

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

**FORM S-8
REGISTRATION STATEMENT**

*UNDER
THE SECURITIES ACT OF 1933*

BigCommerce Holdings, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

46-2707656
(I.R.S. Employer
Identification Number)

**11305 Four Points Drive
Building II, Suite 100
Austin, Texas**
(Address of principal executive offices)

78726
(Zip code)

BIGCOMMERCE HOLDINGS, INC. 2020 EQUITY INCENTIVE PLAN
(Full title of the plan)

Brent Bellm
President and Chief Executive Officer
BigCommerce Holdings, Inc.
11305 Four Points Drive
Building II, Suite 100
Austin, Texas 78726
(Name and address of agent for service)

(512) 865-4500
(Telephone number, including area code, of agent for service)

Copies to:

Samer M. Zabaneh, Esq.
Samuel D. Rettew, Esq.
Latham & Watkins LLP
301 Congress Avenue, Suite 900
Austin, TX 78701
(737) 910-7300

Jeff Mengoli, Esq.
Chuck Cassidy, Esq.
Justin Bowes, Esq.
BigCommerce Holdings, Inc.
11305 Four Points Drive
Austin, Texas 78726
(512) 865-4500

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

- | | | | |
|-------------------------|-------------------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input checked="" type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| | | Emerging growth company | <input type="checkbox"/> |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act

REGISTRATION OF ADDITIONAL SECURITIES PURSUANT TO GENERAL INSTRUCTION E

This Registration Statement on Form S-8 registers an additional 7,311,881 shares of Series 1 common stock of the Registrant which may be issued pursuant to the Registrant's 2020 Equity Incentive Plan (the "2020 Plan"), consisting of (i) 3,616,312 shares of Series 1 common stock that became available for issuance under the 2020 Plan on January 1, 2022 due to the automatic annual increase provisions of the 2020 Plan and (ii) 3,695,569 shares of Series 1 common stock that became available for issuance under the 2020 Plan on January 1, 2023 due to the automatic annual increase provisions of the 2020 Plan. Accordingly, the contents of the Registration Statements on Form S-8 relating to the 2020 Plan previously filed by the Registrant with the Securities and Exchange Commission (the "Commission") on August 7, 2020 (File No. 333-242387) and May 11, 2021 (File No. 333-256007) are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the "Commission") (other than information in a report on Form 8-K that is furnished and not filed pursuant to Form 8-K and, except as may be noted in any such Form 8-K, exhibits filed on such form that are related to such information):

- (i) The Registrant's Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, filed with the Commission on March 1, 2023; and
- (ii) The description of the Registrant's Common Stock included in the Registrant's Registration Statement on [Form 8-A](#) filed on August 3, 2020 (File No. 001-39423), including any amendment or report updating such description.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "1934 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 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 of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission 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 herein or in any subsequently filed document which also is deemed to be incorporated by reference herein 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.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a corporation to indemnify its directors and officers against liabilities arising out of actions, suits and proceedings to which they are made or threatened to be made a party by reason of the fact of their prior or current service to the corporation as a director or officer, in accordance with the provisions of Section 145, which are sufficiently broad to permit indemnification under certain circumstances for liabilities arising under the Securities Act. The indemnity may cover expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by the director or officer in connection with any such action, suit or proceeding. Section 145 permits corporations to pay expenses (including attorneys' fees) incurred by directors and officers in advance of the final disposition of such action, suit or proceeding. In addition, Section 145 provides that a corporation has the power to purchase and maintain insurance on behalf of its directors and officers against any liability asserted against them and incurred by them in their capacity as a director or officer, or arising out of their status as such, whether or not the corporation would have the power to indemnify the director or officer against such liability under Section 145.

The Registrant's amended and restated certificate of incorporation limits the personal liability of directors for breach of fiduciary duty to the maximum extent permitted by the DGCL and provides that no director will have personal liability to the Registrant or to its stockholders for monetary damages for breach of fiduciary duty or other duty as a director. However, these provisions do not eliminate or limit the liability of any of the Registrant's directors:

- for any breach of the director's duty of loyalty to the Registrant or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- for voting or assenting to unlawful payments of dividends, stock repurchases or other distributions; or
- for any transaction from which the director derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to such amendment or repeal. If the DGCL is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of the Registrant's directors will be further limited to the greatest extent permitted by the DGCL.

In addition, the Registrant's amended and restated certificate of incorporation provides that it must indemnify its directors and officers and it must advance expenses, including attorneys' fees, to its directors and officers in connection with legal proceedings, subject to very limited exceptions.

The Registrant maintains a general liability insurance policy that covers certain liabilities of its directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers. In addition, the Registrant has entered into, and intends to continue to enter into, indemnification agreements with each of its directors and executive officers. These indemnification agreements require the Registrant to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Registrant, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

Reference is made to the underwriting agreement filed as [Exhibit 1.1](#) to the Registrant's Registration Statement on [Form S-1](#) (Registration No. 333-239838), declared effective by the Commission on August 3, 2020 and the underwriting agreement filed as [Exhibit 1.1](#) to the Registrant's Registration Statement on [Form S-1](#) (Registration No. 333-250008), declared effective by the Commission on November 10, 2020, in each case pursuant to which the underwriters have agreed to indemnify the Registrant's officers and directors against certain liabilities under the 1933 Act.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Exhibit Number	Documents
4.1	Seventh Amended and Restated Certificate of Incorporation of the Registrant, (incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (Registration No. 001-39423) filed on August 7, 2020).
4.2	Amended and Restated Bylaws as amended (incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (Registration No. 001-39423) filed on August 7, 2020).
4.3	BigCommerce Holdings, Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 4.4 of the Registrant's Form S-8 filed on August 10, 2020).
5.1*	Opinion of Latham & Watkins LLP
23.1*	Consent of Independent Registered Public Accounting Firm
23.2*	Consent of Latham & Watkins LLP is contained in Exhibit 5.1 to this Registration Statement.
24.1*	Power of Attorney is contained on the signature page.
107*	Filing Fee Table.

* Filed herewith.

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;

(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 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) of this section 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 Commission by the registrant pursuant to Section 13 or Section 15(d) of the 1934 Act (15 U.S.C. 78m or 78o(d)) 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.

(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 Section 15(d) of the 1934 Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the 1934 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act 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 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 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 the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 Austin, State of Texas, on March 3, 2023.

BIGCOMMERCE HOLDINGS, INC.

By: /s/ Brent Bellm

Brent Bellm

Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Brent Bellm, Robert Alvarez, and Jeff Mengoli, and each of them, as his or her true and lawful attorneys-in-fact and agents, 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 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 attorneys-in-fact and agents, and each of them, 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 to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Brent Bellm</u> Brent Bellm	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 3, 2023
<u>/s/ Robert Alvarez</u> Robert Alvarez	Chief Financial Officer <i>(Principal Financial Officer)</i>	March 3, 2023
<u>/s/ Thomas Aylor</u> Thomas Aylor	Vice President, Accounting <i>(Principal Accounting Officer)</i>	March 3, 2023
<u>/s/ Lawrence Bohn</u> Lawrence Bohn	Director	March 3, 2023
<u>/s/ Donald E. Clarke</u> Donald E. Clarke	Director	March 3, 2023
<u>/s/ Sally Gilligan</u> Sally Gilligan	Director	March 3, 2023
<u>/s/ Satish Malhotra</u> Satish Malhotra	Director	March 3, 2023

/s/ Jeff Richards

Jeff Richards

Director

March 3, 2023

/s/ Ellen F. Siminoff

Ellen F. Siminoff

Director

March 3, 2023

LATHAM & WATKINS LLP

301 Congress Avenue, Suite 900
 Austin, TX 78701
 Tel: +1.737.910.7300 Fax: +1.737.910.7301
 www.lw.com

FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Shanghai
Hong Kong	Silicon Valley
Houston	Singapore
London	Tel Aviv
Los Angeles	Tokyo
Madrid	Washington, D.C.

March 3, 2023

BigCommerce Holdings, Inc.
 11305 Four Points Drive
 Building II, Suite 100
 Austin, Texas 78726

Re: BigCommerce Holdings, Inc. – Registration Statement on Form S-8

To the addressees set forth above:

We have acted as special counsel to BigCommerce Holdings, Inc., a Delaware corporation (the “**Company**”), in connection with the preparation and filing by the Company on the date hereof with the Securities and Exchange Commission (the “**Commission**”) of a Registration Statement (the “**Registration Statement**”) on Form S-8 under the Securities Act of 1933, as amended (the “**Act**”), relating to the issuance of up to 7,311,881 shares (the “**Shares**”) of Series 1 common stock, par value \$0.0001 per share, of the Company, which may be issued pursuant to the BigCommerce Holdings, Inc. 2020 Equity Incentive Plan (the “**2020 Plan**”), consisting of (i) 3,616,312 Shares that became available for issuance under the 2020 Plan on January 1, 2022 due to the automatic annual increase provisions of the 2020 Plan and (ii) 3,695,569 Shares that became available for issuance under the 2020 Plan on January 1, 2023 due to the automatic annual increase provisions of the 2020 Plan. This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware, and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the recipients thereof, and have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the 2020 Plan, assuming in each case that the individual grants or awards under the 2020 Plan are duly authorized by all necessary corporate action and duly granted or awarded and exercised in accordance of the law and the 2020 Plan (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the General Corporation Law of the State of Delaware.

LATHAM & WATKINS LLP

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 Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Sincerely,

/s/ Latham & Watkins LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2020 Equity Incentive Plan of BigCommerce Holdings, Inc. of our report dated March 1, 2023, with respect to the consolidated financial statements of BigCommerce Holdings, Inc. and the effectiveness of internal control over financial reporting of BigCommerce Holdings, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP
Austin, Texas
March 3, 2023

CALCULATION OF FILING FEE TABLE

Form S-8
(Form Type)

BigCommerce Holdings, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rate	Amount Registered(1)	Proposed Maximum Offering Price Per Share	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock, \$0.0001 par value per share	Rule 457(c) and Rule 457(h)	7,311,881	\$8.87(3)	\$64,856,384.47(3)	0.00011020	\$7,147.18
Total Offering Amounts					\$64,856,384.47		\$7,147.18
Total Fee Offsets							—
Net Fee Due							\$7,147.18

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement on Form S-8 (“Registration Statement”) also covers any additional number of shares of Series 1 common stock, \$0.0001 par value per share (“Common Stock”) of BigCommerce Holdings, Inc. (the “Company”) that became issuable under the Company’s 2020 Equity Incentive Plan (the “2020 Plan”) by reason of any stock dividend, stock split, recapitalization or any other similar transaction which results in an increase in the number of shares of the Registrant’s outstanding Common Stock.
- (2) Represents an additional 7,311,881 shares of Common Stock of the Company available for issuance pursuant to the 2020 Plan, consisting of (i) 3,616,312 shares of Common Stock that became available for issuance under the 2020 Plan on January 1, 2022 due to the automatic annual increase provisions of the 2020 Plan and (ii) 3,695,569 shares of Common Stock that became available for issuance under the 2020 Plan on January 1, 2023 due to the automatic annual increase provisions of the 2020 Plan.
- (3) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act and based on the average of the high and low sales price per share of Common Stock on the Nasdaq Global Market on February 24, 2023, which is within five business days prior to filing this Registration Statement.