

STAMPS.COM INC

Form S-8

March 28, 2017

As filed with the Securities and Exchange Commission on March 28, 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

STAMPS.COM INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

77-0454966
(I.R.S. Employer Identification No.)

1990 E. Grand Avenue
El Segundo, CA 90245
(Address of Principal Executive Offices, including Zip Code)

Stamps.com Inc. 2010 Equity Incentive Plan, as amended
Stamps.com Inc. 2016 ShippingEasy Equity Inducement Plan
Management Incentive Plan
(Full title of the plan)

Seth Weisberg, Esq.
Chief Legal Officer and Secretary
Stamps.com Inc.
1990 E. Grand Avenue
El Segundo, CA 90245
(310) 482-5800
(Name and address, and telephone number, including area code, of agent for service)

copies to:
Ben D. Orlanski, Esq.
Katherine J. Blair, Esq.
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064
(310) 312-4000
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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

Smaller reporting company

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class 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 \$0.001 per share, reserved for issuance pursuant to the 2014 Amendment and 2016 Amendment to the Stamps.com Inc. 2010 Equity Incentive Plan (A)	1,692,691	\$ 114.83	(2) \$ 194,371,707.53	(2) \$ 22,527.68
Common Stock, par value \$0.001 per share, underlying outstanding options granted in connection with the 2014 Amendment and 2016 Amendment to the Stamps.com Inc. 2010 Equity Incentive Plan (A)	1,607,309	\$ 65.24	(3) \$ 104,860,839.16	(3) \$ 12,153.37
Common Stock, par value \$0.001 per share, reserved for issuance pursuant to the Stamps.com Inc. 2016 ShippingEasy Equity Inducement Plan	60,650	\$ 86.89	(4) \$ 5,269,878.50	(4) \$ 610.78
Common Stock, par value \$0.001 per share, reserved for issuance pursuant to the Management Incentive Plan	87,134	\$ 114.83	(2) \$ 10,005,597.22	(2) \$ 1,159.65
Total				\$ 36,451.48

Does not include 3,500,000 shares of common stock reserved for issuance pursuant to awards granted under the (A) Stamps.com Inc. 2010 Equity Incentive Plan and registered on Form S-8 (File No. 333-168360) filed with the Securities and Exchange Commission on July 28, 2010 (see “Explanatory Note,” *infra*).

Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this registration statement also covers any additional shares of common stock of Stamps.com Inc. (the “Registrant”) that become issuable under the Stamps.com Inc. 2010 Equity Incentive Plan (the “2010 EIP”), the Stamps.com Inc. 2016 ShippingEasy Equity Inducement Plan (the “2016 SE EIP”), and the Management Incentive Plan (the “2016 SE MIP”) 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 common stock.

Estimated solely for purposes of calculating the registration fee under Rule 457(c) and (h) of the Securities Act, (2) based on a price of \$114.83, which represents the average of the high and low prices of the Registrant’s common stock as quoted on The Nasdaq Global Select Market on March 27, 2017.

Calculated pursuant to Rule 457(h) of the Securities Act, solely for the purpose of calculating the registration fee, (3) based on a price of \$65.24, which represents the weighted average exercise price per share of options granted under the 2014 Amendment and 2016 Amendment to the 2010 EIP.

Calculated pursuant to Rule 457(h) of the Securities Act, solely for the purpose of calculating the registration fee, (4) based on a price of \$86.89, which represents the exercise price of the options awarded under the 2016 SE EIP.

EXPLANATORY NOTE

Stamps.com Inc. (the “Registrant”) is filing this Registration Statement on Form S-8 for the purpose of registering (a) an additional 3,300,000 shares of its common stock, par value \$0.001 per share (the “Common Stock”), issuable under the 2010 EIP, of which 2,100,000 shares are reserved for issuance pursuant to the 2014 Amendment and 1,200,000 shares are reserved for issuance pursuant to the 2016 Amendment, and which shares of Common Stock are in addition to shares of Common Stock registered on the Registrant’s Form S-8 filed on July 28, 2010 (File No. 333-168360); (b) 60,650 shares of Common Stock issuable under the 2016 SE EIP; and (c) 87,134 shares of Common Stock issuable under the 2016 SE MIP.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in “Item 1. Plan Information” and “Item 2. Registrant Information and Employee Plan Annual Information” of Form S-8 will be sent or given to participants of the 2010 EIP, the 2016 SE EIP, and the 2016 SE MIP, as applicable, as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the “SEC”) either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of Form S-8, 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 Securities and Exchange Commission, or the SEC, allows us to “incorporate by reference” information into this Registration Statement, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this Registration Statement, except for any information superseded by information in this Registration Statement.

(a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the SEC on March 1, 2017; and

(b) The description of our Common Stock contained in our Registration Statement on Form S-1 (Registration No. 333-77025), our Registration Statement on Form 8-A (Registration No. 000-26427) and our Registration Statement on Form S-1 (Registration No. 333-90115) and the information contained under Proposal 2 in our Proxy Statement (DEF 14A) filed on April 2, 2008, and any amendment or report filed for the purpose of updating any such description.

All reports (other than portions of Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K, unless otherwise indicated therein) filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or the Exchange Act, after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing such 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 in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such 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 General Corporation Law of the State of Delaware (the "DGCL") provides, in part, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed suit or proceeding because such person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against all expenses, judgments, fines and amounts paid in settlement, actually and reasonably incurred by him in connection with such suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation (and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful). Similar indemnity is permitted to be provided to such persons in connection with an action or suit by or in the right of the corporation, provided such person acted in good faith and in a manner believed to be in or not opposed to the best interests of the corporation, and provided further (unless a court of competent jurisdiction otherwise determines) that such person shall not have been adjudged liable to the corporation. Delaware law further provides that the indemnification provided thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under the corporation's bylaws, or by reason of any agreement, a vote of stockholders or disinterested directors or otherwise.

Article VIII of our amended and restated certificate of incorporation, as amended (the "Certificate"), provides, in part, that we shall indemnify (and advance expenses to) to the fullest extent authorized under the DGCL, each person who is or was a party or is threatened to be made a party to or is in any way involved in any threatened, pending or completed action, suit or proceeding by reason of the fact that he (or a person of whom he is the legal representative) is or was a director or officer of us or a subsidiary, or is or was serving at our request as a director or officer of another entity or enterprise, or was a director or officer of a corporation that was our predecessor (or of another entity or enterprise at the request of such predecessor), against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in the action, suit or proceeding. In addition, the Certificate provides that we are authorized to provide, to the fullest extent provided by applicable law, indemnification to our directors, officers, employees and agents, through bylaw provisions, agreements with such persons or otherwise in excess of indemnification and advancement permitted by Section 145 of the DGCL, subject to limits created by applicable Delaware (statutory or non-statutory) laws, with respect to action for breach of duty to us, our stockholders and others.

Article VII, Section 6 of our bylaws, as amended, also provides, in part, that we shall, to the fullest extent authorized by Delaware law, indemnify (and advance expenses to under certain circumstances) directors made, or threatened to be made, party to an action or proceeding by reason of being a director or a director of our predecessor, or at our request, a director or officer of another corporation if such proceeding was authorized by our board of directors, and that such indemnification is not exclusive to other indemnification rights those persons may have. In addition, our board of directors, in its discretion, shall have the power to indemnify any person other than a director made party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was an officer or employee of ours.

Section 102(b)(7) of the DGCL permits a corporation to eliminate, and our Certificate provides for the elimination of, the personal liability of its directors or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

We have entered into indemnification agreements with our directors containing provisions that may require us, among other things, to indemnify them against liabilities that may arise by reason of their status or service as directors, officers, employees, agents or fiduciaries of the corporation other than liabilities arising from willful misconduct of a culpable nature, to advance their expense incurred as a result of any proceeding against them as to which they could be indemnified, and to obtain directors' and officers' liability insurance if maintained for other directors or officers.

We also maintain directors' and officers' liability insurance.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
4.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended (incorporated by reference to Exhibit 3.1 to our Form 10-Q filed with the SEC on August 8, 2008 (File No. 000-26427)).
4.2	Bylaws of the Registrant (incorporated by reference to Exhibit 3.4 to Amendment No. 2 to our Form S-1, filed with the SEC on June 7, 1999 (File No. 333-77025)).
4.3	Resolution Amending Bylaws of the Registrant (incorporated by reference to Exhibit 3(ii).1 to our Form 8-K filed with the SEC on April 23, 2010 (File No. 000-26427)).
4.4	Amendment to Bylaws of the Registrant (incorporated by reference to Exhibit 3(ii).1 to our Form 8-K filed with the SEC on January 20, 2012 (File No. 000-26427)).
4.5	Specimen common stock certificate (incorporated herein by reference to Exhibit 4.2 to Amendment No. 4 to our Registration Statement on Form S-1, filed with the SEC on June 22, 1999 (File No. 333-77025)).
5.1	Opinion of Manatt, Phelps & Phillips, LLP
23.1	Consent of Ernst & Young LLP
23.2	Consent of Manatt, Phelps & Phillips, LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on the signature page of this Registration Statement)
99.1	Stamps.com Inc. 2010 Equity Incentive Plan (incorporated by reference to Annex A of our Definitive Proxy Statement on Form 14A filed with the SEC on April 28, 2010) (File No. 000-26427)).
99.2	2014 Amendment to the Stamps.com Inc. 2010 Equity Incentive Plan (incorporated by reference to Exhibit 10.22 to our Form 10-K filed with the SEC on March 1, 2017 (File No. 000-26427)).
99.3	2016 Amendment to the Stamps.com Inc. 2010 Equity Incentive Plan (incorporated by reference to Exhibit 10.23 to our Form 10-K filed with the SEC on March 1, 2017 (File No. 000-26427)).
99.4	Form of Stock Option Agreement (incorporated by reference to Exhibit 4.4 to our Form S-8, filed with the SEC on July 28, 2010 (File No. 333-168360)).
99.5	Management Incentive Plan dated as of July 1, 2016, by and among ShippingEasy, Inc., Stamps.com Inc. and the Participant Representative (as defined therein), and acknowledged and agreed to by Katie May and Barry Cox (incorporated by reference to Exhibit 10.2 to our Form 10-Q filed with the SEC on August 9, 2016 (File No. 000-26427)).+
99.6	Stamps.com Inc. 2016 ShippingEasy Equity Inducement Plan
99.7	Form of Award Agreement to Stamps.com Inc. 2016 ShippingEasy Equity Inducement Plan

+Confidential treatment requested and received as to certain portions.

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, as amended (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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no greater than 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)(1)(i) and (a)(1)(ii) above do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), 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 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 the 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 SEC 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 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 Los Angeles, State of California on March 27, 2017.

STAMPS.COM INC.

By: /s/ Kenneth McBride
 Kenneth McBride
 Chief Executive Officer and Chairman of
 the Board of Directors

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Kenneth McBride and Kyle Huebner, and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any or all amendments to this Registration Statement, and to file the same with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute, 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.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ Kenneth McBride Kenneth McBride	Chairman and Chief Executive Officer (Principal Executive Officer)	March 27, 2017
/s/ Kyle Huebner Kyle Huebner	Co-President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 27, 2017
/s/ Mohan P. Ananda Mohan P. Ananda	Director	March 27, 2017
/s/ G. Bradford Jones G. Bradford Jones	Director	March 27, 2017
/s/ Lloyd I. Miller Lloyd I. Miller	Director	March 27, 2017
/s/ David Habiger David Habiger	Director	March 27, 2017

/s/ Theodore R. Samuels Director March 27, 2017

Theodore R. Samuels

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