

# VMWARE, INC.

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 02/24/12

Address	3401 HILLVIEW AVENUE PALO ALTO, CA, 94304
Telephone	(650) 427-5000
CIK	0001124610
Symbol	VMW
SIC Code	7372 - Services-Prepackaged Software
Industry	IT Services & Consulting
Sector	Technology
Fiscal Year	01/31

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

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

**VMWARE, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**DELAWARE**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**94-3292913**  
(I.R.S. Employer  
Identification No.)

**3401 Hillview Avenue  
Palo Alto, CA 94304**  
(Address, Including Zip Code, of Registrant's Principal Executive Offices)

**VMware, Inc. 2007 Equity and Incentive Plan, as amended**  
(Full Title of the Plan)

**S. Dawn Smith  
Senior Vice President, General Counsel, Chief Compliance Officer  
and Secretary  
VMware, Inc.  
3401 Hillview Avenue  
Palo Alto, CA 94304  
(650) 427-5000**

(Name, Address and Telephone Number, Including Area Code, of Agent For Service)

*With a copy to:*  
**Michael T. Frank  
Morrison & Foerster LLP  
755 Page Mill Road  
Palo Alto, CA 94304  
(650) 813-5600**

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. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a 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(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Class A common stock, \$0.01 par value per share	194,622	\$98.21	\$19,113,826.62	\$2,190.44

- (1) This Registration Statement covers 194,622 shares of the Registrant's Class A common stock, par value \$.01 per share, that may be issued pursuant to awards granted under the VMware, Inc. 2007 Equity and Incentive Plan, as amended (the "Plan"). In accordance with Rule 416(a) of 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 which become issuable under the Plan by reason of any stock dividend, stock split, recapitalization or similar transaction.

- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act. The price per share and aggregate offering prices for the shares registered hereby are calculated on the basis of the weighted average exercise price per share of \$98.21 for 169,902 shares of the Registrant's common stock subject to options previously granted by entities acquired by the Company and assumed under the Plan and price per share of \$98.21 for 24,720 shares of the Registrant's common stock subject to awards previously granted by such entities and assumed under the Plan. The average price per share for the 194,622 shares issuable pursuant to awards previously granted by entities acquired by the Company and assumed under the Plan is based on the average of the high and low sale prices of the Registrant's Class A common stock on the New York Stock Exchange on February 16, 2012.
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## INTRODUCTION

This registration statement on Form S-8 is filed by VMware, Inc. (referred to herein as “we,” “our” or “us”) and relates to 194,622 shares of our Class A common stock, \$0.01 par value per share (“Common Stock”) issuable to our eligible employees and consultants under the Plan.

### PART I INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

We are not filing or including in this Registration Statement on Form S-8 the information called for in Part I of Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”).

### PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### **Item 3. Incorporation of Documents by Reference .**

The Commission allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this Registration Statement, and information that we file later with the Commission will automatically update and supersede this information. We incorporate by reference the following documents we have filed with the Commission:

- (1) The description of the Common Stock contained in our Registration Statement on Form 8-A, filed with the Commission on July 27, 2007, including any amendments or reports filed for the purpose of updating such description; and
- (2) Annual Report on Form 10-K filed with the Commission on February 24, 2012 for the fiscal year ended December 31, 2011.

All documents filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (“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 deregisters all securities covered hereby then remaining unsold are incorporated by reference in this Registration Statement and are a part hereof from the date of filing of such documents. A Current Report on Form 8-K furnished to the Commission shall not be incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement, or in any subsequently filed document which also is or is deemed to be incorporated by reference in this Registration Statement, 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 4. Description of Securities .**

Not applicable.

#### **Item 5. Interests of Named Experts and Counsel .**

Not applicable.

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**Item 6. Indemnification of Directors and Officers.**

Section 102 of the Delaware General Corporation Law (“DGCL”) allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or to any of its stockholders for monetary damage for a breach of his or her fiduciary duty as a director, except in the case 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. Our certificate of incorporation provides that, to the fullest extent of Delaware law, none of our directors will be liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director.

Section 145 of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at its request in such capacity in another corporation or business association against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 or her conduct was unlawful.

Our certificate of incorporation and bylaws generally provide for mandatory indemnification of directors and officers to the fullest extent permitted by law. We have also entered into indemnification agreements with our directors and executive officers in the form filed as an exhibit to our Registration Statement on Form S-1 (Registration No. 333-142368) that will generally provide for mandatory indemnification to the fullest extent permitted by law. In addition, our officers and directors are insured under an officers and directors liability insurance policy.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<u>Exhibit</u>	<u>Description</u>
5.1	Opinion of Morrison & Foerster LLP.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Morrison & Foerster LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature pages to this Registration Statement).
99.1	VMware, Inc. 2007 Equity and Incentive Plan, as amended.*

\* Incorporated herein by reference to the Registrant’s Quarterly Report on Form 10-Q filed with the Commission on November 2, 2011.

**Item 9. Undertakings.**

1. The undersigned registrant hereby undertakes:

(a) 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 this 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 this 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; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

*provided, however*, that paragraphs (a)(i) and (a)(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 us pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(b) 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.

(c) 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.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of our 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 this 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.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Commission 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 us of expenses incurred or paid by any of our directors, officers or controlling persons 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, we 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 the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant, VMware, Inc., 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 on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Palo Alto, State of California, on February 24, 2012.

**VMWARE, INC.**

By: /s/ Paul A. Maritz

Name: Paul A. Maritz

Title: Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, the undersigned hereby constitute and appoint Paul A. Maritz, Mark S. Peek and S. Dawn Smith and each of them, his or her true and lawful attorney-in-fact and agent, each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, or any related registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with 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 or necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his 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 on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Paul A. Maritz</u> Paul A. Maritz	Chief Executive Officer (principal executive officer) and Director	February 24, 2012
<u>/s/ Mark S. Peek</u> Mark S. Peek	Chief Financial Officer and Co-President, Business Operations (principal financial officer)	February 24, 2012
<u>/s/ Robynne D. Sisco</u> Robynne D. Sisco	Chief Accounting Officer and Corporate Controller (principal accounting officer)	February 24, 2012
<u>/s/ Joseph M. Tucci</u> Joseph M. Tucci	Chairman of the Board of Directors	February 24, 2012
<u>/s/ Michael W. Brown</u> Michael W. Brown	Director	February 24, 2012
<u>John R. Egan</u>	Director	February 24, 2012
<u>/s/ David I. Goulden</u> David I. Goulden	Director	February 24, 2012
<u>/s/ Renee J. James</u> Renee J. James	Director	February 24, 2012
<u>/s/ Dennis D. Powell</u> Dennis D. Powell	Director	February 24, 2012
<u>/s/ David N. Strohm</u> David N. Strohm	Director	February 24, 2012

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## INDEX TO EXHIBITS

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PALO ALTO  
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MORRISON & FOERSTER LLP  
NEW YORK, SAN FRANCISCO,  
LOS ANGELES, PALO ALTO,  
SAN DIEGO, WASHINGTON, D.C.  
NORTHERN VIRGINIA, DENVER,  
SACRAMENTO, WALNUT CREEK  
TOKYO, LONDON, BRUSSELS,  
BEIJING, SHANGHAI, HONG KONG

**OPINION OF MORRISON & FOERSTER LLP**

February 24, 2012

VMware, Inc.  
3401 Hillview Ave  
Palo Alto, CA 94304

Re: Registration of Securities of VMware, Inc.

Ladies and Gentlemen:

At your request, we have examined the Registration Statement on Form S-8 to be filed with the Securities and Exchange Commission (the “SEC”) in connection with the registration under the Securities Act of 1933, as amended, of an aggregate of one hundred ninety four thousand, six hundred and twenty two (194,622) shares (the “Plan Shares”) of Class A common stock, par value \$0.01 (“Common Shares”), of VMware, Inc. (the “Company”), issuable under the VMware, Inc. 2007 Equity and Incentive Plan, as amended (the “Plan”), in respect of awards granted by entities acquired by the Company in connection with certain mergers, reorganizations, separations, or other transactions, and assumed by the Company in connection with such mergers, reorganizations, separations, or other transactions, in accordance with the Plan.

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended.

As your counsel in connection with the Registration Statement, we have examined the proceedings taken by the Company in connection with the authorization of the issuance of the Plan Shares, and such documents as we have deemed necessary to render this opinion. For the purpose of the opinion rendered below, we have assumed that in connection with the issuance of the Plan Shares, the Company will receive consideration in an amount not less than the aggregate par value of the Plan Shares covered by each such issuance. We have examined the originals, or photostatic or certified copies, of such records of the Company and certificates of officers of the Company and such other documents as we have deemed relevant and necessary as the basis for the opinions set forth below. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all

documents submitted to us as copies. We have also assumed that there are no agreements or understandings between or among the Company and any participants in the Plan that would expand, modify or otherwise affect the terms of the Plan or the respective rights or obligations of the participants thereunder, and that each award agreement setting forth the terms of each grant of options or other awards under the Plan is consistent with the Plan and has been duly authorized and validly executed and delivered by the parties thereto.

Based upon and subject to the foregoing, it is our opinion that the Plan Shares, when issued and outstanding pursuant to the terms of the Plan, will be validly issued, fully paid and nonassessable Common Shares.

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

Very truly yours,

/s/ MORRISON & FOERSTER 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 24, 2012 relating to the financial statements, financial statement schedules and the effectiveness of internal control over financial reporting, which appears in VMware, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2011.

/s/ PricewaterhouseCoopers LLP  
San Jose, CA  
February 24, 2012