RUBICON PROJECT, INC.
Form S-8
July 28, 2017

As filed with the Securities and Exchange Commission on July 28, 2017

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

THE RUBICON PROJECT, INC.

(Exact name of registrant as specified in its charter)

Delaware	**20-8881738**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

12181 Bluff Creek Drive, 4th Floor

Los Angeles, CA 90094

(Address of Principal Executive Offices, Zip Code)

nToggle, Inc. 2014 Equity Incentive Plan

The Rubicon Project, Inc. 2014 Equity Incentive Plan, as amended and restated

The Rubicon Project, Inc. 2014 Inducement Grant Equity Incentive Plan, as amended and restated

(Full title of the plans)

Brian W. Copple

General Counsel

The Rubicon Project, Inc.

12181 Bluff Creek Drive, 4th Floor

Los Angeles, CA 90094

(Name and address of agent for service)

(310) 207-0272

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company, and emerging growth 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

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 7(a)(2)(B) of the Securities Act.

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 of The Rubicon Project, Inc. issuable upon exercise of assumed stock options under the nToggle, Inc. 2014 Equity Incentive Plan	432,482(2)	$0.51(3)	$220,565.82(3)	$25.56
Common Stock of The Rubicon Project, Inc. subject to shares of restricted stock outstanding under the nToggle, Inc. 2014 Equity Incentive Plan, as assumed by the Registrant	77,499(2)	$5.03(4)	$389,819.97(4)	$45.18
Common Stock of The Rubicon Project, Inc. to be issued pursuant to future awards under The Rubicon Project, Inc. 2014 Equity Incentive Plan, as amended and restated (the Rubicon Plan)	5,000,000(5)	$5.03(4)	$25,150,000(4)	$2,914.89
Common Stock of The Rubicon Project, Inc. to the issued pursuant to future awards under The Rubicon Project, Inc. 2014 Inducement Grant Equity Incentive Plan, as amended and restated (the Inducement Plan)	1,700,000(6)	$5.03(4)	$8,551,000(4)	$991.06
Total	7,209,981		$34,311,385.80(3)(4)	$3,976.69

(1) In addition to the number of shares of the common stock, par value $0.00001 per share (the Common Stock) of the Registrant stated above, pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers any additional shares of Common Stock that become issuable 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 shares of the Registrant s Common Stock issuable pursuant to outstanding stock options and subject to shares of restricted stock previously granted under the nToggle, Inc. 2014 Equity Incentive Plan (the nToggle Plan), which were assumed by the Registrant on July 14, 2017 pursuant to the Agreement and Plan of Merger, dated as of July 11, 2017, by and among the Registrant, nToggle, Inc. (nToggle), Caviar Acquisition Corp., a wholly owned subsidiary of the Registrant (Merger Sub), Shareholder Representative Services LLC, solely in its capacity as the initial Holder Representative thereunder, and the individuals signing joinder agreements in connection therewith (the Merger Agreement), pursuant to which nToggle merged (the Merger) with and into Merger Sub, with nToggle surviving the Merger.

(3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act, based upon the weighted-average exercise price per share of the options assumed by the Registrant.

(4)

Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) and Rule 457(c) under the Securities Act, based upon the average of the high and low prices of the Registrant s Common Stock on July 27, 2017.

(5) Includes shares of the Registrant s Common Stock issuable pursuant to future awards under the Rubicon Plan as a result of the Merger in accordance with the provisions of the Rubicon Plan and NYSE Listed Company Manual Section 303A.08.

(6) Represents shares of the Registrant s Common Stock issuable pursuant to outstanding and future awards under the Inducement Plan in accordance with the provisions of the Inducement Plan and NYSE Listed Company Manual Section 303A.08.

EXPLANATORY NOTE

The Registrant is filing this Registration Statement to register (i) 432,482 shares of Common Stock, under the Securities Act, issuable in connection with certain stock options outstanding under the nToggle Plan, (ii) 77,499 shares of restricted stock issued under the nToggle Plan, as assumed by the Registrant, (iii) 5,000,000 shares that may be issued pursuant to awards under the Rubicon Plan in accordance with the provisions thereof and NYSE Listed Company Manual Section 303A.08, and (iv) 1,700,000 shares that may be issued pursuant to awards under the Inducement Plan in accordance with the provisions thereof and NYSE Listed Company Manual Section 303A.08.

On July 14, 2017, pursuant to the terms of the Merger Agreement, nToggle merged with and into Merger Sub, with nToggle surviving the Merger as a wholly owned subsidiary of the Registrant. In connection with the Merger, the Registrant assumed the nToggle Plan and the shares of restricted stock and stock options outstanding under the nToggle Plan on July 14, 2017. The aggregate number of shares of the Registrant s Common Stock subject to the awards outstanding under the nToggle Plan is 509,981. In addition, the shares that were approved by nToggle stockholders and that remained available or become available for future grants under the nToggle Plan will be available for grant under the Rubicon Plan, adjusted to reflect the Merger, in accordance with NYSE Listed Company Manual Section 303A.08.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I will be sent or given to employees as specified by Rule 428(b)(1) under the Securities Act. Such documents are not being filed with the U.S. Securities and Exchange Commission (the Commission) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The rules of the Commission allow us to incorporate by reference information into this Registration Statement. The information incorporated by reference is considered to be a part of this Registration Statement, and information that we file later with the Commission will automatically update and supersede this information. This Registration Statement incorporates by reference the documents listed below (other than portions of these documents that are either (1) described in paragraphs (d)(1), (d)(2), (d)(3) or (e)(5) of Item 407 of Regulation S-K promulgated by the Commission or (2) furnished under applicable Commission rules rather than filed and exhibits furnished in connection with such items):

1. The Registrant s Annual Report on Form 10-K filed with the Commission on March15, 2017;

2. All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), since the end of the fiscal year covered by the Annual Report; and

3. The description of the Common Stock contained in the Registrant s Registration Statement on Form 8-A filed with the Commission under Section 12(b) Exchange Act on March 28, 2014, including any amendments or reports filed for the purpose of updating such description.

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date hereof, but prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered hereby have been sold or that deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Notwithstanding the foregoing, unless specifically stated to the contrary in such filing, none of the information that the Registrant discloses under Items 2.02 or 7.01 of any Current Report on Form 8-K that it may from time to time furnish to the Commission will be incorporated by reference into, or otherwise be included in or deemed to be a part of, this Registration Statement.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement. Subject to the foregoing, all information in this Registration Statement is so qualified in its entirety by the information appearing in the documents incorporated herein by reference.

Item 4. Description of Securities.
Not applicable.

Item 5. Interests of Named Experts and Counsel.
The validity of the issuance of the shares of Common Stock will be passed on for the Company by Jonathan Feldman, Esq., Deputy General Counsel and Assistant Secretary of the Company, who has received awards under the Rubicon Plan and is eligible to receive additional awards under the Rubicon Plan.

Item 6. Indemnification of Directors and Officers.
The Registrant is a Delaware corporation. Section 145 of the General Corporation Law of the State of Delaware (the DGCL) allows for the indemnification of officers, directors and other corporate agents in terms sufficiently broad to indemnify such persons under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act. Article X of the Registrant s Sixth Amended and Restated Certificate of Incorporation and Article VI of the Registrant s Amended and Restated Bylaws authorize indemnification of the Company s directors, officers, employees and other agents to the extent and under the circumstances permitted by the DGCL.

The Registrant s Amended and Restated Bylaws also expressly authorize the Registrant to carry directors and officers insurance providing indemnification to its directors and officers for some liabilities. The Registrant maintains directors and officers liability insurance.

In addition, the Registrant has entered into agreements to indemnify its directors and executive officers.

The above discussion of the DGCL and of the Registrant s Sixth Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws, and indemnification agreements is not intended to be exhaustive and is qualified in its entirety by such statute, certificate of incorporation, bylaws and indemnification agreements.

Item 7. Exemption from Registration Claimed.
Not applicable.

Item 8. Exhibits.
The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

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;

(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 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(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 the Registration Statement;

(2) 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 therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

(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, 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 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 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 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Los Angeles, State of California, on July 28, 2017.

The Rubicon Project, Inc.

By: /s/ David Day

Name: David Day
Title: Chief Financial Officer (principal financial and accounting officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Michael Barrett, David Day, Brian W. Copple, and Jonathan Feldman, and each of them, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and 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 any registration statement relating to the offering covered by this Registration Statement and filed pursuant to Rule 462 under the Securities Act, and to file the same, with exhibits thereto and other documents in connection therewith, with the 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, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully so or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, the following persons have signed this Registration Statement in the capacities and on the date(s) indicated.

Signature	Title	Date
/s/ Michael Barrett Michael Barrett	President, Chief Executive Officer and Director (*Principal Executive Officer*)	July 28, 2017
/s/ Frank Addante Frank Addante	Founder and Chairman	July 28, 2017
Sumant Mandal	Director	July 28, 2017

	Director	July 28, 2017
Lewis W. Coleman		
/s/ Lisa L. Troe	Director	July 28, 2017
Lisa. L. Troe		
/s/ Robert J. Frankenberg	Director	July 28, 2017
Robert J. Frankenberg		
/s/ Robert F. Spillane	Director	July 28, 2017
Robert F. Spillane		

EXHIBIT INDEX

Exhibit No.	Exhibit Description
4.1*	nToggle, Inc. 2014 Equity Incentive Plan.
4.2	The Rubicon Project, Inc. 2014 Equity Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.1 to the Registrant s Current Report on Form 8-K filed with the Commission on April 8, 2016).
4.3	The Rubicon Project, Inc. 2014 Inducement Grant Equity Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.2 to the Registrant s Current Report on Form 8-K filed with the Commission on April 8, 2016).
5.1*	Opinion of Jonathan Feldman, Esq.
23.1*	Consent of Jonathan Feldman, Esq. (included in Exhibit 5.1).
23.2*	Consent of PricewaterhouseCoopers LLP.
24.1*	Power of Attorney (included on signature page hereto).

* Filed herewith.