

VMWARE, INC.

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 02/26/14

Address	3401 HILLVIEW AVENUE PALO ALTO, CA, 94304
Telephone	(650) 427-5000
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Industry	IT Services & Consulting
Sector	Technology
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**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. Amended and Restated 2007 Equity and Incentive Plan
(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)

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 ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Accelerated filer ☐

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
Class A common stock, \$0.01 par value per share				
Outstanding under the Amended and Restated 2007 Equity and Incentive Plan (options substituted in connection with acquisitions)	1,398,340	\$11.29 ⁽²⁾	\$15,787,258.60 ⁽²⁾	\$ 2,033.40
Outstanding under the Amended Restated 2007 Equity and Incentive Plan (restricted stock unit awards and shares issued under options substituted in connection with acquisitions)	254,427	\$94.99 ⁽²⁾	\$24,168,020.73 ⁽²⁾	\$ 3,112.85

- ⁽¹⁾ This Registration Statement covers 1,652,767 shares of the Registrant's Class A common stock, par value \$0.01 per share ("Common Stock"), issuable pursuant to awards granted under the VMware, Inc. Amended and Restated 2007 Equity and Incentive Plan (the "Equity Plan"). In accordance with Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers any additional shares of the Registrant's Common Stock that become issuable under the Equity 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 Rules 457(c) and (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 \$11.29 for 1,398,340 shares of the Registrant's Common Stock subject to options previously granted by entities acquired by the Registrant and assumed under the Equity Plan and price per share of \$94.99 for 254,427 shares of the Registrant's Common Stock subject to restricted stock awards previously granted by such entities and assumed under the Equity Plan. The average price per share for the 254,427 shares issuable pursuant to awards previously granted by entities acquired by the Company and assumed under the Equity Plan is based on the average of the high and low sale prices of the Registrant's Common Stock on the New York Stock Exchange on February 20, 2014.

INTRODUCTION

This registration statement on Form S-8 is filed by VMware, Inc. (referred to herein as “we,” “our” or “us”) and relates to 1,652,767 shares of our Class A common stock, par value \$0.01 per share (“Common Stock”), issuable pursuant to awards granted under the VMware, Inc. Amended and Restated 2007 Equity and Incentive 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;
- (2) Annual Report on Form 10-K filed with the Commission on February 25, 2014 for the fiscal year ended December 31, 2013; and
- (3) Current Reports on Form 8-K filed with the Commission on January 16, 2014, January 22, 2014 (but only the information reported under Item 1.01, Item 2.03 and Item 5.07 thereof is incorporated herein by reference) and February 24, 2014.

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.

The legality of the shares of Common Stock being registered pursuant to this Registration Statement will be passed upon for the Registrant by S. Dawn Smith, Senior Vice President, General Counsel, Chief Compliance Officer and Secretary of the Registrant. Ms. Smith holds restricted stock units, options to purchase Common Stock and is eligible to participate in the Registrant's equity plans.

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.

Exhibit	Description
5.1	Opinion of Counsel
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Counsel (included in Exhibit 5.1).
24.1	Power of Attorney included on the signature pages to this Registration Statement.
99.1	VMware, Inc. Amended and Restated 2007 Equity and Incentive Plan.*

* Incorporated by reference to the Registrant's Registration Statement on Form S-8 filed with the Commission on June 20, 2013.

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 of 1933, as amended (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 our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us 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 26, 2014.

VMWARE, INC.

By: /s/ Patrick P. Gelsinger

Name: Patrick P. Gelsinger

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, the undersigned hereby constitute and appoint Patrick P. Gelsinger, Jonathan C. Chadwick 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 or her and in his or her 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 or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his or her 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.

Signature	Title	Date
<u>/s/ Patrick P. Gelsinger</u> Patrick P. Gelsinger	Chief Executive Officer and Director (Principal Executive Officer)	February 26, 2014
<u>/s/ Jonathan C. Chadwick</u> Jonathan C. Chadwick	Chief Financial Officer and Executive Vice President (Principal Financial Officer)	February 26, 2014
<u>/s/ Kevan Kryslar</u> Kevan Kryslar	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)	February 26, 2014
<u>/s/ Joseph M. Tucci</u> Joseph M. Tucci	Chairman of the Board of Directors	February 26, 2014
<u>/s/ Michael W. Brown</u> Michael W. Brown	Director	February 26, 2014
<u>/s/ John R. Egan</u> John R. Egan	Director	February 26, 2014
<u>/s/ Pamela J. Craig</u> Pamela J. Craig	Director	February 26, 2014
<u>/s/ David I. Goulden</u> David I. Goulden	Director	February 26, 2014
<u>/s/ Paul A. Maritz</u> Paul A. Maritz	Director	February 26, 2014
<u>/s/ Dennis D. Powell</u> Dennis D. Powell	Director	February 26, 2014

/s/ David N. Strohm

Director

February 26, 2014

David N. Strohm

INDEX TO EXHIBITS

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* Incorporated by reference to the Registrant's Registration Statement on Form S-8 filed with the Commission on June 20, 2013.

February 26, 2014
VMware, Inc.
3401 Hillview Ave
Palo Alto, CA 94304

Ladies and Gentlemen:

I am the Senior Vice President, General Counsel, Chief Compliance Officer and Secretary of VMware, Inc. (the “Registrant”), and I am issuing this opinion in connection with the filing by the Registrant of a Registration Statement on Form S-8 (the “Registration Statement”) with the Securities and Exchange Commission (the “Commission”) covering the offering of up to 1,652,767 shares (the “Shares”) of the Registrant’s common stock, \$0.01 par value per share (the “Common Stock”), authorized for issuance by the Registrant under its Amended and Restated 2007 Equity and Incentive Plan (the “Equity Plan”).

I am qualified to practice law in the State of California. This opinion is limited in all respects to the General Corporation Law of the State of Delaware (the “DGCL”), and I express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or as to any matters of municipal law or the laws of any local agencies within any state. I am not licensed to practice law in the State of Delaware, and my opinions as to the DGCL are based solely on my review of standard compilations of such law.

In connection with the foregoing, I have examined and am familiar with the Restated Certificate of Incorporation of the Registrant, the Amended and Restated Bylaws of the Registrant, the Equity Plan, the corporate proceedings with respect to the issuance of the Shares, the Registration Statement, and such other certificates, instruments and documents as I have considered necessary or appropriate for purposes of this opinion.

For the purpose of the opinion rendered below, I have assumed that in connection with the issuance of the Shares, the Registrant will receive consideration in an amount not less than the aggregate par value of the Shares covered by each such issuance. In my examination, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as certified, conformed or photostatic copies, and the authenticity of the originals of such copies.

Based upon and subject to the foregoing, I am of the opinion that when (a) issued and delivered by the Registrant in accordance with the terms of the Equity Plan, and (b) paid for in full in accordance with the terms of the Equity Plan, the Shares will be validly issued, fully paid and non-assessable.

I consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, I do not thereby admit that I am in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended (the “Securities Act”), or the rules and regulations of the Commission. This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Securities Act.

Very truly yours,

/s/ S. Dawn Smith

S. Dawn Smith
Senior Vice President, General Counsel, Chief
Compliance Officer and Secretary

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 of VMware, Inc. of our report dated February 25, 2014 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in the Annual Report on Form 10-K for the year ended December 31, 2013.

/s/ PricewaterhouseCoopers LLP

San Jose, CA

February 25, 2014