

As filed with the Securities and Exchange Commission on June 1, 2022

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

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

SMILEDIRECTCLUB, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

83-4505317

(I.R.S. Employer Identification Number)

**414 Union Street
Nashville, Tennessee 37219**

(Address of Principal Executive Offices, including Zip Code)

**SmileDirectClub, Inc. 2019 Omnibus Incentive Plan
SmileDirectClub, Inc. 2019 Stock Purchase Plan**
(Full title of the plans)

Susan Greenspon Rammelt
Chief Legal Officer, EVP Business Affairs and Secretary
SmileDirectClub, Inc.
414 Union Street
Nashville, TN 37219
(Name and address of agent for service)
800-848-7566

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

with a copy to:
Jason M. Hille
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 271-2400

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company 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 7(a)(2)(B) of the Securities Act.

STATEMENT PURSUANT TO GENERAL INSTRUCTION E TO FORM S-8

This Registration Statement on Form S-8 (this “Registration Statement”) registers additional shares of Class A Common Stock, par value \$0.0001 per share, of SmileDirectClub, Inc. (the “Registrant”) available for grant and issuance by Registrant under its 2019 Omnibus Incentive Plan (the “Omnibus Plan”) and its 2019 Stock Purchase Plan (the “Purchase Plan”).

The number of shares reserved for issuance under the Omnibus Plan is subject to an automatic increase on the first day of each fiscal year, commencing on January 1, 2020 and ending on (and including) January 1, 2029, in an amount equal to 5% of the total number of shares of Class A Common Stock outstanding on the last day of the calendar month prior to the date of such automatic increase (the “Omnibus Plan Evergreen Provision”). Notwithstanding the foregoing, the Registrant’s Board of Directors may act prior to the first day of a given fiscal year to provide that there will be no increase in the number of shares of Class A Common Stock available for issuance under the Omnibus Plan for such fiscal year or that the increase in the number of shares available for issuance under the Omnibus Plan for such year will be a lesser number of shares than would otherwise occur pursuant to the preceding sentence.

The number of shares reserved for issuance under the Purchase Plan is subject to an automatic increase on the first day of each fiscal year, commencing on January 1, 2020, and ending on (and including) January 1, 2029, in an amount equal to 1% of the total number of shares of the Registrant’s Class A Common Stock outstanding on the last day of the calendar month prior to the date of such automatic increase (the “Purchase Plan Evergreen Provision”). Notwithstanding the foregoing, the Registrant’s Board of Directors may act prior to the first day of a given fiscal year to provide that there will be no increase in the number of shares of Class A Common Stock available for issuance under the Purchase Plan for such fiscal year or that the increase in the number of shares available for issuance under the Purchase Plan for such year will be a lesser number of shares than would otherwise occur pursuant to the preceding sentence.

This Registration Statement registers an additional 16,900,689 shares of Class A Common Stock that became available for grant and issuance under the Omnibus Plan pursuant to the Omnibus Plan Evergreen Provision and an additional 3,380,138 shares of Class A Common Stock that had become available for grant and issuance under the Purchase Plan pursuant to the Purchase Plan Evergreen Provision through January 1, 2022. The contents of the Registration Statement on Form S-8 relating to the Omnibus Plan and the Purchase Plan previously filed by the Registrant with the Securities and Exchange Commission (the “Commission”) on September 16, 2019 (File No. 333-233773) 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 8 Exhibits

Exhibit Index

<u>Exhibit No.</u>	<u>Exhibit Description</u>
<u>4.1</u>	<u>Amended and Restated Certificate of Incorporation of SmileDirectClub, Inc. (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed by the Registrant on September 17, 2019 (File No. 001-39037)).</u>
<u>4.2</u>	<u>Amended and Restated By-laws of SmileDirectClub, Inc. (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K filed by the Registrant on September 17, 2019 (File No. 001-39037)).</u>
<u>4.3</u>	<u>SmileDirectClub, Inc. 2019 Omnibus Incentive Plan (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-8 filed by the Registrant on September 16, 2019 (File No. 333-233773)).</u>
<u>4.4</u>	<u>SmileDirectClub, Inc. 2019 Stock Purchase Plan (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-8 filed by the Registrant on September 16, 2019 (File No. 333-233773)).</u>
<u>5</u>	<u>Opinion of Foley & Lardner LLP.</u>
<u>23.1</u>	<u>Consent of Foley & Lardner LLP (included in Exhibit 5).</u>
<u>23.2</u>	<u>Consent of Ernst & Young LLP.</u>
<u>24</u>	<u>Power of Attorney (included on the signature page of this Form S-8).</u>
<u>107</u>	<u>Filing Fee Table.</u>

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Nashville, State of Tennessee, on this 31st day of May, 2022.

SMILEDIRECTCLUB, INC.

By: /s/ David B. Katzman

David B. Katzman
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David B. Katzman and Susan Greenspon Rammelt, and each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in their name, place or 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 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 his, her 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, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
<u>/s/ David B. Katzman</u> David B. Katzman <u>/s/ Troy Crawford</u> Troy Crawford <u>/s/ Steven Katzman</u> Steven Katzman <u>/s/ Jordan Katzman</u> Jordan Katzman <u>/s/ Alexander Fenkell</u> Alexander Fenkell <u>/s/ Susan Greenspon Rammelt</u> Susan Greenspon Rammelt <u>/s/ Edward W. Ward, III</u> Edward W. Ward, III <u>/s/ Carol J. Hamilton</u> Carol J. Hamilton <u>/s/ Richard F. Wallman</u> Richard F. Wallman	 Chief Executive Officer and Director (Principal Executive Officer) Interim Chief Financial Officer, Chief Accounting Officer, and Treasurer (Principal Financial and Accounting Officer) Chief Operating Officer and Director Director Director Chief Legal Officer, EVP Business Affairs, Secretary, and Director Director Director Director	 May 31, 2022 May 31, 2022 May 31, 2022 May 31, 2022

May 31, 2022

SmileDirectClub, Inc.
414 Union Street
Nashville, Tennessee

Re: SmileDirectClub, Inc. Registration on Form S-8

Ladies and Gentlemen:

We have served as counsel to SmileDirectClub, Inc., a Delaware corporation (the “Company”), in connection with the preparation of a Registration Statement on Form S-8 (together with all exhibits thereto, the “Registration Statement”) to be filed by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”). The Registration Statement relates to an offering by the Company of up to a total of (1) 16,900,689 additional shares of the Company’s Class A common stock, par value \$0.0001 per share (the “Shares”), that may be issued pursuant to the Company’s 2019 Omnibus Incentive Plan (the “Omnibus Plan”) and (2) 3,380,138 additional Shares, that may be issued pursuant to the Company’s 2019 Stock Purchase Plan (the “Purchase Plan” and together with the Omnibus Plan, the “Plans”).

In connection with our representation, we have examined (1) the Amended and Restated Certificate of Incorporation of the Company, (2) the Amended and Restated By-Laws of the Company, (3) the Registration Statement, (4) the Plans and (5) such other corporate records, certificates, documents and other instruments as in our opinion are necessary or appropriate in connection with expressing the opinions set forth below.

Based upon and pursuant to the foregoing, we are of the opinion that the Shares, when issued by the Company pursuant to the terms and conditions of the Plans and as contemplated by the Registration Statement, will be validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are “experts” within the meaning of Section 11 of the Securities Act or within the category of persons whose consent is required by Section 7 of the Securities Act.

Sincerely,

/s/ Foley & Lardner LLP

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SACRAMENTO
SALT LAKE CITY
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY

TALLAHASSEE
TAMPA
WASHINGTON, D.C.
BRUSSELS
TOKYO

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement on Form S-8 pertaining to the 2019 Omnibus Incentive Plan and 2019 Stock Purchase Plan of SmileDirectClub, Inc. of our reports dated March 1, 2022, with respect to the consolidated financial statements of SmileDirectClub, Inc. and the effectiveness of internal control over financial reporting of SmileDirectClub, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2021, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Nashville, Tennessee
May 31, 2022

Calculation of Filing Fee Tables
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SMILEDIRECTCLUB, INC.
(Exact name of Registrant as specified in its charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽²⁾	Maximum Aggregate Offering Price ⁽²⁾	Fee Rate	Amount of Registration Fee
Equity	Class A Common Stock, par value \$0.0001 per share, reserved for issuance pursuant to the SmileDirectClub, Inc. 2019 Omnibus Incentive Plan	Other ⁽²⁾	16,900,689 ⁽¹⁾	\$1.34 ⁽²⁾	\$22,646,923.26 ⁽²⁾	0.0000927	\$2,099.37
Equity	Class A Common Stock, par value \$0.0001 per share, reserved for issuance pursuant to the SmileDirectClub, Inc. 2019 Stock Purchase Plan	Other ⁽²⁾	3,380,138 ⁽¹⁾	\$1.34 ⁽²⁾	\$4,529,384.92	0.0000927	\$419.87
Total Offering Amounts				-	\$27,176,308.18	-	\$2,519.24
Total Fees Previously Paid				-	-	-	-
Total Fee Offsets				-	-	-	-
Net Fee Due				-	-	-	\$2,519.24

- (1) Represents shares of Class A Common Stock of SmileDirectClub, Inc. (the “Registrant”). Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), the amount to be registered includes any additional shares of the Registrant’s Class A Common Stock that become issuable under the SmileDirectClub, Inc. 2019 Omnibus Incentive Plan or the SmileDirectClub, Inc. 2019 Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected that results in an increase to the number of outstanding shares of the Registrant’s Class A Common Stock, as applicable.
- (2) Estimated in accordance with Rule 457(c) and Rule 457(h) solely for the purpose of calculating the registration fee based on a per share price of \$1.34, the average of the high and low price of the Class A Common Stock on May 24, 2022, as reported on the NASDAQ Global Select Market.