2 will be sent or given to employees as specified in Rule 428(b)(1) and are not required to be filed as part of this registration statement.

**PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE**

The following documents filed by eBay Inc. (the Company ) with the Securities and Exchange Commission (the Commission ) are incorporated by reference into this registration statement:

(a) Our latest Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed on February 20, 2009 (File No. 000-24821), filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act ).

(b)(1) Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009, filed on April 28, 2009 (File No. 000-24821).

(b)(2) Our Current Reports on Form 8-K filed on January 5, 2009 (File No. 000-24821), January 22, 2009 (File No. 000-24821), March 12, 2009 (File No. 000-24821), April 1, 2009 (File No. 000-24821), April 16, 2009 (File No. 000-24821) and May 1, 2009 (File No. 000-24821).

(c) The description of the Company's common stock which is contained in a Registration Statement on Form 8-A, filed August 20, 1998 (File No. 000-24821), under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this registration statement from the date of the filing of such reports and documents.

**ITEM 4. DESCRIPTION OF SECURITIES**

Not applicable.

**ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL**

Not applicable.

**ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

As permitted by Section 145 of the Delaware General Corporation Law (the "DGCL"), the Company's Amended and Restated Bylaws (the "Bylaws") provide that (i) the Company is required to indemnify its directors and officers to the fullest extent permitted by the DGCL, (ii) the Company may, in its discretion, indemnify other persons as set forth in the DGCL, (iii) to the fullest extent permitted by the DGCL, the Company is required to advance all expenses incurred by its directors and officers in connection with a legal proceeding (subject to certain exceptions), (iv) the rights conferred in the Bylaws are not exclusive, (v) the Company is authorized to enter into indemnification agreements with its directors, officers, employees and agents and (vi) the Company may not retroactively amend the Bylaws provisions relating to indemnity.

The Company has entered into agreements with its directors and executive officers that require the Company to indemnify such persons against expenses, judgments, fines, settlements and other amounts that such person becomes legally obligated to pay (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or officer of the Company or any of its affiliated enterprises, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

**ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED**

Not applicable.

**ITEM 8. EXHIBITS**

The following exhibits are filed as part of this registration statement.

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**Exhibit**

| <b>Number</b> | <b>Description</b>  |
|---------------|---|
| 5.1           | Opinion of Cooley Godward Kronish LLP.  |
| 23.1          | Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.   |
| 23.2          | Consent of Cooley Godward Kronish LLP (included in Exhibit 5.1 to this registration statement).   |
| 24.1          | Power of Attorney (included on the signature page of this registration statement).  |
| 99.1          | eBay Inc. 2008 Equity Incentive Award Plan, as amended and restated.  |
| 99.2          | eBay Inc. Amended and Restated 1998 Employee Stock Purchase Plan (incorporated by reference from the Form S-8 (SEC File No. 333-149131) filed with the Commission on February 8, 2008). |

**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 of 1933, as amended (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 periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference herein.

(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 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 San Jose, State of California, on June 5, 2009.

**eBay Inc.**

/s/ John J. Donahoe  
John J. Donahoe

President, Chief Executive Officer & Director

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints John J. Donahoe, Michael R. Jacobson and Robert H. Swan, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and her 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or his or her or their substitute or substitutes, 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.

| <b>Signature</b>                           | <b>Title</b>  | <b>Date</b>  |
|--|---|--------------|
| /s/ John J. Donahoe<br>John J. Donahoe     | President, Chief Executive Officer and Director   | June 5, 2009 |
| /s/ Robert H. Swan<br>Robert H. Swan       | Senior Vice President, Finance and Chief Financial Officer<br>(Principal Financial Officer) | June 5, 2009 |
| /s/ Phillip P. DePaul<br>Phillip P. DePaul | Vice President, Chief Accounting Officer (Principal<br>Accounting Officer)                  | June 5, 2009 |
| /s/ Pierre M. Omidyar<br>Pierre M. Omidyar | Founder, Chairman of the Board and Director   | June 5, 2009 |



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| <b>Signature</b>   | <b>Title</b> | <b>Date</b>  |
|--|--------------|--------------|
| /s/ Fred D. Anderson<br>Fred D. Anderson                     | Director     | June 5, 2009 |
| /s/ Marc L. Andreessen<br>Marc L. Andreessen                 | Director     | June 5, 2009 |
| /s/ Edward W. Barnholt<br>Edward W. Barnholt                 | Director     | June 5, 2009 |
| /s/ Philippe Bourguignon<br>Philippe Bourguignon             | Director     | June 5, 2009 |
| /s/ Scott D. Cook<br>Scott D. Cook                           | Director     | June 5, 2009 |
| /s/ William Clay Ford, Jr.<br>William Clay Ford, Jr.         | Director     | June 5, 2009 |
| /s/ Dawn G. Lepore<br>Dawn G. Lepore                         | Director     | June 5, 2009 |
| /s/ David M. Moffett<br>David M. Moffett                     | Director     | June 5, 2009 |
| /s/ Richard T. Schlosberg, III<br>Richard T. Schlosberg, III | Director     | June 5, 2009 |
| /s/ Thomas J. Tierney<br>Thomas J. Tierney                   | Director     | June 5, 2009 |

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