

SHUTTERFLY INC  
Form S-8  
October 26, 2015

As filed with the Securities and Exchange Commission on October 26, 2015

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT**

***UNDER***

***THE SECURITIES ACT OF 1933***

**Shutterfly, Inc.**

**(Exact Name of Registrant as Specified in its Charter)**

**Delaware**  
**(State or Other Jurisdiction of**  
**Incorporation or Organization)**

**94-3330068**  
**(I.R.S. Employer**

**Identification Number)**

**2800 Bridge Parkway**

**Redwood City, California 94065**

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(Address of Principal Executive Offices) (Zip Code)

**2015 Equity Inducement Plan**

(Full Title of the Plan)

**Jeffrey T. Housenbold**

**President and Chief Executive Officer**

**c/o Shutterfly, Inc.**

**2800 Bridge Parkway**

**Redwood City, California 94065**

(Name and Address of Agent for Service)

**(650) 610-5200**

(Telephone Number, Including Area Code, of Agent for Service)

*Copy to:*

**Robert Freedman, Esq.**

**Fenwick & West LLP**

**Silicon Valley Center,**

**801 California Street**

**Mountain View, CA 94041**

**(650) 988-8500**

Indicate by check mark whether 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 to be Registered	Amount	Maximum	Proposed Maximum	Amount of Registration Fee
	to be Registered <sup>(1)</sup>	Offering Price Per Share <sup>(2)</sup>	Aggregate Offering Price	
Common Stock, \$0.0001 par value per share:				
2015 Equity Inducement Plan	300,000 <sup>(3)</sup>	\$39.80	\$11,940,000	\$1,202.36
Total	300,000			\$1,202.36

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement includes an indeterminate number of additional shares of Common Stock which may be offered and issued to prevent dilution from stock splits, stock dividends or similar transactions as provided in the above-referenced plan.
- (2) Estimated solely for purposes of this offering in accordance with Rule 457(h) and Rule 457(c) of the Securities Act based on the average of the high and low price per share of the Registrant's Common Stock, as reported on the Nasdaq Global Select Market on October 23, 2015.
- (3) Represents shares of Common Stock reserved for issuance upon the exercise of stock options and the settlement of restricted stock unit awards under the 2015 Equity Inducement Plan to be granted by the Registrant to certain employees as a material inducement to their acceptance of employment with the Registrant in accordance with NASDAQ Listing Rule 5635(c)(4).

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The documents containing the information required by Part I of Form S-8 (plan information and registrant information and employee plan annual information) will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act of 1933 (the Securities Act ). Such documents need not be filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act ) are incorporated herein by reference:

1. The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2014, filed with the Commission on February 17, 2015, as amended April 30, 2015.
2. The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, filed with the Commission on May 7, 2015, and the quarter ended June 30, 2015, filed with the Commission on August 6, 2015.
3. The Registrant's Current Report on Form 8-K filed with the Commission on February 12, 2015 (with respect to Item 5.02 only), June 16, 2015 and August 21, 2015.
4. The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A (Registration No. 001-33031) filed with the Commission on September 29, 2006 under Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange 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 in this Registration Statement and to be a part hereof from the date of filing of such documents. 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 in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such 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 court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation includes a provision that eliminates the personal liability of its directors for monetary damages resulting from breach of fiduciary duty as a director, except for liability:

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 that involve intentional misconduct or a knowing violation of law,

under Section 174 of the Delaware General Corporation Law regarding unlawful dividends and stock purchases, or

for any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant's restated bylaws provide that:

the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions,

the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law,

the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions, and

the rights conferred in the bylaws are not exclusive.

The Registrant has entered into separate indemnification agreements with its directors and executive officers to provide such directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director, executive officer or employee of the Registrant regarding which indemnification is sought.

The indemnification provisions in the Registrant's restated certificate of incorporation, restated bylaws and the indemnification agreements entered into or to be entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant currently carries liability insurance for its directors and officers.

See also the undertakings set out in response to Item 9 of this Registration Statement.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

For a list of exhibits, see the Exhibit Index to this Registration Statement, which is incorporated into this Item by reference.

**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 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; and

(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 A(1)(i) and A(1)(ii) of this section 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 Section 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 herein, 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 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 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 may be permitted to directors, officers or 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.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant, Shutterfly, Inc., 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 Redwood City, State of California, on October 26, 2015.

SHUTTERFLY, INC.

By: /s/ Brian M. Regan  
 Brian M. Regan  
 Senior Vice President and Chief Financial  
 Officer

**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints Jeffrey T. Housenbold and Brian M. Regan, and each of them, as attorneys-in-fact, each with full power of substitution, for him or her in any and all capacities, to sign any amendment to this Registration Statement and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting to said attorneys-in-fact, 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, 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 date indicated.

Signature	Capacity	Date
/s/ Jeffrey T. Housenbold	President, Chief Executive Officer and Director ( <i>Principal Executive Officer</i> )	October 26, 2015
Jeffrey T. Housenbold		
/s/ Brian M. Regan	Sr. Vice President and Chief Financial Officer	
Brian M. Regan	( <i>Principal Financial Officer</i> )	October 26, 2015
/s/ Philip A. Marineau	Chairman of the Board of Directors	
Philip A. Marineau		October 26, 2015
/s/ Eric J. Keller	Director	
Eric J. Keller		October 26, 2015
/s/ Mario Cibelli	Director	
		October 26, 2015

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Mario Cibelli

/s/ Ann Mather

Director

Ann Mather

October 26, 2015

/s/ Nancy J. Schoendorf

Director

Nancy J. Schoendorf

October 26, 2015

/s/ Brian T. Swette

Director

Brian T. Swette

October 26, 2015

/s/ Thomas D. Hughes

Director

Thomas D. Hughes

October 26, 2015

/s/ Michael P. Zeisser

Director

Michael P. Zeisser

October 26, 2015

**INDEX TO EXHIBITS**

**Exhibit**

<b>Number</b>	<b>Document</b>
4.1	Form of Registrant's Common Stock Certificate (incorporated by reference to Exhibit 4.01 of the Registrant's Registration Statement on Form S-1 filed on August 18, 2006 (Registration No. 333-135426))
5.1	Opinion of Fenwick & West LLP
23.1	Consent of Fenwick & West LLP (contained in Exhibit 5.1)
23.2	Consent of Independent Registered Public Accounting Firm
24.1	Power of Attorney (see Signature Page)
99.1	2015 Equity Inducement Plan and forms of award agreements