

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

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

DIRECT DIGITAL HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

83-0662116
(IRS Employer Identification No.)

**1233 West Loop South, Suite 1170
Houston, TX 77027**
(Address of principal executive offices) (Zip code)

DIRECT DIGITAL HOLDINGS, INC. 2022 OMNIBUS INCENTIVE PLAN
(Full title of the plan)

**Mark Walker
Chairman and Chief Executive Officer
Keith Smith
President
1233 West Loop Suite 1170
Houston, TX 77027**
(Name and address of agent for service)
(832) 402-1051
(Telephone number, including area code, of agent for service)

Copies to:

**Phyllis Young, Esq.
Stephen E. Older, Esq.
Rakesh Gopalan, Esq.
McGuireWoods LLP
1251 Avenue of the Americas, 20th Floor
New York, New York 10020
(212) 548-2100**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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 of 1934, as amended (the "Exchange Act").

Large accelerated filer
Non-accelerated filer

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.

EXPLANATORY NOTE

This registration statement on Form S-8 is being filed by Direct Digital Holdings, Inc. (the "Company") with the U.S. Securities and Exchange Commission (the "Commission") for the purpose of registering the offer and sale of 1,500,000 shares of the Company's Class A common stock, par value \$0.001 per share, available for issuance upon exercise of unvested options granted under the Direct Digital Holdings, Inc. 2022 Omnibus Incentive Plan (the "Plan"). The Plan was adopted by the Company's board of directors and approved by the Company's stockholder on January 17, 2022.

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.

Not required to be filed with this registration statement.

Item 2. Registrant Information and Employee Plan Annual Information.

Not required to be filed with this registration statement.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

References in this registration statement to “we,” “us,” “our,” and the “Company,” or similar references, refer to Direct Digital Holdings, Inc., unless otherwise stated or the context otherwise requires.

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by Direct Digital Holdings, Inc. (the “Company”), with the U.S. Securities and Exchange Commission (the “Commission”) pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated by reference in, and shall be deemed to be a part of, this registration statement:

- (a) [the Company’s Annual Report on Form 10-K for the year ended December 31, 2021, filed with the Commission on March 31, 2022](#)
- (b) [the Company’s Current Report on Form 8-K filed with the Commission on February 16, 2022](#) and
- (c) [the description of the Company’s shares of Class A common stock in the Company’s registration statement on Form 8-A \(File No. 001-41261\) filed with the Commission on February 3, 2022, under Section 12\(b\) of the Securities Exchange Act of 1934, as amended \(the “Exchange Act”\), including any amendments or reports filed for the purpose of updating such description.](#)

All reports and other documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered pursuant to this registration statement have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents or reports.

For purposes of this registration statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained therein, or in any other subsequently filed document which also is or is deemed to be incorporated by reference, modifies or supersedes such document or such statement in such document. Any 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 shall any information furnished under Item 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.

Section 145(a) of the DGCL provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) because that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, so long as the person acted in good faith and in a manner he or she reasonably believed was in or not opposed to the corporation’s best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the corporation to obtain a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action, so long as the person acted in good faith and in a manner the person reasonably believed was in or not opposed to the corporation’s best interests, except that no indemnification shall be permitted without judicial approval if a court has determined that the person is to be liable to the corporation with respect to such claim. Section 145(c) of the DGCL provides that, if a present or former director or officer has been successful in defense of any action referred to in Sections 145(a) and (b) of the DGCL, the corporation must indemnify such officer or director against the expenses (including attorneys’ fees) he or she actually and reasonably incurred in connection with such action.

Section 145(g) of the DGCL provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise against any liability asserted against and incurred by such person, in any such capacity, or arising out of his or her status as such, whether or not the corporation could indemnify the person against such liability under Section 145 of the DGCL.

Our certificate of incorporation and our bylaws provide for the indemnification of our directors and officers to the fullest extent permitted under the DGCL.

We also maintain a directors’ and officers’ insurance policy pursuant to which our directors and officers are insured against liability for actions taken in their capacities as directors and officers.

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

foregoing provisions or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following documents are filed as exhibits to this registration statement:

Exhibit Number	Description of Exhibit
<u>5.1*</u>	Opinion of McGuireWoods LLP.
<u>23.1*</u>	Consent of Marcum LLP.
<u>23.2*</u>	Consent of McGuireWoods LLP (included in Exhibit 5.1).
<u>24.1*</u>	Powers of Attorney (included on the signature page of this registration statement).
<u>99.1</u>	Direct Digital Holdings, Inc. 2022 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.3 to the registration statement on Form S-1 filed on February 7, 2022).
<u>107*</u>	Filing Fee Table.

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned Company 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 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 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 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Filing Fees 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 (a)(1)(i) and (a)(1)(ii) of this section do not apply if this registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by or furnished to the Commission by the Company 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 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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company'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 this registration statement 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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, 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 Houston, State of Texas, on April 8, 2022.

DIRECT DIGITAL HOLDINGS, INC.

By: /s/ Mark D. Walker

Name: Mark D. Walker
Title: Chairman and Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Mark Walker and Keith Smith, and each of them, his or her true and lawful agent, proxy and attorney-in-fact, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to act on, sign and file with the Securities and Exchange Commission any and all amendments (including post-effective amendments) to this registration statement together with all schedules and exhibits thereto, and to take any and all actions which may be necessary or appropriate to be done, as fully for all intents and purposes as he or she might or could do in person, hereby approving, ratifying and confirming all that such agent, proxy and attorney-in-fact or any of his or her substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Mark D. Walker Mark D. Walker	Chairman, Chief Executive Officer, and Director (Principal Executive Officer)	April 8, 2022
/s/ Susan Echard Susan Echard	Chief Financial Officer (Principal Financial and Accounting Officer)	April 8, 2022
/s/ Keith Smith Keith Smith	President and Director	April 8, 2022
/s/ Richard Cohen Richard Cohen	Director	April 8, 2022
/s/ Antoinette R. Leatherberry Antoinette R. Leatherberry	Director	April 8, 2022

McGuireWoods LLP
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 2146
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McGUIREWOODS

April 8, 2022

Direct Digital Holdings, Inc.
 1233 West Loop South, Suite 1170
 Houston, TX 77027

Re: Registration Statement on Form S-8
 1,500,000 Shares of Class A Common Stock of Direct Digital Holdings, Inc. to be issued pursuant to the Direct Digital Holdings, Inc. 2022 Omnibus Incentive Plan

Ladies and Gentlemen:

We have acted as counsel to Direct Digital Holdings, Inc., a Delaware corporation (the “**Company**”), in connection with the Registration Statement on Form S-8 (the “**Registration Statement**”) that is being filed on the date hereof with the Securities and Exchange Commission (the “**SEC**”) by the Company pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), relating to the registration of the issuance of 1,500,000 shares (the “**Shares**”) of the Company’s Class A common stock, par value \$0.001 per share (the “**Common Stock**”), from time to time pursuant to the Direct Digital Holdings, Inc. 2022 Omnibus Incentive Plan (the “**Plan**”). This opinion letter is being furnished at the Company’s request to fulfill the requirements of Item 8 of Form S-8 and Item 601(b)(5) of Regulation S-K promulgated under the Securities Act.

In connection with this opinion letter, we have examined the Registration Statement, including the exhibits being filed therewith or incorporated by reference therein. In addition, we have examined and relied upon the following:

- (i) a certificate from an executive officer of the Company certifying as to (A) true and correct copies of the Amended and Restated Certificate of Incorporation of the Company and the Amended and Restated By-laws of the Company and (B) the resolutions of the Board of Directors of the Company with respect to the Plan and the Registration Statement;
- (ii) a certificate dated April 7, 2022 issued by the Secretary of State of the State of Delaware, attesting to the corporate status of the Company in the State of Delaware; and
- (iii) originals, or copies identified to our satisfaction as being true copies, of such other records, documents and instruments as we have deemed necessary for the purposes of this opinion letter.

Direct Digital Holdings, Inc.
 April 8, 2022
 Page 2

For all purposes of the opinion expressed herein, we have assumed, without independent investigation, the following: (a) to the extent that we have reviewed and relied upon certificates of the Company or authorized representatives thereof and certificates and assurances from public officials, all of such certificates, representations and assurances are accurate with regard to factual matters; (b) all documents submitted to us as originals are authentic, complete and accurate, and all documents submitted to us as copies conform to authentic original documents; (c) the genuineness of all signatures; and (d) the Registration Statement will be effective under the Securities Act.

Based on and subject to the foregoing and the exclusions, qualifications, limitations and other assumptions set forth in this opinion letter, we are of the opinion that the Shares have been duly authorized and, when issued and paid for in accordance with and upon the terms and conditions of the Plan, will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the Delaware General Corporation Law (including statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing), as in effect on the date hereof, and we do not express any opinion concerning any other law.

The foregoing opinion is being furnished only for the purpose referred to in the first paragraph of this opinion letter. We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/S/ MCGUIREWOODS LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Direct Digital Holdings, Inc. on Form S-8 of our report dated March 31, 2022, with respect to our audits of the consolidated financial statements of Direct Digital Holdings, Inc. as of December 31, 2021 and 2020 and for the years ended December 31, 2021 and 2020 appearing in the Annual Report on Form 10-K of Direct Digital Holdings, Inc. for the year ended December 31, 2021.

/s/ Marcum llp

Marcum llp
Houston, Texas
April 8, 2022

Calculation of Filing Fee Tables

Form S-8
(Form Type)**Direct Digital Holdings, Inc.**
(Exact Name of Registrant as Specified in its Charter)**Table 1: Newly Registered and Carry Forward Securities**

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Newly Registered Securities							
Equity	Class A common stock, par value \$0.001 per share	457(c); 457(h)	1,500,000 ⁽²⁾	\$3.13 ⁽³⁾	\$4,695,000.00 ⁽³⁾	\$92.70 per \$1,000,000	\$435.23
Total Offering Amounts							
Total Fee Offsets							
Net Fee Due							
\$435.23							
-							
\$435.23							

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this registration statement also covers such additional shares of Class A common stock, par value \$0.001 per share (the "Common Stock") of the registrant, as may be issued to prevent dilution from stock splits, stock dividends and similar transactions.

(2) Represents 1,500,000 shares of Common Stock reserved for issuance pursuant to future awards under the Direct Digital Holdings, Inc. 2022 Omnibus Incentive Plan.

(3) Pursuant to Rules 457(c) and 457(h) under the Securities Act, and solely for the purpose of calculating the registration fee, the proposed maximum offering price per share is the average of the high and low prices reported for the registrant's Common Stock quoted on The Nasdaq Capital Market on April 6, 2022.