

FORTINET INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 03/01/17

Address	899 KIFER ROAD SUNNYVALE, CA 94086
Telephone	408-235-7700
CIK	0001262039
Symbol	FTNT
SIC Code	3577 - Computer Peripheral Equipment, Not Elsewhere Classified
Industry	IT Services & Consulting
Sector	Technology
Fiscal Year	12/31

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

**FORM S-8
REGISTRATION STATEMENT**
*Under
The Securities Act of 1933*

FORTINET, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0560389
(I.R.S. Employer
Identification Number)

899 Kifer Road
Sunnyvale, California 94086
(Address, including zip code, of principal executive offices)

2009 Equity Incentive Plan
(Full title of the plan)

John Whittle
Vice President and General Counsel
Fortinet, Inc.
899 Kifer Road
Sunnyvale, California 94086
(Name and address of agent for service)

408-235-7700
(Telephone number, including area code, of agent for service)

Copy to:

Jeffrey R. Vetter
Ran D. Ben-Tzur
Fenwick & West LLP
801 California Street
Mountain View, California 94041
650-988-8500

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 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, \$0.001 par value per share, to be issued under the 2009 Equity Incentive Plan	8,653,899 (2)	\$36.89 (3)	\$ 319,242,334.11	\$ 37,000.19

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the 2009 Equity Incentive Plan 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) Reflects an automatic annual increase on January 1, 2017 to the number of shares of the Registrant's common stock reserved for issuance under the 2009 Equity Incentive Plan, which annual increase is provided for in the 2009 Equity Incentive Plan.
- (3) Estimated in accordance with Rules 457(h) solely for the purpose of calculating the registration fee. The proposed maximum offering price per share of \$36.89 was computed by averaging the high and low prices of a share of the Registrant's common stock as reported on The NASDAQ Global Select Market on February 24, 2017.

FORTINET, INC.
REGISTRATION STATEMENT ON FORM S-8

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

The documents containing the information specified in Item 1 and Item 2 of this Registration Statement on Form S-8 (the "Registration Statement") will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the rules and regulations of the Securities and Exchange Commission (the "Commission") and the instructions to the Registration Statement, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

There are hereby incorporated by reference in this Registration Statement the following documents and information heretofore filed by Fortinet, Inc. (the "Registrant") with the Commission:

(1) The Registrant's annual report on Form 10-K for the fiscal year ended December 31, 2016, filed with the Commission on March 1, 2017, pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and

(2) The description of the Registrant's common stock contained in the Registrant's Registration Statement on Form 8-A (File No. 001-34511) filed with the Commission on October 29, 2009, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents, except as to specific sections of such documents as set forth therein. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K prior to or subsequent to the filing of this Registration Statement shall not be deemed incorporated by reference into this Registration Statement. 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 Delaware General Corporation Law authorizes a corporation's board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL"), the Registrant's certificate of incorporation includes provisions that eliminate the personal liability of its directors and officers for monetary damages for breach of their fiduciary duty as directors and officers.

In addition, as permitted by Section 145 of the DGCL, the bylaws of the Registrant provide that:

- The Registrant shall indemnify its directors and officers for serving the Registrant in those capacities or for serving other business enterprises at the Registrant's request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- The Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- The Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- The Registrant will not be obligated pursuant to the bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors or brought to enforce a right to indemnification.
- The rights conferred in the bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- The Registrant may not retroactively amend the bylaws provisions to reduce its indemnification obligations to directors, officers, employees and agents.

The Registrant's policy is to enter into separate indemnification agreements with each of its directors and officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the DGCL and also provides for certain additional procedural protections. The Registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

These indemnification provisions and the indemnification agreements entered into between the Registrant and its officers and directors may be sufficiently broad to permit indemnification of the Registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit	Description
4.1	2009 Equity Incentive Plan and forms of restricted stock unit award agreement and restricted stock agreement thereunder <i>(incorporated by reference to Exhibit 10.4 filed with the Registrant's Registration Statement on Form S-1 (File No. 333-161190) on August 10, 2009)</i>
4.2	Forms of stock option award agreement under the 2009 Equity Incentive Plan <i>(incorporated by reference to Exhibit 10.5 filed with the Registrant's Annual Report on Form 10-K (File No. 001-34511) on February 25, 2011)</i>
4.3	Form of performance stock unit award agreement under the 2009 Equity Incentive Plan <i>(incorporated by reference to Exhibit 99.1 filed with the Registrant's Quarterly Report on Form 10-Q (File No. 001-34511) on August 6, 2013)</i>
4.4	Forms of restricted stock unit award and performance stock unit award agreement under 2009 Equity Incentive Plan (Additional Forms) <i>(incorporated by reference to Exhibit 10.7 filed with the Registrant's Annual Report on Form 10-K (File No. 001-34511) on March 2, 2015)</i>
5.1	Opinion of Fenwick & West LLP
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm
23.2	Consent of Fenwick & West LLP <i>(included in Exhibit 5.1)</i>
24.1	Power of Attorney (See page II-4)

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;

(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 percent 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) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic 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 this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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.

(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 of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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 of 1933 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 of 1933 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 of 1933 and will be governed by the 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 Sunnyvale, State of California, on this 1st day of March, 2017.

FORTINET, INC.

By: _____ /s/ Ken Xie

Ken Xie
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Ken Xie and Andrew Del Matto, and each of them, as his or her true and lawful attorney in fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Registration Statement (including post effective amendments or any abbreviated registration statement and any amendments thereto filed pursuant to Rule 462(b) increasing the number of securities for which registration is sought), and to file the same, with all exhibits thereto and 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 connection therewith, as fully for 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 below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Ken Xie Ken Xie	Chief Executive Officer and Chairman (Principal Executive Officer)	March 1, 2017
/s/ Andrew Del Matto Andrew Del Matto	Chief Financial Officer (Principal Financial Officer)	March 1, 2017
/s/ Keith Jensen Keith Jensen	Chief Accounting Officer (Principal Accounting Officer)	March 1, 2017
/s/ Michael Xie Michael Xie	President, Chief Technology Officer and Director	March 1, 2017
/s/ Ming Hsieh Ming Hsieh	Director	March 1, 2017
/s/ Gary Locke Gary Locke	Director	March 1, 2017
/s/ William H. Neukom William H. Neukom	Director	March 1, 2017
/s/ Christopher B. Paisley Christopher B. Paisley	Director	March 1, 2017
/s/ Judith Sim Judith Sim	Director	March 1, 2017

INDEX TO EXHIBITS

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SILICON VALLEY 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041
TEL: 650.988.8500 FAX: 650.938.5200 WWW.FENWICK.COM

March 1, 2017

Fortinet, Inc.
899 Kifer Road
Sunnyvale, California 94086

Ladies and Gentlemen:

As counsel to Fortinet, Inc., a Delaware corporation (the “*Company*”), we have examined the Registration Statement on Form S-8 (the “*Registration Statement*”) to be filed by the Company with the Securities and Exchange Commission (the “*Commission*”) on or about March 1, 2017 in connection with the registration under the Securities Act of 1933, as amended (the “*Securities Act*”), of an aggregate of 8,653,899 shares (the “*Shares*”) of the Company’s Common Stock, \$0.001 par value per share (the “*Common Stock*”), that are subject to issuance by the Company upon the exercise or settlement of awards granted or to be granted under the Company’s 2009 Equity Incentive Plan (the “*Plan*”). At your request, we are providing this letter to express our opinion on the matters set forth below in this letter.

In connection with our opinion expressed below, we have examined originals or copies of the Company’s certificate of incorporation and bylaws, certain corporate proceedings of the Company’s board of directors and stockholders relating to the Registration Statement, the Plan and such other agreements, documents, certificates and statements of the Company, its transfer agent and public or governmental officials, as we have deemed advisable, and have examined such questions of law as we have considered necessary. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures on documents submitted to us, the conformity to originals of all documents submitted to us as copies and the absence of any undisclosed termination, waiver or amendment to any document reviewed by us. In giving our opinion, we have also relied upon a good standing certificate regarding the Company issued by the Delaware Secretary of State and representations made to us by the Company, including representations that the Company has available a sufficient number of authorized shares of Common Stock that are not currently outstanding or reserved for issuance under other outstanding securities or plans of the Company, to enable the Company to issue and deliver all of the Shares as of the date of this letter.

We render this opinion only with respect to, and we express no opinion herein concerning the application or effect of the laws of any jurisdiction other than, the existing Delaware General Corporation Law.

Based upon and subject to the foregoing, it is our opinion that the 8,653,899 Shares of Common Stock to be registered under the Registration Statement that may be issued and sold by the Company upon the exercise or settlement of awards granted or to be granted under the Plan, when issued, sold and delivered in accordance with the Plan and the applicable Plan Agreements to be entered into thereunder conforming to the terms and conditions of the Plan, and in accordance with the resolutions adopted by the Board, and in the manner and for the consideration stated in the Registration Statement, the prospectus constituting a part thereof and any amendments thereto, will be validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the prospectus constituting a part thereof and any amendments thereto. We do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder. This opinion is intended solely for use in connection with issuance and sale of the Shares subject to the Registration Statement and is not to be relied upon for any other purpose. In providing this letter, we are opining only as to the specific legal issues expressly set forth above, and no opinion shall be inferred as to any other matter or matters. This opinion is rendered on, and speaks only as of, the date of this letter first written above, and does not address any potential change in facts or law that may occur after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention, whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

FENWICK & WEST LLP

/s/ Jeffrey R. Vetter

Jeffrey R. Vetter, a Partner

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports relating to the consolidated financial statements of Fortinet, Inc. and the effectiveness of Fortinet, Inc.'s internal control over financial reporting dated March 1, 2017, appearing in the Annual Report on Form 10-K of Fortinet, Inc. for the year ended December 31, 2016.

/s/ DELOITTE & TOUCHE LLP

San Jose, California

March 1, 2017