

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

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

ACV Auctions Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-2415221
(I.R.S. Employer
Identification Number)

640 Ellicott Street, #321
Buffalo, New York 14203
(800) 553-4070

(Address of principal executive offices) (Zip code)

ACV Auctions Inc. 2021 Equity Incentive Plan
ACV Auctions Inc. 2021 Employee Stock Purchase Plan
(Full titles of the plans)

Leanne Fitzgerald
Chief Legal Officer
ACV Auctions Inc.
640 Ellicott Street, #321
Buffalo, New York 14203
(800) 553-4070

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

Copies to:

William Zerella
Chief Financial Officer
ACV Auctions Inc.
640 Ellicott Street, #321
Buffalo, New York 14203
(800) 553-4070

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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
Non-accelerated filer

Accelerated filer
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 pursuant to Section 7(a)(2)(B) of the Securities Act.

REGISTRATION OF ADDITIONAL SHARES
PURSUANT TO GENERAL INSTRUCTION E

Pursuant to General Instruction E of Form S-8, ACV Auctions Inc. (the "**Registrant**") is filing this Registration Statement with the Securities and Exchange Commission (the "**Commission**") to register (i) 7,922,811 additional shares of its Class A common stock under the 2021 Equity Incentive Plan (the "**2021 Plan**"), pursuant to the provisions of the 2021 Plan providing for an automatic increase in the number of shares Class A common stock reserved and available for issuance under the 2021 Plan on January 1, 2023, and (ii) 1,584,562 additional shares of its Class A common stock under the 2021 Employee Stock Purchase Plan (the "**2021 ESPP**"), pursuant to the provisions of the 2021 ESPP providing for an automatic increase in the number of shares of Class A common stock reserved and available for issuance under the 2021 ESPP on January 1, 2023. In accordance with the instructional note to Part I of Form S-8 as promulgated by the Commission, the information specified by Part I of the Form S-8 has been omitted from this Registration Statement.

PART II

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by the Registrant with the Commission are incorporated by reference into this Registration Statement:

(a) The contents of the Registrant's Registration Statement on Form S-8 (File No 333-255309), filed with the Commission on February 23, 2022.

(b) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on March 1, 2023.

(c) The description of the Registrant's Class A common stock contained in Exhibit 4.2 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on February 28, 2022, including any amendments or reports filed for the purpose of updating such description.

(d) All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (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 8. EXHIBITS

Exhibit Number	Description	Incorporated by Reference			Filing Date
		Schedule Form	File Number	Exhibit	
4.1	Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.	8-K	001-40256	3.1	March 26, 2021
4.2	Amended and Restated Bylaws of the Registrant, as currently in effect.	8-K	001-40256	3.2	March 26, 2021
4.3	Form of Class A Common Stock Certificate of the Registrant.	S-1/A	333-253617	4.1	March 15, 2021
5.1*	Opinion of Davis Polk & Wardwell LLP.				
23.1*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.				
23.2*	Consent of Davis Polk & Wardwell LLP (included in Exhibit 5.1).				
24.1*	Power of Attorney (included on the signature page of this Form S-8).				
99.1	ACV Auctions Inc. 2021 Equity Incentive Plan, and forms of agreements thereunder.	S-1/A	333-253617	10.3	March 15, 2021
99.2	ACV Auctions Inc. 2021 Employee Stock Purchase Plan.	S-1/A	333-253617	10.4	March 15, 2021
107*	Filing fee table.				

* Filed herewith

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 Buffalo, State of New York, on this 1st day of March, 2023.

ACV AUCTIONS INC.

By: /s/ Leanne Fitzgerald

Name: Leanne Fitzgerald

Title: Chief Legal Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Leanne Fitzgerald and William Zerella and each of them, individually, 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 sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all 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, 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, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ George Chamoun</u> George Chamoun	Chief Executive Officer and Director (Principal Executive Officer)	3/1/2023
<u>/s/ William Zerella</u> William Zerella	Chief Financial Officer (Principal Financial and Accounting Officer)	3/1/2023
<u>/s/ Kirsten Castillo</u>		

Kirsten Castillo	Director	2/28/2023
/s/ Robert P. Goodman		
Robert P. Goodman	Director	2/28/2023
/s/ Brian Hirsch		
Brian Hirsch	Director	2/28/2023
/s/ René F. Jones		
René F. Jones	Director	2/28/2023
/s/ Eileen A. Kamerick		
Eileen A. Kamerick	Director	2/28/2023
/s/ Brian Radecki		
Brian Radecki	Director	2/28/2023

OPINION OF DAVIS POLK & WARDWELL LLP

March 1, 2023

ACV Auctions, Inc.
640 Ellicott Street, #321
Buffalo, New York 14203

Ladies and Gentlemen:

We have acted as special counsel to ACV Auctions, Inc., a Delaware corporation (the “**Company**”), and are delivering this opinion in connection with the Company’s Registration Statement on Form S-8 (the “**Registration Statement**”) filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, for the registration of (i) 7,922,811 shares (the “**Shares**”) of the Company’s common stock, par value \$0.0001 per share, that were added to the shares of common stock authorized for issuance pursuant to the Company’s 2021 Equity Incentive Plan (the “**2021 Plan**”) and (ii) 1,584,562 Shares of the Company’s common stock that were added to the shares of common stock authorized for issuance pursuant to the Company’s 2021 Employee Stock Purchase Plan (the “**ESPP**,” and together with the 2021 Plan, the “**Plans**”). We, as your counsel, have examined originals or copies of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

In rendering the opinion expressed herein, we have, without independent inquiry or investigation, assumed that (i) all documents submitted to us as originals are authentic and complete, (ii) all documents submitted to us as copies conform to authentic, complete originals, (iii) all signatures on all documents that we reviewed are genuine, (iv) all natural persons executing documents had and have the legal capacity to do so, (v) all statements in certificates of public officials and officers of the Company that we reviewed were and are accurate and (vi) all representations made by the Company as to matters of fact in the documents that we reviewed were and are accurate.

On the basis of the foregoing, we are of the opinion that the Shares have been duly authorized and, when and to the extent issued pursuant to the Plans upon receipt by the Company of the consideration for the Shares specified therein, will be validly issued, fully paid and non-assessable.

We are members of the Bar of the State of New York and the foregoing opinion is limited to the laws of the State of New York and the General Corporation Law of the State of Delaware.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Davis Polk & Wardwell LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-255309) pertaining to the 2015 Long-Term Incentive Plan, 2021 Equity Incentive Plan and 2021 Employee Stock Purchase Plan,
- (2) Registration Statement (Form S-8 No. 333-256222) pertaining to the 2015 Long-Term Incentive Plan, of our reports dated March 1, 2023, with respect to the consolidated financial statements of ACV Auctions Inc. and the effectiveness of internal control over financial reporting of ACV Auctions Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2022.

/s/ Ernst & Young LLP

New York, NY

March 1, 2023

Calculation of Filing Fee Tables

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

ACV Auctions Inc.

(Exact Name of Registrant as Specified in Its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title (1)	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee (6)
Fees to be Paid	Equity	Class A Common Stock, par value \$0.001 per share, 2021 Equity Incentive Plan	Rule 457(c) and Rule 457(h) (2)	7,922,811 ⁽⁴⁾	\$12.17	\$96,420,610	\$110.20 per \$1,000,000	\$10,626
Fees to be Paid	Equity	Class A Common Stock, par value \$0.001 per share, 2021 Employee Stock Purchase Plan	Rule 457(c) and Rule 457(h) (3)	1,584,562 ⁽⁵⁾	\$12.17	\$19,284,120	\$110.20 per \$1,000,000	\$2,126
	Total Offering Amounts					\$115,704,730		\$12,752
	Total Fee Offsets (7)							-
	Net Fee Due							\$12,752

- (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 the Registrant’s Class A 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 the Registrant’s Class A common stock.
- (2) Estimated in accordance with Rule 457(c) and (h) solely for the purpose of calculating the registration fee on the basis of the average of the high and low prices of the Registrant’s Class A common stock as reported on the Nasdaq Global Select Market on February 24, 2022.
- (3) Estimated in accordance with Rule 457(c) and (h) solely for the purpose of calculating the registration fee on the basis of the average of the high and low prices of the Registrant’s Class A common stock as reported on the Nasdaq Global Select Market on February 24, 2022,.
- (4) Represents an automatic annual increase equal to 5.0% of the total number of shares of the Registrant’s Class A common stock and Class B common stock outstanding on December 31 of the preceding year, which annual increase is provided by the Registrant’s 2021 Equity Incentive Plan.
- (5) Represents an automatic increase equal to 1.0% of the total number of shares of the Registrant’s Class A common stock and Class B common stock outstanding on December 31 of the preceding year, which annual increase is provided by the Registrant’s 2021 Employee Stock Purchase Plan.
- (6) Rounded up to the nearest penny.
- (7) The Registrant does not have any fee offsets.