

ELLIE MAE INC
Form S-8
February 02, 2012

As filed with the Securities and Exchange Commission on February 2, 2012

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

UNDER

THE SECURITIES ACT OF 1933

ELLIE MAE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

94-3288780

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(IRS Employer Identification No.)

4155 Hopyard Road, Suite 200

Pleasanton, California 94588

(Address of Principal Executive Offices) (Zip Code)

2011 Equity Incentive Award Plan

Employee Stock Purchase Plan

(Full title of the plan)

Elisa Lee

Executive Vice President and General Counsel

Ellie Mae, Inc.

4155 Hopyard Road, Suite 200

Pleasanton, California 94588

(Name and address of agent for service)

(925) 227-7000

(Telephone number, including area code, of agent for service)

Copies to:

Christopher L. Kaufman

Robert W. Phillips

Latham & Watkins LLP

140 Scott Drive

Menlo Park, California 94025

(650) 328-4600

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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. (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	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
To Be Registered				
Common Stock, \$0.0001 Par Value	210,195(2)	\$5.64(3)	\$1,185,500	\$136
Common Stock, \$0.0001 Par Value	1,050,979(4)	\$5.64(3)	\$5,927,522	\$680

- (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 Employee Stock Purchase Plan (the ESPP) or the 2011 Equity Incentive Award Plan (the 2011 Plan) by reason of any stock dividend, stock split, recapitalization or similar transaction effected without the registrant's receipt of consideration which would increase the number of outstanding shares of common stock. In addition, pursuant to Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefits plan described herein.
- (2) Represents 210,195 additional shares of common stock reserved for future issuance under the ESPP.
- (3) This estimate is made pursuant to Rules 457(c) and 457(h) of the Securities Act for purposes of calculating the registration fee. The Proposed Maximum Offering Price Per Share is \$5.64, which is the average of the high and low prices for the registrant's common stock as reported on the New York Stock Exchange on January 27, 2012.
- (4) Represents 1,050,979 additional shares of common stock reserved for future issuance under the 2011 Plan.

Proposed sale to take place as soon after the effective date of the registration statement as awards under the plans are exercised and/or vest.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this 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 information incorporated by reference herein is considered to be part of this registration statement, and later information filed with the Commission will update and supersede this information. The following documents filed by the Registrant with the Commission are incorporated herein by reference:

- (a) The prospectus filed by the Registrant with the Commission pursuant to Rule 424(b) under the Securities Act, on April 15, 2011, relating to the registration statement on Form S-1, as amended (Registration No. 333-166438), which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed;
- (b) The description of the Registrant's common stock contained in the Registrant's registration statement on Form 8-A (Registration No. 001-35140), filed by the Registrant with the Commission under Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), on April 14, 2011, including any amendments or reports filed for the purpose of updating such description;
- (c) The Registrant's quarterly reports on Form 10-Q for the quarterly periods ended March 31, June 30, and September 30, 2011, filed with the Commission on May 13, August 10, and November 10, 2011, respectively; and
- (d) The Registrant's current reports on Form 8-K filed with the Commission on April 20, August 15 (only with respect to Items 1.01, 2.01, and 5.02 thereof), October 24, November 14 (only with respect to Item 5.02 thereof), and December 13, 2011 and on Form 8-K/A filed with the Commission on October 28, 2011.

All documents that the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to the registration statement which indicates that all of the shares of common stock offered have been sold or which deregisters all of such shares then remaining unsold shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of the filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions. For the purposes of 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 to the extent that a statement contained herein or in any other subsequently filed document which also is or 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.

Under no circumstances will any information filed under current Items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant is a Delaware corporation. Subsection (b)(7) of Section 102 of the Delaware General Corporation Law (the DGCL), enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; (iii) under Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions); or (iv) for any transaction from which the director derived an improper personal benefit.

Section 145 of the DGCL authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act.

As permitted by Section 145 of the DGCL, the Registrant's certificate of incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breaches of their fiduciary duties as directors and that provides for the indemnification of directors to the fullest extent permitted under Delaware law.

In addition, as permitted by Section 145 of the DGCL, the bylaws of the Registrant provide that:

the Registrant shall indemnify its directors and officers for serving the Registrant in those capacities or for serving other business enterprises at the Registrant's request, to the fullest extent permitted by the DGCL;

the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification;

the Registrant is not obligated pursuant to the bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors;

the rights conferred in the bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons;

the rights to indemnification and to prepayment of expenses shall continue notwithstanding that an indemnified person has ceased to be a director or officer of the Registrant and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person; and

the Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is not required by law.

The Registrant has entered into separate indemnification agreement with each of its directors and executive officers that, with certain exceptions, provide the maximum indemnity allowed to directors and executive officers by Section 145 of the DGCL and that allow for certain additional procedural protections. The Registrant intends to enter into indemnification agreements with any new directors and executive officers in the future.

The indemnification provisions of the Registrant's certificate of incorporation and bylaws and the indemnification agreements entered into, or to be entered into, between the Registrant and its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description of Exhibit
5.1	Opinion of Latham & Watkins LLP.
10.1	Ellie Mae, Inc. 2011 Equity Incentive Award Plan, filed as Exhibit 10.5 to the Registrant's Registration Statement on Form S-8 (File No. 333-174460) filed with the Commission on May 24, 2011, is hereby incorporated by reference.
10.2	Form of Stock Option Grant Notice and Stock Option Agreement for Awards under the Ellie Mae, Inc. 2011 Equity Incentive Award Plan, filed as Exhibit 10.6 to the Registrant's Registration Statement on Form S-8 (File No. 333-174460) filed with the Commission on May 24, 2011, is hereby incorporated by reference.
10.3	Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement for Awards under the Ellie Mae, Inc. 2011 Equity Incentive Award Plan, filed as Exhibit 10.7 to the Registrant's Registration Statement on Form S-8 (File No. 333-174460) filed with the Commission on May 24, 2011, is hereby incorporated by reference.
10.4	Ellie Mae, Inc. Employee Stock Purchase Plan, filed as Exhibit 10.8 to the Registrant's Registration Statement on Form S-8 (File No. 333-174460) filed with the Commission on May 24, 2011, is hereby incorporated by reference.
23.1	Consent of Latham & Watkins LLP (included in Exhibit 5.1).

23.2 Consent of Grant Thornton LLP, independent registered public accounting firm.

23.3 Consent of Haskell & White LLP, independent auditor.

23.4 Consent of SingerLewak LLP, independent registered public accounting firm.

24.1 Power of attorney (included in the signature page to this Registration Statement).

Item 9. Undertakings.

a. The undersigned Registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made pursuant to this Registration Statement, 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 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 this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that: paragraphs (i) and (ii) above do not apply if 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 15(d) of the Exchange Act that are incorporated by reference in this 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 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.
- h. 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 provisions described under Item 6 Indemnification of Directors and Officers, 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 Pleasanton, State of California, on this 2nd day of February, 2012.

ELLIE MAE, INC.

By: /s/ Sigmund Anderman
Name: Sigmund Anderman
Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Sigmund Anderman and Edgar A. Luce, and each of them, as attorneys-in-fact, each with the power of substitution, 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, and to file the same, with all exhibits thereto and all documents in connection therewith, with the 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, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ SIGMUND ANDERMAN	Chief Executive Officer and Director	February 2, 2012
Sigmund Anderman	(principal executive officer)	
/s/ EDGAR A. LUCE	Chief Financial Officer	February 2, 2012
Edgar A. Luce	(principal financial and accounting officer)	
/s/ CARL BUCCELLATO	Director	February 2, 2012
Carl Buccellato		
Craig Davis	Director	
/s/ A. BARR DOLAN	Director	February 2, 2012
A. Barr Dolan		
/s/ ALAN S. HENRICKS	Director	February 2, 2012
Alan S. Henricks		
/s/ ROBERT J. LEVIN	Director	February 2, 2012
Robert J. Levin		
/s/ BERNARD M. NOTAS	Director	February 2, 2012
Bernard M. Notas		
/s/ FRANK SCHULTZ	Director	February 2, 2012
Frank Schultz		
/s/ JEB SPENCER	Director	February 2, 2012
Jeb Spencer		

EXHIBIT INDEX

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