

PROOFPOINT INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 02/23/17

Address	892 ROSS DRIVE SUNNYVALE, CA 94089
Telephone	408-517-4710
CIK	0001212458
Symbol	PFPT
SIC Code	7374 - Computer Processing and Data Preparation and Processing Services
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**

PROOFPOINT, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

51-0414846
(I.R.S. Employer
Identification Number)

**892 Ross Drive
Sunnyvale, CA 94089
(408) 517-4710**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

2012 Employee Stock Purchase Plan
(Full title of the plan)

**Gary Steele
Chief Executive Officer
Proofpoint, Inc.
892 Ross Drive
Sunnyvale, CA 94089
(408) 517-4710**

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

Please send copies of all communications to:

Jeffrey R. Vetter, Esq.
Fenwick & West LLP
801 California Street
Mountain View, CA 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 (as defined 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 Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.0001 par value				
— To be issued under the 2012 Employee Stock Purchase Plan	430,146	\$ 69.30(2)	\$ 29,809,117.80	\$ 3,454.88
Total	430,146		\$ 29,809,117.80	\$ 3,454.88

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the Registrant's 2012 Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and 457(h) using the average of the high and low prices for the Registrant's common stock as reported on The NASDAQ Global Market on February 17, 2017, multiplied by 85%, which is the percentage of the price per share applicable to purchasers under the Registrant's 2012 Employee Stock Purchase Plan.

EXPLANATORY NOTE

Pursuant to General Instruction E of Form S-8, Proofpoint, Inc. (the “Registrant”) is filing this Registration Statement with the SEC to register 430,146 additional shares of Common Stock under the Registrant’s 2012 Employee Stock Purchase Plan, pursuant to the provisions of that plan providing for an automatic increase in the number of shares reserved for issuance under such plan. This Registration Statement hereby incorporates by reference the contents of the Registrant’s registration statement on Form S-8 filed with the Securities and Exchange Commission (the “Commission”) on April 20, 2012 (Registration No. 333-180839), the Form S-8 filed with the Commission on March 15, 2013 (Registration No. 333-187321), the Form S-8 filed with the Commission on March 14, 2014 (Registration No. 333-194599), the Form S-8 filed with the Commission on February 26, 2015 (Registration No. 333-202312) and the Form S-8 filed with the Commission on February 25, 2016 (Registration No. 333-209712). 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 Form S-8 has been omitted from this Registration Statement.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission pursuant to the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act") are incorporated herein by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the Commission on February 23, 2017; and
- (b) The description of the Registrant's common stock contained in the Registrant's registration statement on Form 8-A (Registration No. 001-35506) filed on April 13, 2012 under Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby 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 hereof from the date of the filing of such documents.

Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K prior or subsequent to the date hereof shall not be incorporated by reference into this Registration Statement, except as to specific sections of such reports that are filed or deemed filed as set forth therein. 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 8. Exhibits.

The following exhibits are filed herewith:

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
4.01	Amended and Restated Certificate of Incorporation of the Registrant	S-1	333-178479	3.02	
4.02	Amended and Restated Bylaws of the Registrant	S-1	333-178479	3.04	
4.03	Form of Registrant's common stock certificate	S-1	333-178479	4.01	
5.01	Opinion of Fenwick & West LLP				X
23.01	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm				X
23.02	Consent of Fenwick & West LLP (contained in Exhibit 5.01)				X
24.01	Power of Attorney (included on the signature page to this Registration Statement)				X
99.1	2012 Employee Stock Purchase Plan.	S-1	333-178479	10.04	

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 Sunnyvale, State of California, on this 23rd day of February, 2017.

PROOFPOINT, INC.

By: /s/ Gary Steele
Gary Steele

Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Gary Steele and Paul Auvil, 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 (including post-effective amendments) to this Registration Statement on Form S-8, 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 or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Gary Steele</u> Gary Steele	Chief Executive Officer and Director (<i>Principal Executive Officer</i>)	February 23, 2017
<u>/s/ Paul Auvil</u> Paul Auvil	Chief Financial Officer (<i>Principal Financial Officer and Principal Accounting Officer</i>)	February 23, 2017
<u>/s/ Dana Evan</u> Dana Evan	Director	February 23, 2017
<u>/s/ Jonathan Feiber</u> Jonathan Feiber	Director	February 23, 2017

<u>/s/ Doug Garn</u> Doug Garn	Director	February 23, 2017
<u>/s/ Eric Hahn</u> Eric Hahn	Director	February 23, 2017
<u>/s/ Kevin Harvey</u> Kevin Harvey	Director	February 23, 2017
<u>/s/ R. Scott Herren</u> R. Scott Herren	Director	February 23, 2017

EXHIBIT INDEX

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

MATTHEW P. QUILTER
PARTNER

February 23, 2017

MQUILTER@FENWICK.COM
(650) 335-7936

Proofpoint Inc.
892 Ross Drive
Sunnyvale, CA 94089

Ladies and Gentlemen:

As counsel to Proofpoint, Inc., a Delaware corporation (the "**Company**"), we have examined the Registration Statement on Form S-8 to be filed by the Company with the Securities and Exchange Commission (the "**Commission**") on or about February 23, 2017 (the "**Registration Statement**") in connection with the registration under the Securities Act of 1933, as amended (the "**Securities Act**"), of an aggregate of 430,146 shares (the "**Shares**") of the Company's Common Stock, \$0.0001 par value per share (the "**Common Stock**"), subject to issuance by the Company pursuant to purchase rights granted or to be granted under the Company's 2012 Employee Stock Purchase Plan, as amended to date (the "**Plan**"). At your request we are providing this letter, to express our opinion on the matters set forth below in this letter (" **our opinion** ").

In connection with our opinion expressed below we have examined originals or copies of the Company's certificate of incorporation and bylaws, the Plan, certain corporate proceedings of the Company's board of directors and stockholders relating to the Registration Statement, the Plan and the Company's current certificate of incorporation and bylaws, 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 when the 430,146 Shares of Common Stock that may be issued and sold by the Company pursuant to purchase rights granted or to be granted under the Plan, have been issued and sold by the Company against the Company's receipt of payment therefor (in an amount and type of consideration not less than the par value per Share) in accordance with the terms (including payment provisions) of the Plan and have been duly registered on the books of the transfer agent and registrar for the Shares in the name or on behalf of the holders thereof, such Shares will be validly issued, fully paid and non-assessable.

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

By: /s/ Fenwick & West LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated February 23, 2017 relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appears in Proofpoint, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2016.

/s/ PricewaterhouseCoopers LLP
San Jose, California
February 23, 2017
