

Square, Inc.
Form 8-K
May 25, 2018

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

May 22, 2018

Square, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

001-37622
(Commission

File Number)

80-0429876
(IRS Employer

Identification No.)

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1455 Market Street, Suite 600

San Francisco, CA 94103

(Address of principal executive offices, including zip code)

(415) 375-3176

(Registrant's telephone number, including area code)

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 (see General Instruction A.2. below):

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))

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.

Purchase Agreement

On May 22, 2018, Square, Inc. (the *Company*) entered into a purchase agreement (the *Purchase Agreement*) with Goldman Sachs & Co. LLC (the *Initial Purchaser*), to issue and sell \$750 million aggregate principal amount of 0.50% Convertible Senior Notes due 2023 (the *Notes*) in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the *Securities Act*). The Notes were issued to the Initial Purchaser pursuant to an exemption from the registration requirements of the Securities Act afforded by Section 4(a)(2) of the Securities Act. In addition, the Company granted the Initial Purchaser a 30-day option to purchase up to an additional \$112.5 million aggregate principal amount of Notes on the same terms and conditions to cover over-allotments. The Initial Purchaser exercised its over-allotment option in full on May 24, 2018, and a total of \$862.5 million aggregate principal amount of Notes were issued on May 25, 2018.

The Purchase Agreement includes customary representations, warranties and covenants by the Company and customary closing conditions. Under the terms of the Purchase Agreement, the Company has agreed to indemnify the Initial Purchaser against certain liabilities.

The foregoing description of the Purchase Agreement is qualified in its entirety by reference to the Purchase Agreement attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Convertible Note Hedge Transactions

On May 22, 2018 and May 24, 2018, in connection with the pricing of the Notes and the exercise of the Initial Purchaser's over-allotment option, respectively, the Company entered into privately negotiated convertible note hedge transactions (the *Convertible Note Hedge Transactions*) with respect to the Company's Class A common stock, par value \$0.0000001 per share (the *Class A Common Stock*), with each of Barclays Bank PLC, Citibank, N.A., Goldman Sachs & Co. LLC and Royal Bank of Canada (collectively, the *Counterparties*). The Company paid an aggregate amount of approximately \$172.6 million to the Counterparties for the Convertible Note Hedge Transactions. The Convertible Note Hedge Transactions collectively cover, subject to anti-dilution adjustments substantially similar to those in the Notes, approximately 11.1 million shares of Class A Common Stock, the same number of shares underlying the Notes, at a strike price that initially corresponds to the initial conversion price of the Notes, and are exercisable upon conversion of the Notes. The Convertible Note Hedge Transactions will expire upon the maturity of the Notes.

The Convertible Note Hedge Transactions are expected generally to reduce the potential dilution to the Class A Common Stock upon conversion of the Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted Notes, as the case may be, in the event that the market price per share of the Class A Common Stock, as measured under the terms of the Convertible Note Hedge Transactions, is greater than the strike price of those Convertible Note Hedge Transactions.

The Convertible Note Hedge Transactions are separate transactions, entered into by the Company with the Counterparties, and are not part of the terms of the Notes. Holders of the Notes will not have any rights with respect to the Convertible Note Hedge Transactions.

The foregoing description of the Convertible Note Hedge Transactions is qualified in its entirety by reference to the copy of the form of confirmation for the Convertible Note Hedge Transactions attached as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Warrant Transactions

In addition, concurrently with entering into the Convertible Note Hedge Transactions, on May 22, 2018 and May 24, 2018, the Company separately entered into privately negotiated warrant transactions, whereby the Company sold to the Counterparties warrants (the Warrants) to acquire, collectively, subject to anti-dilution adjustments, approximately 11.1 million shares of the Class A Common Stock at an initial strike price of approximately \$109.26 per share, which represents a premium of approximately 100% over the last reported sale price of the Class A Common Stock of \$54.63 on May 22, 2018. The Company received aggregate proceeds of approximately \$112.1 million from the sale of the Warrants to the Counterparties. The Warrants were sold in private placements to the Counterparties pursuant to an exemption from the registration requirements of the Securities Act afforded by Section 4(a)(2) of the Securities Act.

If the market price per share of the Class A Common Stock, as measured under the terms of the Warrants, exceeds the strike price of the Warrants, the Warrants could have a dilutive effect, unless the Company elects, subject to certain conditions, to settle the Warrants in cash.

The Warrants are separate transactions, entered into by the Company with the Counterparties, and are not part of the terms of the Notes. Holders of the Notes will not have any rights with respect to the Warrants.

The foregoing description of the Warrants is qualified in its entirety by reference to the copy of the form of confirmation for the Warrants attached as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

Indenture

On May 25, 2018, the Company entered into an Indenture relating to the issuance of the Notes (the Indenture), by and between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the Trustee). The Notes will bear interest at a rate of 0.50% per year, payable semi-annually on May 15 and November 15 of each year, beginning on November 15, 2018. The Notes will mature on May 15, 2023, unless earlier repurchased by the Company or converted pursuant to their terms.

The initial conversion rate of the Notes is 12.8456 shares of Class A Common Stock per \$1,000 principal amount of Notes (which is equivalent to an initial conversion price of approximately \$77.85 per share). The conversion rate will be subject to adjustment upon the occurrence of certain specified events but will not be adjusted for accrued and unpaid interest. In addition, upon the occurrence of a make-whole fundamental change (as defined in the Indenture), the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert its Notes in connection with such make-whole fundamental change.

Prior to the close of business on the business day immediately preceding February 15, 2023, the Notes will be convertible only under the following circumstances: (1) during any calendar quarter commencing after September 30, 2018 (and only during such calendar quarter), if the last reported sale price of the Class A Common Stock for at least 20 trading days (whether or not consecutive) during the 30 consecutive trading day period ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period in which, for each trading day of that period, the trading price per \$1,000 principal amount of Notes for such trading day was less than 98% of the product of the last reported sale price of the Class A Common Stock and the conversion rate on each such trading day; or (3) upon the occurrence of specified corporate transactions. On or after February 15, 2023, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders of the Notes may convert all or a portion of their Notes regardless of the foregoing conditions. Upon conversion, the Notes will be settled in cash, shares of the Class A Common Stock or any combination thereof at the Company's option.

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The Company may not redeem the Notes prior to the maturity date, and no sinking fund is provided for the Notes. Upon the occurrence of a fundamental change (as defined in the Indenture) prior to the maturity date, holders may require the Company to repurchase all or a portion of the Notes for cash at a price equal to 100% of the principal amount of the Notes to be repurchased, plus any accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The Notes are the Company's general unsecured obligations and will rank senior in right of payment to any existing and future indebtedness that is contractually subordinated to the Notes; rank equal in right of payment with the Company's existing and future senior unsecured indebtedness that is not so subordinated, including the Company's 0.375% Convertible Senior Notes due 2022; effectively rank junior in right of payment to any of the Company's existing and future secured indebtedness to the extent of the value of the assets securing such indebtedness (including amounts outstanding under the Company's revolving credit agreement, as amended); and be structurally subordinated to all indebtedness and other liabilities (including trade payables) of subsidiaries of the Company.

The following events are considered events of default with respect to the Notes, which may result in the acceleration of the maturity of the Notes:

- (1) the Company defaults in any payment of interest on the Notes when due and payable and the default continues for a period of 30 days;
- (2) the Company defaults in the payment of principal on the Notes when due and payable at the stated maturity, upon any required repurchase, upon declaration of acceleration or otherwise;
- (3) failure by the Company to comply with its obligation to convert the Notes in accordance with the Indenture upon exercise of a holder's conversion right and such failure continues for a period of three business days;
- (4) failure by the Company to comply with its obligations under the Indenture with respect to consolidation, merger and sale of assets of the Company;
- (5) failure by the Company to give a fundamental change notice or notice of a specified corporate transaction when due with respect to the Notes;
- (6) failure by the Company to comply with any of its other agreements contained in the Notes or the Indenture, for a period 60 days after written notice from the Trustee or the holders of at least 25% in principal amount of the Notes then outstanding has been received;
- (7) default by the Company or any of its significant subsidiaries (as defined in the Indenture) with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$100.0 million (or its foreign currency equivalent) in the aggregate of the Company and/or any such subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and, in the case of clauses (i) and (ii), such default is not cured or waived, such acceleration is not rescinded or such indebtedness is not paid or discharged, as the case may be, within 30 days after notice to the Company by the Trustee or to the Company and the Trustee by holders of at least 25% in aggregate principal amount of Notes then outstanding in accordance with the Indenture; and
- (8) certain events of bankruptcy, insolvency or reorganization of the Company or any of its significant subsidiaries (as defined in the Indenture).

If such an event of default, other than an event of default described in clause (8) above with respect to the Company, occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding Notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare 100% of the principal of, and accrued and unpaid interest, if any, on, all the Notes to be due and payable. In case of certain events of bankruptcy, insolvency or reorganization involving the Company, 100% of the principal of, and accrued and unpaid interest on, the Notes will automatically become due and payable. Upon such a declaration

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of acceleration, such principal and accrued and unpaid interest on the Notes, if any, will be due and payable immediately.

The foregoing description is qualified in its entirety by reference to the text of the Indenture and the Form of 0.50% Convertible Senior Note due 2023, which are attached as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

The Initial Purchaser and Counterparties, or, in each case, their affiliates, have engaged in, and may in the future engage in, other commercial dealings with the Company or its affiliates in the ordinary course of business, including in connection with the Company's revolving credit agreement, as amended. They have received, or may in the future receive, customary fees and commissions for those transactions.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 is incorporated herein by reference.

Item 8.01 Other Events.

On May 23, 2018, the Company issued a press release announcing the pricing of its offering of \$750 million aggregate principal amount of Notes in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
4.1	<u>Indenture, dated May 25, 2018, by and between Square, Inc. and The Bank of New York Mellon Trust Company, N.A.</u>
4.2	<u>Form of 0.50% Convertible Senior Note due 2023 (included in Exhibit 4.1).</u>
10.1	<u>Purchase Agreement, dated May 22, 2018, by and between Square, Inc. and Goldman Sachs & Co. LLC.</u>
10.2	<u>Form of Convertible Note Hedge Confirmation.</u>
10.3	<u>Form of Warrant Confirmation.</u>
99.1	<u>Press Release, dated May 23, 2018.</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.

SQUARE, INC.

By: /s/ Jason S. Gao
Jason S. Gao

Assistant Secretary

Date: May 25, 2018