

INSTRUCTURE INC
Form S-8
November 13, 2015

As filed with the Securities and Exchange Commission on November 13, 2015

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Instructure, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
Incorporation or organization)

6330 South 3000 East, Suite 700

26-3505687
(I.R.S. Employer
Identification No.)

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Salt Lake City, UT 84121

(800) 203-6755

(Address of principal executive offices) (Zip code)

Instructure, Inc. 2010 Equity Incentive Plan

Instructure, Inc. 2015 Equity Incentive Plan

Instructure, Inc. 2015 Employee Stock Purchase Plan

(Full titles of the plans)

Joshua L. Coates

Chief Executive Officer

6330 South 3000 East, Suite 700

Salt Lake City, UT 84121

(800) 203-6755

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

Copies to:

John T. McKenna

Alan Hambelton

Cooley LLP

3175 Hanover Street

Palo Alto, CA 94304

(650) 843-5000

Matthew A. Kaminer

Senior Vice President, General

Counsel and Secretary

Instructure, Inc.

6330 South 3000 East, Suite 700

Salt Lake City, UT 84121

(800) 203-6755

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 Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) 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, par value \$0.0001 per share | | | | |
| 2015 Equity Incentive Plan | 2,000,000 (2) | \$ 16.00 (5) | \$ 32,000,000.00 | \$ 3,224.00 |
| 2015 Employee Stock Purchase Plan | 333,333 (3) | \$ 13.60 (6) | \$ 4,533,328.80 | \$ 457.00 |
| 2010 Equity Incentive Plan | 4,163,680 (4) | \$ 6.59 (7) | \$ 27,438,651.20 | \$ 2,764.00 |
| Total | 6,497,013 | | \$ 63,971,980.00 | \$ 6,445.00 |

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of Registrant's common stock that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected that results in an increase to the number of outstanding shares of Registrant's common stock.
- (2) Represents shares of common stock reserved for future issuance under the Registrant's 2015 Equity Incentive Plan (the 2015 Plan). The number of shares reserved for issuance under the 2015 Plan will automatically increase on January 1 of each year, starting on January 1, 2016 and continuing through January 1, 2025, by the lesser of (a) 4.5% of the total number of shares of the Registrant's capital stock outstanding on December 31 of the preceding calendar year and (b) a number determined by the Registrant's board of directors.
- (3) Represents shares of common stock reserved for future issuance under the Registrant's 2015 Employee Stock Purchase Plan (the 2015 ESPP). The number of shares reserved for issuance under the 2015 ESPP will automatically increase on January 1 of each year, starting on January 1, 2016 and continuing through January 1, 2025, by the lesser of (a) 1% of the total number of shares of the Registrant's capital stock outstanding on December 31 of the preceding calendar year, (b) 333,333 shares of common stock or (c) a number determined by the Registrant's board of directors.

- (4) Represents shares of common stock reserved for issuance pursuant to stock awards outstanding under the Registrant's 2010 Equity Incentive Plan (the "2010 Plan") as of the date of this Registration Statement.
- (5) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of (a) the grant price for outstanding restricted stock units under the 2015 Plan and (b) the initial public offering price of \$16.00 per share of the common stock as set forth in the Registrant's Registration Statement on Form S-1 (File No. 333-207349) declared effective on November 12, 2015 (the "Initial Public Offering Price") with respect to the balance of shares to be registered pursuant to the 2015 Plan. The chart below details the calculations of the registration fee:

| Securities | Number of Shares of Common Stock | Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|--|-----------------------------|---|-------------------------------|
| Common Stock, par value \$0.0001 per share, upon the grant of restricted stock units granted under the 2015 Plan | 76,562 | \$ 16.00 (7)(b) | \$ 1,224,992.00 | \$ 124.00 |
| Common Stock, par value \$0.0001 per share, reserved for future grant under the 2015 Plan | 1,923,438 | \$ 16.00 (7)(c) | \$ 30,775,008.00 | \$ 3,100.00 |
| Total | 2,000,000 | | \$ 32,000,000.00 | \$ 3,224.00 |

- (6) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of the Initial Public Offering Price, multiplied by 85%, the percentage of the price per share applicable to purchases under the 2015 ESPP.
- (7) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of the weighted-average exercise price for outstanding options granted pursuant to the 2010 Plan.

PART II

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by Instructure, Inc. (the Registrant) with the Securities and Exchange Commission are incorporated by reference into this Registration Statement:

(a) The Registrant's prospectus filed on November 13, 2015 pursuant to Rule 424(b) under the Securities Act relating to the Registration Statement on Form S-1 (File No. 333-207349), which contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed.

(b) The description of the Registrant's Common Stock which is contained in the Registration Statement on Form 8-A filed on November 10, 2015 (File No. 001-37629) under the Securities Exchange Act of 1934, as amended (the Exchange Act), including any amendment or report filed for the purpose of updating such description.

(c) All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement 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. 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 that 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

See the description of the Registrant's common stock contained in the Registration Statement on Form S-1 (File No. 333-207349).

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 court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act.

The Registrant's amended and restated certificate of incorporation and amended and restated bylaws provide that the Registrant will indemnify its directors and executive officers, and may indemnify its other officers, employees and other agents, to the fullest extent permitted by the Delaware General Corporation Law. Delaware General Corporation Law provides that directors of the Registrant will not be personally liable for monetary damages for any breach of

fiduciary duties as directors, except liability:

for any transaction from which the director derives an improper personal benefit;

for any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;

under Section 174 of the Delaware General Corporation Law (unlawful payment of dividends or redemption of shares); or

for any breach of a director's duty of loyalty to the corporation or its stockholders.

The Registrant has entered into indemnification agreements with each of its directors and executive officers. These agreements provide for the indemnification of such persons for all reasonable expenses and liabilities incurred in connection with any action or proceeding brought against them by reason of the fact that they are or were serving in such capacity.

The Registrant may maintain insurance policies that indemnify its directors and officers against various liabilities arising under the Securities Act and the Exchange Act that might be incurred by any director or officer in his capacity as such.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS

| Exhibit Number | Description | Incorporated by Reference | | | Filing Date |
|----------------|--|---------------------------|-------------|---------|------------------|
| | | Schedule Form | File Number | Exhibit | |
| 4.1 | Amended and Restated Certificate of Incorporation, as currently in effect. | S-1 | 333-207349 | 3.1 | November 2, 2015 |
| 4.2 | Form of Amended and Restated Certificate of Incorporation, to be effective upon the closing of the Registrant's initial public offering. | S-1 | 333-207349 | 3.2 | October 9, 2015 |
| 4.3 | Amended and Restated Bylaws, as currently in effect. | S-1 | 333-207349 | 3.3 | October 9, 2015 |
| 4.4 | Form of Amended and Restated Bylaws, to be effective upon the closing of the Registrant's initial public offering. | S-1 | 333-207349 | 3.4 | October 9, 2015 |
| 4.5 | Form of Common Stock Certificate. | S-1 | 333-207349 | 4.1 | November 2, 2015 |
| 5.1* | Opinion of Cooley LLP. | | | | |
| 23.1* | Consent of Cooley LLP (included in Exhibit 5.1). | | | | |
| 23.2* | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. | | | | |
| 24.1* | Power of Attorney (included on the signature page of this Form S-8). | | | | |
| 99.1 | 2010 Equity Incentive Plan and Forms of Incentive Stock Option Agreement and Nonqualified Stock Option Agreement. | S-1 | 333-207349 | 10.3 | November 2, 2015 |
| 99.2 | 2015 Equity Incentive Plan. | S-1 | 333-207349 | 10.4 | November 2, 2015 |
| 99.3 | | S-1 | 333-207349 | 10.5 | October 9, 2015 |

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Form of Stock Option Agreement, Notice of Exercise and Stock Option Grant Notice under the 2015 Equity Incentive Plan.

| | | | | | |
|------|--|-----|------------|------|------------------|
| 99.4 | Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Award Agreement under the 2015 Equity Incentive Plan. | S-1 | 333-207349 | 10.6 | October 9, 2015 |
| 99.5 | 2015 Employee Stock Purchase Plan. | S-1 | 333-207349 | 10.7 | November 2, 2015 |

* Filed herewith.

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;

(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 reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(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.

(d) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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 Section 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 Salt Lake City, State of Utah, on this 13th day of November, 2015.

INSTRUCTURE, INC.

By: /s/ Joshua L. Coates
Joshua L. Coates

Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Joshua L. Coates, Steven B. Kaminsky and Matthew A. Kaminer, and each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in their name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), 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 or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, 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.

| Signature | Title | Date |
|------------------------|---|----------------------|
| /s/ Joshua L. Coates | Chief Executive Officer and Director | November 13, 2015 |
| Joshua L. Coates | <i>(Principal Executive Officer)</i> | |
| /s/ Steven B. Kaminsky | Chief Financial Officer | November 13, 2015 |
| Steven B. Kaminsky | <i>(Principal Financial and Accounting Officer)</i> | |
| /s/ Steven A. Collins | Director | November 13, 2015 |
| Steven A. Collins | Director | |
| William M. Conroy | | |
| /s/ Byron B. Deeter | Director | |

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| | | |
|---------------------------|----------|----------------------|
| Byron B. Deeter | | November 13, 2015 |
| /s/ E. Nicholas Efstratis | Director | November 13, 2015 |
| E. Nicholas Efstratis | | |
| /s/ Ellen Levy | Director | November 13, 2015 |
| Ellen Levy | | |
| /s/ Adam D. Marcus | Director | November 13, 2015 |
| Adam D. Marcus | | |
| /s/ Lloyd G. Waterhouse | Director | November 13, 2015 |
| Lloyd G. Waterhouse | | |
| /s/ Brian C. Whitmer | Director | November 13, 2015 |
| Brian C. Whitmer | | |

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