

LIVEPERSON INC
Form 8-K
March 05, 2019

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
Date of Report (Date of earliest event reported): February 27, 2019

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

Delaware	0-30141	13-3861628
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

475 Tenth Avenue, 5th Floor
New York, New York 10018
(Address of principal executive offices, with zip code)
(212) 609-4200

Registrant's telephone number, including area code
N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ..Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ..Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ..Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ..Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
- Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ..

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 13(a) of the Exchange Act. ..

Item 1.01 Entry into a Material Definitive Agreement.

Indenture and Notes

On March 4, 2019, LivePerson, Inc. (“LivePerson” or the “Company”) completed its previously announced private offering (the “Note Offering”) of an aggregate of \$200.0 million principal amount of its 0.750% Convertible Senior Notes due 2024 (the “Notes”) to qualified institutional buyers pursuant to Rule 144A promulgated under the Securities Act of 1933, as amended (the “Securities Act”).

On March 4, 2019, LivePerson entered into an Indenture relating to the issuance of the Notes (the “Indenture”) by and between the Company and U.S. Bank National Association, as trustee (the “Trustee”). The Notes will bear interest at a rate of 0.750% per year, payable semi-annually on March 1 and September 1 of each year, beginning on September 1, 2019. The Notes may bear additional interest under specified circumstances relating to LivePerson’s failure to comply with its reporting obligations under the Indenture or if the Notes are not freely tradeable as required by the Indenture. The Notes are convertible into cash, shares of LivePerson’s common stock or a combination of cash and shares of LivePerson’s common stock, at LivePerson’s election. The Notes will mature on March 1, 2024, unless earlier converted or repurchased.

The net proceeds from the Note Offering are expected to be approximately \$192.0 million, after deducting the initial purchasers’ discount and estimated offering expenses payable by LivePerson. LivePerson used a portion of the net proceeds from the Note Offering to pay the cost of the capped call transactions described below. LivePerson intends to use the remainder of the net proceeds from the Note Offering for general corporate purposes, which may include acquisitions or other strategic transactions.

Holders of the notes may convert their Notes at their option at any time prior to the close of business on the business day immediately preceding November 1, 2023, in multiples of \$1,000 principal amount, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on June 30, 2019 (and only during such calendar quarter), if the last reported sale price of LivePerson’s common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price for the Notes on each applicable trading day as determined by LivePerson; (2) during the five business day period after any five consecutive trading day period (the “measurement period”) in which the “trading price” (as defined in the Indenture) per \$1,000 principal amount of Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of LivePerson’s common stock and the conversion rate for the Notes on each such trading day; or (3) upon the occurrence of specified corporate events. On or after November 1, 2023, holders may convert all or any portion of their Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date, regardless of the foregoing circumstances. Upon conversion, LivePerson will pay or deliver, as the case may be, cash, shares of its common stock or a combination of cash and shares of its common stock, at LivePerson’s election.

The initial conversion rate is 25.9182 shares of LivePerson’s common stock per \$1,000 principal amount of Notes (equivalent to an initial conversion price of approximately \$38.58 per share of LivePerson’s common stock). The conversion rate for the Notes is subject to adjustment if certain events occur, but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, LivePerson will increase the conversion rate for a holder who elects to convert its Notes in connection with such a corporate event.

LivePerson may not redeem the Notes, and no sinking fund is provided for the Notes.

If LivePerson undergoes a fundamental change (as defined in the Indenture) prior to the maturity date, holders may require LivePerson to repurchase for cash all or any portion of their Notes in principal amounts of \$1,000 or a multiple thereof at a fundamental change repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

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The Notes are LivePerson's senior unsecured obligations and rank senior in right of payment to any of LivePerson's indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to all of LivePerson's existing and future liabilities that are not subordinated; effectively junior in right of payment to any of LivePerson's secured indebtedness to the extent

of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables) of LivePerson's current or future subsidiaries.

The Indenture also contains customary events of default.

The foregoing description of the Indenture and the Notes does not purport to be complete and is qualified in its entirety by reference to the full text of each of the Indenture and the Form of 0.750% Convertible Senior Notes due 2024, copies of which are filed with this Current Report on Form 8-K as Exhibits 4.1 and 4.2, respectively, and are incorporated by reference herein.

Capped Call Transactions

On February 27, 2019, concurrently with the pricing of the Notes, LivePerson entered into privately negotiated capped call transactions with Barclays Bank, PLC, Citibank, N.A., JPMorgan Chase Bank, National Association, London Branch and Société Générale (the "Option Counterparties"). The capped call transactions are expected generally to reduce the potential dilution to holders of LivePerson's common stock upon conversion of the Notes and/or offset any cash payments LivePerson is required to make in excess of the principal amount of the converted Notes, as the case may be, upon any conversion of the Notes, with such reduction and/or offset subject to a cap initially equal to \$57.16 (which represents a premium of approximately 100% over the last reported sale price of \$28.58 per share of LivePerson's common stock on February 27, 2019).

The capped call transactions are separate transactions, entered into by LivePerson with the Option Counterparties, are not part of the terms of the Notes, and will not affect any holder's rights under the Notes. Holders of the Notes will not have any rights with respect to the capped call transactions.

LivePerson used approximately \$20.2 million of the net proceeds from the offering of the Notes to pay the cost of the capped call transactions.

The foregoing description of the capped call transactions does not purport to be complete and is qualified in its entirety by reference to the full text of the Form of Capped Call Transaction Confirmation, a copy of which is filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 2.03.

Item 3.02 Unregistered Sale of Equity Securities

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 3.02. The Notes were sold to the initial purchasers in reliance on the exemption from the registration requirements provided by Section 4(a)(2) of the Securities Act and the Notes were resold to qualified institutional buyers as defined in, and in reliance on, Rule 144A of the Securities Act.

The offer and sale of the Notes and the common stock issuable upon conversion of the Notes have not been and will not be registered under the Securities Act or the securities laws of any other jurisdiction, and such securities may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. This Current Report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

Forward-Looking Statements

This Current Report on Form 8-K contains "forward-looking statements" regarding LivePerson that are not historical facts. Any such forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements involve risks and uncertainties that could cause actual future events or results to differ materially from such statements, including, but not limited to, prevailing market conditions, the anticipated use of the proceeds of the Note Offering, the impact of general economic, industry or political conditions in the United States or internationally, and whether the capped call

transactions will offset potential dilution to holders of LivePerson common stock upon any conversion of the Notes and/or offset the potential cash payments that LivePerson could be required to make. The forward-looking statements contained in this Current Report on Form 8-K are also subject to additional risks, uncertainties, and factors, including those more fully described in the “Risk Factors” described in LivePerson’s Annual Report on Form 10-K for the year ended December 31, 2018 filed with the Securities and Exchange Commission, or SEC, and in LivePerson’s other filings with the SEC. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date on which they are made. LivePerson undertakes no obligation to update any forward-looking statement, whether as a result of changes in underlying factors, new information, future events or otherwise.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits. The following documents are included as exhibits to this report:

Exhibit No.	Description
4.1	<u>Indenture, dated as of March 4, 2019, by and between LivePerson, Inc. and U.S. Bank National Association, as Trustee.</u>
4.2	<u>Form of 0.750% Convertible Senior Notes due 2024 (included within the Indenture filed as Exhibit 4.1).</u>
10.1	<u>Form of Capped Call Transaction Confirmation.</u>

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

LIVEPERSON, INC.
(Registrant)

Date: March 5, 2019 By: /s/ Monica L. Greenberg
Monica L. Greenberg
Executive Vice President, Business Affairs and General Counsel