

SALESFORCE COM INC
Form S-8
May 13, 2011

As filed with the Securities and Exchange Commission on May 13, 2011

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

Under

The Securities Act of 1933

salesforce.com, inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

94-3320693
(I.R.S. Employer
Identification Number)

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The Landmark @ One Market, Suite 300

San Francisco, California 94105

(Address of principal executive offices, including zip code)

salesforce.com, inc. 2004 Equity Incentive Plan

salesforce.com, inc. 2006 Inducement Equity Incentive Plan

Radian6 Technologies Inc. Third Amended and Restated Stock Option Plan

(Full title of the plan)

David Schellhase, Esq.

Executive Vice President, Legal

salesforce.com, inc.

The Landmark @ One Market, Suite 300

San Francisco, California 94105

(415) 901-7000

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

Copy to:

Aaron J. Alter, Esq.

Wilson Sonsini Goodrich & Rosati

Professional Corporation

650 Page Mill Road

Palo Alto, California 94304

(650) 493-9300

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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 a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered (1) | Proposed | Proposed | Amount of Registration Fee |
|---|-----------------------------------|--|--|-------------------------------|
| | | Maximum Offering Price Per Share | Maximum Aggregate Offering Price | |
| Common stock, \$0.001 par value per share: | | | | |
| To be issued under the 2004 Equity Incentive Plan | 3,500,000 (2) | \$ 132.04 (5) | \$ 462,140,000 | \$ 53,655 |
| To be issued under the 2006 Inducement Equity Incentive Plan | 300,000 (3) | \$ 132.04 (5) | \$ 39,612,000 | \$ 4,599 |
| Outstanding under the Third Amended and Restated Stock Option Plan | 239,519 (4) | \$ 55.34 (6) | \$ 13,254,981 | \$ 1,538 |
| TOTAL: | 4,039,519 | | \$ 515,006,981 | \$ 59,792 |

- (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 2004 Equity Incentive Plan ("2004 Plan"), 2006 Inducement Equity Incentive Plan ("2006 Plan") and Radian6 Technologies Inc. Third Amended and Restated Stock Option Plan (the "Radian6 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) The 2004 Plan provides for an annual increase in the number of Shares reserved and available for issuance under the 2004 Plan as follows: On February 1, 2009 and each February 1 thereafter, through and including February 1, 2013, by a number of shares equal to the smallest of (i) three and one half percent (3.5%) of the number of shares of Common Stock issued and outstanding on the immediately preceding January 31, (ii) three million five hundred thousand (3,500,000) shares or (iii) an amount determined by the Board.
- (3) In April 2006, the Registrant's board of directors approved the 2006 Plan. In January 2011, the Registrant's board of directors amended the 2006 Plan to increase the 2006 Plan's share reserve by 300,000 shares to 1,000,000 shares total.
- (4) Represents shares of the Registrant's common stock issuable in connection with stock options granted under the Radian 6 Plan that were assumed by the Registrant on May 2, 2011 (the "Assumed Awards"), upon the closing of the acquisition of Radian6 Technologies, Inc. ("Radian6") pursuant to the Share Purchase Agreement dated as of March 30, 2011, by and among the Registrant, salesforce.com Canada Corporation, Radian6, each of the Radian6 shareholders, and the Radian6 shareholder representative.
- (5) Estimated in accordance with Rule 457(h) solely for purposes of calculating the registration fee on the basis of the average of the high and low prices of Registrant's Common Stock as reported on the New York Stock Exchange on May 9, 2011.
- (6) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of the weighted average exercise price of \$55.34 per share.

SALESFORCE.COM, INC.

REGISTRATION STATEMENT ON FORM S-8

INCORPORATION OF PREVIOUS REGISTRATION STATEMENT

This Registration Statement on Form S-8 is being filed by salesforce.com, inc. (the Company or the Registrant) to register:

3,500,000 additional shares of common stock of the Registrant, \$0.001 par value (the Common Stock), which may be acquired upon the exercise of stock options and restricted stock units granted to certain employees, consultants and directors of the Company, under the Registrant s 2004 Equity Incentive Plan, as amended (the 2004 Plan);

300,000 shares of common stock of the Registrant, which may be acquired upon the exercise of stock options and restricted stock units granted to certain employees, under the Registrant s 2006 Inducement Equity Incentive Plan, as amended (the 2006 Plan); and

239,519 shares of common stock of the Registrant, pursuant to the Company s assumption of the outstanding options granted under the Radian6 Technologies Inc. Third Amended and Restated Stock Option Plan (the Radian6 Plan).

Pursuant to General Instruction E of Form S-8, the contents of the Registrant s Registration Statements on Form S-8, Registration Nos. 333-117860, 333-123656, 333-134467, 333-143161, 333-151180, 333-159554 and 333-167190 filed with the Securities and Exchange Commission (the Commission) on August 2, 2004, March 29, 2005, May 25, 2006, May 22, 2007, May 23, 2008, May 28, 2009 and May 28, 2010, respectively, are hereby incorporated in this Registration Statement by reference to the extent not replaced hereby.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information

The documents containing the information specified in this Item 1 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Securities and Exchange Commission (the Commission) and the instructions to Form S-8, 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 under the Securities Act.

Item 2. Registration Information and Employee Plan Annual Information.

The documents containing the information specified in this Item 2 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, 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 under the Securities Act. Such documents, together with the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement on Form S-8, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act, and are available upon written request to: Secretary, The Landmark @ One Market, Suite 300, San Francisco, California 94105, (415) 901-7000.

PART II

INFORMATION REQUIRED IN 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:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended January 31, 2011 filed with the Commission on March 23, 2011;
- (2) The Registrant's Current Reports on Form 8-K filed with the Commission on February 24, 2011, March 30, 2011, April 1, 2011 and May 2, 2011, except to the extent that information therein is furnished and not filed with the Securities and Exchange Commission; and
- (3) The description of the Registrant's Common Stock contained in the Company's Registration Statement on Form 8-A (File No. 001-32224) filed with the Commission on June 21, 2004, pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (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.

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 102(b) of the Delaware General Corporation Law authorizes a corporation to provide in its Certificate of Incorporation that a director of the corporation shall not be personally liable to a corporation or its stockholders for monetary damages for breach or alleged breach of the director's duty of care. While this statute does not change the directors' duty of care, it enables corporations to limit available relief to equitable remedies such as injunction or rescission. The statute has no effect on a director's duty of loyalty or liability for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, illegal payment of dividends or stock redemptions or repurchases, or for any transaction from which the director derives an improper personal benefit. As permitted by the statute, the Company has adopted provisions in its Certificate of Incorporation which eliminate to the fullest extent permissible under Delaware law the personal liability of its directors to the Company and its stockholders for monetary damages for breach or alleged breach of their duty of care.

Section 145 of the General Corporation Law of the State of Delaware allows for the indemnification of officers, directors, employees and agents of a corporation. The Bylaws of the Company provide for indemnification of its directors, officers, employees and agents to the full extent permitted by Delaware law, including those circumstances in which indemnification would otherwise be discretionary under Delaware law. The Company's Bylaws also empower the Company to enter into indemnification agreements with its directors and officers and to purchase insurance on behalf of any person whom it is required or permitted to indemnify. The Company has entered into agreements with its directors and its executive officers that require the Company to indemnify such persons to the fullest extent permitted under Delaware law against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or an executive officer of the Company or any of its affiliated enterprises. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. The Company intends to enter into indemnification agreements with any new directors and executive officers in the future.

Section 145 of the General Corporation Law of the State of Delaware provides for indemnification in terms sufficiently broad to indemnify such individuals, under certain circumstances, for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit Number | Description |
|----------------|---|
| 4.1(1) | 2004 Equity Incentive Plan, as amended, and forms of agreements thereunder |
| 4.2 | 2006 Inducement Equity Incentive Plan and forms of agreements thereunder |
| 4.3 | Radian6 Technologies Inc. Third Amended and Restated Stock Option Plan and form of agreement thereunder |
| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm |
| 23.2 | Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1 hereto) |
| 24.1 | Power of Attorney (contained on signature page hereto) |

(1) Incorporated by reference to the Registrant's Form 10-Q for the quarterly period ended July 31, 2008 as filed with the Securities and Exchange Commission on August 22, 2008.

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 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 of 1933 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 San Francisco, State of California, on May 13, 2011.

salesforce.com, inc.

By: /s/ Marc Benioff
 Marc Benioff
 Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below hereby constitutes and appoints Marc Benioff, Graham Smith and David Schellhase, 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 on Form S-8 (including post effective amendments), 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, proxy 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, proxy 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 on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--------------------------|---|--------------|
| /s/ Marc Benioff | Chairman of the Board and Chief Executive Officer | May 13, 2011 |
| Marc Benioff | (Principal Executive Officer) | |
| /s/ Graham Smith | Chief Financial Officer | May 13, 2011 |
| Graham Smith | (Principal Financial & Accounting Officer) | |
| /s/ Craig Conway | Director | May 13, 2011 |
| Craig Conway | | |
| /s/ Alan Hassenfeld | Director | May 13, 2011 |
| Alan Hassenfeld | | |
| /s/ Craig Ramsey | Director | May 13, 2011 |
| Craig Ramsey | | |
| /s/ Sanford R. Robertson | Director | May 13, 2011 |
| Sanford R. Robertson | | |
| /s/ Stratton Selavos | Director | May 13, 2011 |

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| | | |
|------------------------|----------|--------------|
| Stratton Sclavos | | |
| /s/ Lawrence Tomlinson | Director | May 13, 2011 |
| Lawrence Tomlinson | | |
| /s/ Maynard Webb | Director | May 13, 2011 |
| Maynard Webb | | |
| /s/ Shirley Young | Director | May 13, 2011 |
| Shirley Young | | |

INDEX TO EXHIBITS

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| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm |
| 23.2 | Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1 hereto) |
| 24.1 | Power of Attorney (contained on signature page hereto) |

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