

FIRST DATA CORP
Form S-8
October 15, 2015

As filed with the Securities and Exchange Commission on October 15, 2015.

Registration No. 333-

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

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

First Data Corporation
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

225 Liberty Street, 29th Floor

47-0731996
(I.R.S. Employer
Identification No.)

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New York, New York 10281

(800) 735-3362

(Address, including zip code, and telephone number, including area code, of principal executive offices)

2007 Stock Incentive Plan for Employees of First Data Corporation and its Affiliates

First Data Corporation 2015 Omnibus Incentive Plan

First Data Corporation 2015 Employee Stock Purchase Plan

(Full title of the plan)

Adam L. Rosman, Esq.

Executive Vice President, General Counsel and Secretary

225 Liberty Street, 29th Floor

New York, New York 10281

(800) 735-3362

(Name and address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

Joseph H. Kaufman, Esq.

Richard A. Fenyas, Esq.

Simpson Thacher & Bartlett LLP

425 Lexington Avenue

New York, New York 10017

Telephone: (212) 455-2000

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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:

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 to be registered ⁽¹⁾	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Class A common stock, par value \$0.01 per share				
2015 Omnibus Incentive Plan	105,634,233 ⁽²⁾	\$16.00 ⁽⁶⁾	\$1,690,147,728	\$170,198
2015 ESPP	6,327,292 ⁽³⁾	\$15.20 ⁽⁷⁾	\$96,174,838	\$9,685
2007 Plan	34,262,300 ⁽⁴⁾	(8)		
Class B common stock, par value \$0.01 per share				
2007 Plan	34,262,300 ⁽⁵⁾	\$11.09 ⁽⁹⁾	\$379,968,907	\$38,263
Total	180,486,125		\$2,166,291,473	\$218,146

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the **Securities Act**), this Registration Statement also covers an indeterminate amount of additional shares of the Registrant's Class A common stock, par value \$0.01 per share (**Class A common stock**) and the Registrant's Class B common stock, par value \$0.01 per share (**Class B common stock**), which may be offered and issued to prevent dilution resulting from adjustments as a result of stock dividends, stock splits, reverse stock splits, recapitalizations, reclassifications, mergers, split-ups, reorganizations, consolidations and other capital adjustments.
- (2) Represents shares of Class A common stock reserved for issuance pursuant to future awards under the First Data Corporation 2015 Omnibus Incentive Plan (the **2015 Omnibus Incentive Plan**). To the extent that any shares subject to awards outstanding under the 2007 Plan (as defined below) are forfeited, terminated, cancelled, expire unexercised, withheld in payment of the exercise price or withheld to satisfy tax withholding obligations subsequent to the date of this Registration Statement, the shares of Class B common stock reserved for issuance pursuant to such shares will become available for issuance as shares of Class A common stock on a one-for-one basis under the 2015 Omnibus Incentive Plan. See footnote (5).
- (3) Represents shares of Class A common stock reserved for issuance pursuant to future awards under the First Data Corporation 2015 Employee Stock Purchase Plan (the **2015 ESPP**).

- (4) Represents shares of Class A common stock issuable upon conversion of shares of Class B common stock underlying equity awards outstanding under the Registrant's 2007 Stock Incentive Plan for Employees of First Data Corporation and its Affiliates (the **2007 Plan**) as of the date of this Registration Statement. See footnote (5).
- (5) Represents shares of Class B common stock reserved for issuance pursuant to stock option awards outstanding under the 2007 Plan as of the date of this Registration Statement. To the extent that any shares of Class B common stock subject to outstanding under the 2007 Plan are forfeited, terminated, cancelled, expire unexercised, withheld in payment of the exercise price or withheld to satisfy tax withholding obligations subsequent to the date of this Registration Statement, such shares of Class B common stock reserved for issuance pursuant to such awards will become available for issuance as shares of Class A common stock on a one-for-one basis under the 2015 Omnibus Incentive Plan. See footnote (2).
- (6) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of \$16.00 per share, which is the initial public offering price per share of Class A common stock set forth on the cover page of the Registrant's prospectus dated October 14, 2015 relating to its initial public offering.
- (7) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of 95% of \$16.00 per share, which is the initial public offering price per share of Class A common stock set forth on the cover page of the Registrant's prospectus dated October 14, 2015 relating to its initial public offering. Pursuant to the 2015 ESPP, the purchase price of shares of Class A common stock reserved for issuance thereunder will be 95% of the lesser of the fair market value of a share of Class A common stock on the offering commencement date or on the purchase date.
- (8) Pursuant to Rule 457(i), there is no fee associated with the registration of shares of Class A common stock issuable upon conversion of shares of Class B common stock (a convertible security) being registered under this Registration Statement because no additional consideration will be received in connection with such conversion.
- (9) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of \$11.09 per share, the weighted-average exercise price of stock option awards outstanding under the 2007 Plan as of the date of this Registration Statement.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The information specified in Items 1 and 2 of Part I of the Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of the Form S-8. The documents containing the information specified in this Part I will be delivered to the participants in the 2007 Stock Incentive Plan for Employees of First Data Corporation and its Affiliates, the First Data Corporation 2015 Omnibus Incentive Plan and the First Data Corporation 2015 Employee Stock Purchase Plan covered by this Registration Statement on Form S-8 (the Registration Statement) as required by Rule 428(b)(1). Such documents are not required to be filed with the Securities and Exchange Commission (the Commission) as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by First Data Corporation (the Company or Registrant) pursuant to the Securities Act and the Securities Exchange Act of 1934, as amended (the Exchange Act), are hereby incorporated by reference in this Registration Statement:

- (a) The Company's Prospectus, dated October 14, 2015, filed with the Commission pursuant to Rule 424(b) of the Securities Act, relating to the registration statement on Form S-1 (File No. 333-205750); and
- (b) The description of the Company's Class A common stock contained in its registration statement on Form 8-A (Registration No. 001-11073), filed on October 14, 2015 pursuant to Section 12(b) of the Exchange Act, including all other amendments and reports filed for the purpose of updating such description.

All documents that the Company subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement (except for any portions of the Company's Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with the Commission) and prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into 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 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.

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 102(b)(7) of the Delaware General Corporation Law (the "DGCL") allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or

its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Company's amended and restated certificate of incorporation provides for this limitation of liability.

Section 145 of the DGCL, or Section 145, provides, among other things, that a Delaware corporation may indemnify any person who was, is or is threatened to be made, 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 such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be 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 that his or her conduct was unlawful. A Delaware corporation may indemnify any persons who were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests, provided further that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses (including attorneys' fees) which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to 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 enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify such person under Section 145.

The Company's amended and restated bylaws provide that the Company must indemnify, and advance expenses to, its directors and officers to the full extent authorized by the DGCL.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of the Company's amended and restated certificate of incorporation, the Company's amended and restated bylaws, agreement, vote of stockholders or disinterested directors or otherwise. Notwithstanding the foregoing, the Company shall not be obligated to indemnify a director or officer in respect of a proceeding (or part thereof) instituted by such director or officer, unless such proceeding (or part thereof) has been authorized by the Board of Directors pursuant to the applicable procedure outlined in the amended and restated bylaws.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held jointly and severally liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions to be entered in the books containing the minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

The Company maintains standard policies of insurance that provide coverage (1) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to the Company with respect to indemnification payments that the Company may make to such directors and officers. The underwriting agreement provides for indemnification by the underwriters of the Company and our officers and directors, and by the Company of the underwriters, for certain liabilities arising under the Securities Act or otherwise in connection with this offering.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed as part of this Registration Statement:

Exhibit Number	Description of Document	Form	File Number	Exhibit Number	Filing Date
4.1	Third Amended and Restated Certificate of Incorporation of First Data Corporation	S-1/A	333-205750	3.1	10/1/2015
4.2	Amended and Restated Bylaws of First Data Corporation	S-1/A	333-205750	3.2	10/1/2015
4.3	Form of Stock Certificate for Class A common stock	S-1/A	333-205750	4.1	10/1/2015
4.4	Form of Stock Certificate for Class B common stock	S-1/A	333-205750	4.2	10/1/2015
4.5	2007 Stock Incentive Plan for Employees of First Data Corporation and its Affiliates, as amended	10-K	1-11073	10.10	2/27/2015
4.6*	First Data Corporation 2015 Omnibus Incentive Plan				
4.7*	First Data Corporation 2015 Employee Stock Purchase Plan				
4.8	Form of Management Stockholder s Agreement	S-1/A	333-205750	10.18	7/20/2015
5.1*	Opinion of Simpson Thacher & Bartlett LLP				
23.1*	Consent of Ernst & Young LLP				
23.2*	Consent of KPMG LLP				
23.3	Consent of Simpson Thacher & Bartlett LLP (included as part of Exhibit 5.1)				
24.1*	Power of Attorney (included in the signature pages to this Registration Statement)				

* Filed herewith.

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 the 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

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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 a 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 the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the 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 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 the 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 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 and 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.

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 New York, New York, on October 15, 2015.

First Data Corporation

By: /s/ Frank Bisignano
 Name: Frank Bisignano
 Title: Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints each of Frank Bisignano, Himanshu A. Patel and Adam L. Rosman or any of them as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him in his name, place and stead, in any and all capacities, including in his capacity as a director and/or officer, as the case may be, to sign and file, with the Securities and Exchange Commission, a Registration Statement on Form S-8 and any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants to such 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 with any or all of the above-described matters, as fully as each of the undersigned might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact as 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 and power of attorney have been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Frank Bisignano	Chairman and Chief Executive Officer	October 15, 2015
Frank Bisignano	(Principal Executive Officer)	
/s/ Himanshu A. Patel	Executive Vice President,	October 15, 2015
Himanshu A. Patel	Chief Financial Officer	
	(Principal Financial Officer)	
/s/ Matthew Cagwin	Vice President, Corporate Controller and	October 15, 2015
Matthew Cagwin	Chief Accounting Officer	
	(Principal Accounting Officer)	

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/s/ Joseph J. Plumeri	Director	October 15, 2015
Joseph J. Plumeri		
/s/ Joe W. Forehand	Director	October 15, 2015
Joe W. Forehand		
/s/ Henry R. Kravis	Director	October 15, 2015
Henry R. Kravis		
/s/ Heidi G. Miller	Director	October 15, 2015
Heidi G. Miller		
/s/ James E. Nevels	Director	October 15, 2015
James E. Nevels		
/s/ Scott C. Nuttall	Director	October 15, 2015
Scott C. Nuttall		
/s/ Tagar C. Olson	Director	October 15, 2015
Tagar C. Olson		