

SPLUNK INC
Form S-8
March 29, 2017

As filed with the Securities and Exchange Commission on March 29, 2017

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

The Securities Act of 1933

SPLUNK INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

86-1106510
(I.R.S. Employer
Identification Number)

270 Brannan Street

San Francisco, California 94107

(Address of principal executive offices, including zip code)

2012 Equity Incentive Plan

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2012 Employee Stock Purchase Plan

(Full title of the plan)

Douglas S. Merritt

President and Chief Executive Officer

Splunk Inc.

270 Brannan Street

San Francisco, California 94107

(415) 848-8400

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

Copies to:

**Jeffrey D. Saper
Jon C. Avina
Calise Y. Cheng**

Wilson Sonsini Goodrich & Rosati, P.C.

650 Page Mill Road

Palo Alto, California 94304

(650) 493-9300

Leonard R. Stein

Scott A. Morgan

Weilyn L. Wood

Splunk Inc.

270 Brannan Street

San Francisco, California 94107

(415) 848-8400

Indicate by 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.

Large accelerated filer

Non-accelerated filer (do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common stock, \$0.001 par value per share:				
To be issued under the 2012 Equity Incentive Plan	6,858,474(2)\$	60.13(4)\$	412,400,041.62 \$	47,797.17
To be issued under the 2012 Employee Stock Purchase Plan	2,743,389(3)\$	51.12(5)\$	140,242,045.68 \$	16,254.06
TOTAL:	9,601,863		\$ 552,642,087.30 \$	64,051.23

(1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the 2012 Equity Incentive Plan (2012 Plan) and 2012 Employee Stock Purchase Plan (2012 ESPP) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.

(2) Represents an automatic increase of 5% of the outstanding shares on the last day of the immediately preceding fiscal year to the number of shares of the Registrant's common stock reserved for issuance under, and which annual increase is provided for, in the 2012 Plan.

(3) Represents an automatic increase of 2% of the outstanding shares on the last day of the immediately preceding fiscal year to the number of shares of the Registrant's common stock reserved for issuance under, and which annual increase is provided for, in the 2012 ESPP.

(4) Estimated in accordance with Rule 457(c) and (h) solely for purposes of calculating the registration fee on the basis of \$60.13, the average of the high and low prices of the Registrant's common stock as reported on the NASDAQ Global Select Market on March 22, 2017.

(5) Estimated in accordance with Rule 457 (c) and (h) solely for the purpose of calculating the registration fee on the basis of 85% of \$60.13, the average of the high and low prices of the Registrant's common stock as reported on the NASDAQ Global Select Market on March 22, 2017. Pursuant to the 2012 ESPP, which plan is incorporated by reference herein, the purchase price of the shares of common stock will be 85% of the lower of the fair market value of the common stock on the first trading day of the offering period or on the last day of the offering period.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Splunk Inc. (the Registrant) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the Commission):

(1) The Registrant's Annual Report on Form 10-K for the fiscal year ended January 31, 2017, filed with the Commission on March 29, 2017 pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the Exchange Act);

(2) All other reports of the Registrant filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant's Annual Report referred to in (1) above (other than information in any Current Report on Form 8-K deemed to have been furnished and not filed in accordance with the rules of the Commission and, except as may be noted in any such Form 8-K, exhibits filed on such Form 8-K that are related to such information); and

(3) The description of the Registrant's Common Stock contained in the Company's Registration Statement on Form 8-A (File No. 001-35498) filed with the Commission on April 9, 2012, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a corporation's board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law, the Registrant's certificate of incorporation includes provisions that eliminate the personal liability of its directors and officers for monetary damages for breach of their fiduciary duty as directors and officers.

In addition, as permitted by Section 145 of the Delaware General Corporation Law, the certificate of incorporation and bylaws of the Registrant provide that:

- The Registrant shall indemnify its directors and officers for serving the Registrant in those capacities or for serving other business enterprises at the Registrant's request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if 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 Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- The Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- The Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification under the bylaws of the Registrant or the Delaware General Corporation Law.
- The Registrant will not be obligated pursuant to the bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors or brought to enforce a right to indemnification or otherwise required under the bylaws of the Registrant or applicable law.
- The rights conferred in the certificate of incorporation and bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- The Registrant may not retroactively amend the bylaw provisions to reduce its indemnification obligations to directors, officers, employees and agents.

The Registrant's policy is to enter into separate indemnification agreements with each of its directors and officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the Delaware General Corporation Law and also to provide for certain additional procedural protections. The Registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

These indemnification provisions and the indemnification agreements entered into between the Registrant and its officers and directors may be sufficiently broad to permit indemnification of the Registrant's officers and directors for liabilities (including reimbursement of expenses

incurred) arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Form	Incorporated by Reference File No.	Reference Exhibit	Filing Date
4.1	Specimen common stock certificate of the Registrant.	S-1/A	333-178988	4.1	April 6, 2012
4.2	2012 Equity Incentive Plan.	S-1/A	333-178988	10.3	April 6, 2012
4.3	Form of Stock Option Award Agreement under the 2012 Equity Incentive Plan.	8-K	001-35498	10.1	April 24, 2012
4.4	Form of Restricted Stock Unit Award Agreement under the 2012 Equity Incentive Plan.	8-K	001-35498	10.2	April 24, 2012
4.5	Form of Performance Unit Award Agreement under the 2012 Equity Incentive Plan	10-Q	001-35498	10.1	June 9, 2015

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4.6	2012 Employee Stock Purchase Plan.	S-1/A	333-178988	10.4	April 6, 2012
4.7	Form of Enrollment/Subscription Agreement under the 2012 Employee Stock Purchase Plan.	8-K	001-35498	10.3	April 24, 2012
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.				
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.				
23.2	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1 hereto).				
24.1	Power of Attorney (contained on signature page hereto).				

Item 9. Undertakings.

A. The undersigned Registrant hereby undertakes:

(1) 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;

(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 percent 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)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

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(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) 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.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 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 of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Francisco, State of California, on the 29th day of March, 2017.

SPLUNK INC.

By: */s/ Douglas S. Merritt*
 Douglas S. Merritt
 President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Douglas S. Merritt, David F. Conte and Leonard R. Stein, and each of them, as his true and lawful attorneys-in-fact and agents with full power of substitution, for him in any and all capacities, to sign the Registration Statement on Form S-8 of Splunk Inc., and any or all amendments (including post-effective amendments thereto), 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 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his 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, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<i>/s/ Douglas S. Merritt</i> Douglas S. Merritt	President and Chief Executive Officer (Principal Executive Officer)	March 29, 2017
<i>/s/ David F. Conte</i> David F. Conte	Senior Vice President and Chief Financial Officer (Principal Accounting and Financial Officer)	March 29, 2017
<i>/s/ Godfrey R. Sullivan</i> Godfrey R. Sullivan	Chairman and Director	March 29, 2017
<i>/s/ Mark T. Carges</i> Mark T. Carges	Director	March 29, 2017
<i>/s/ Amy L. Chang</i> Amy L. Chang	Director	March 29, 2017
<i>/s/ John G. Connors</i> John G. Connors	Director	March 29, 2017

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/s/ David M. Hornik David M. Hornik	Director	March 29, 2017
/s/ Patricia B. Morrison Patricia B. Morrison	Director	March 29, 2017
/s/ Thomas M. Neustaetter Thomas M. Neustaetter	Director	March 29, 2017
/s/ Stephen G. Newberry Stephen G. Newberry	Director	March 29, 2017
/s/ Graham V. Smith Graham V. Smith	Director	March 29, 2017

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