

CyberArk Software Ltd.
Form S-8
November 19, 2014

As filed with the Securities and Exchange Commission on November 19, 2014

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER THE
SECURITIES ACT OF 1933**

CyberArk Software Ltd.
(Exact name of registrant as specified in charter)

| | |
|---|---|
| State of Israel | Not Applicable |
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |

| | |
|--|----------------|
| 94 Em-Ha'moshavot Road | |
| Park Azorim, P.O. Box 3143 | 4970602 |
| Petach Tikva, Israel | (Zip Code) |
| (Address of principal executive offices) | |

Cyber-Ark Software Ltd. 2001 Stock Option Plan

Cyber-Ark Software Ltd. 2001 Section 102 Stock Option Plan

Cyber-Ark Software Ltd. 2011 Share Option Plan

CyberArk Software Ltd. 2014 Share Incentive Plan

(Full Title of the Plans)

Cyber-Ark Software, Inc.

60 Wells Avenue

Suite 103

Newton, Massachusetts 02459

(617) 965-1544

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies of communications to:

| | | |
|------------------------------------|--|----------------------------------|
| Colin J. Diamond, Esq. | Donna Rahav, Adv. General Counsel | Dan Shamgar, Adv. |
| Joshua G. Kiernan, Esq. | CyberArk Software Ltd. | David S. Glatt, Adv. |
| White & Case LLP | 94 Em-Ha'moshavot Road | Shira Azran, Adv. |
| 1155 Avenue of the Americas | Park Azorim, P.O. Box 3143 | Meitar Liquornik Geva |
| New York, NY 10036 | Petach Tikva 4970602, Israel | Leshem Tal |
| Tel: (212) 819-8200 | Tel: +972-3-918-0000 | 16 Abba Hillel Silver Rd. |
| Fax: (212) 354-8113 | Fax: +972-3-924-0111 | Ramat Gan 5250608, Israel |
| | | Tel: +972-3-610-3100 |
| | | Fax: +972-3-610-3111 |

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 |
|--------------------------------------|-----------------------------|---|---|----------------------------|
|--------------------------------------|-----------------------------|---|---|----------------------------|

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| | | | | | |
|-------------------------------------|-----------|----------|-------------|-----|-----------|
| Ordinary Shares, par value NIS 0.01 | 1,951,230 | \$ 0.46 | \$897,566 | (2) | \$ 104.30 |
| Ordinary Shares, par value NIS 0.01 | 2,467,885 | \$ 2.58 | \$6,367,143 | (3) | \$ 739.86 |
| Ordinary Shares, par value NIS 0.01 | 224,000 | \$ 14.00 | \$3,136,000 | (4) | \$ 364.40 |
| Ordinary Shares, par value NIS 0.01 | 219,358 | \$ 33.84 | \$7,423,074 | (5) | \$ 862.56 |

This Registration Statement on Form S-8 covers the following Ordinary Shares of CyberArk Software Ltd. (the “Registrant”): (i) 1,951,230 ordinary shares issuable upon the exercise of options granted prior to the date hereof under the Registrant’s 2001 Section 102 Share Option Plan and the Registrant’s 2001 Share Option Plan (together, the “2001 Plans”), (ii) 2,467,885 ordinary shares issuable upon the exercise of options granted prior to the date hereof under the Registrant’s 2011 Share Option Plan (the “2011 Plan”), (iii) 224,000 ordinary shares issuable upon the exercise of options granted prior to the date hereof under the Registrant’s 2014 Share Incentive Plan (the “2014 Plan” and together with the 2011 Plan and the 2001 Plans, the “Compensation Plans”), (iv) 219,358 ordinary shares that may be issued under the Registrant’s 2014 Plan and (v) pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), an indeterminate number of additional shares that may become issuable under the terms of the Compensation Plans by reason of any share split, share dividend, recapitalization or other similar transaction effected without the Registrant’s receipt of consideration which results in an increase in the number of the outstanding shares of the Registrant’s ordinary shares.

Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) under the Securities Act on the basis of \$0.46 per share, the weighted average exercise price of the 1,951,230 ordinary shares issuable upon exercise of outstanding options under the Compensation Plans as of the date of this Registration Statement.

Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) under the Securities Act on the basis of \$2.58 per share, the weighted average exercise price of the 2,467,885 ordinary shares issuable upon exercise of outstanding options under the Compensation Plans as of the date of this Registration Statement.

Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) under the Securities Act on the basis of \$14.00 per share, the weighted average exercise price of the 224,000 ordinary shares issuable upon exercise of outstanding options under the Compensation Plans as of the date of this Registration Statement.

Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) under the Securities Act on the basis of the average of the high and low prices (\$33.00-\$34.68) of the Registrant’s ordinary shares as quoted on the Nasdaq Global Select Market on November 12, 2014.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information*

Item 2. Registrant Information and Employee Plan Annual Information*

* The documents containing the information specified in this Part I of Form S-8 (plan information and registration information and employee plan annual information) will be sent or given to employees as specified by the Securities and Exchange Commission (the "Commission") pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act"). Such documents are not required to be and are not filed with the Commission either as part of this registration statement (this "Registration Statement") or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. The Registrant will provide a written statement to participants advising them of the availability without charge, upon written or oral request, of the documents incorporated by reference in Item 3 of Part II hereof and including the statement in the preceding sentence. The written statement to all participants will indicate the availability without charge, upon written or oral request, of other documents required to be delivered pursuant to Rule 428(b), and will include the address and telephone number to which the request is to be directed.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed by CyberArk Software Ltd. (the “Company”) are incorporated herein by reference:

- (i) the Company’s final prospectus filed on September 24, 2014 pursuant to Rule 424(b)(4) under the Securities Act in connection with the Company’s Registration Statement on Form F-1 (File No. 333-196991); and
- (ii) the description of the Company’s Ordinary Shares contained in Item 1 of the Registration Statement on Form 8-A (File No. 001-36625) filed with the Commission on September 16, 2014.

In addition to the foregoing, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), prior to the filing of a post-effective amendment indicating that all securities offered hereby have been sold or deregistering 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 herein or in a document all or a portion of which is 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

Under the Israeli Companies Law, a company may not exculpate an office holder from liability for a breach of the duty of loyalty. An Israeli company may exculpate an office holder in advance from liability to the company, in whole or in part, for damages caused to the company as a result of a breach of duty of care but only if a provision authorizing such exculpation is included in its articles of association. Our articles of association to be effective upon the closing of this offering include such a provision. The company may not exculpate in advance a director from liability arising out of a prohibited dividend or distribution to shareholders.

Under the Israeli Companies Law, a company may indemnify an office holder in respect of the following liabilities and expenses incurred for acts performed by him or her as an office holder, either pursuant to an undertaking made in advance of an event or following an event, provided its articles of association include a provision authorizing such indemnification:

financial liability imposed on him or her in favor of another person pursuant to a judgment, including a settlement or arbitrator's award approved by a court. However, if an undertaking to indemnify an office holder with respect to such liability is provided in advance, then such an undertaking must be limited to events which, in the opinion of the board of directors, can be foreseen based on the company's activities when the undertaking to indemnify is given, and to an amount or according to criteria determined by the board of directors as reasonable under the circumstances, and such undertaking shall detail the abovementioned foreseen events and amount or criteria;

reasonable litigation expenses, including attorneys' fees, incurred by the office holder (1) as a result of an investigation or proceeding instituted against him or her by an authority authorized to conduct such investigation or proceeding, provided that (i) no indictment was filed against such office holder as a result of such investigation or proceeding; and (ii) no financial liability was imposed upon him or her as a substitute for the criminal proceeding as a result of such investigation or proceeding or, if such financial liability was imposed, it was imposed with respect to an offense that does not require proof of criminal intent; and (2) in connection with a monetary sanction; and

reasonable litigation expenses, including attorneys' fees, incurred by the office holder or imposed by a court in proceedings instituted against him or her by the company, on its behalf, or by a third party, or in connection with criminal proceedings in which the office holder was acquitted, or as a result of a conviction for an offense that does not require proof of criminal intent.

Under the Israeli Companies Law, a company may insure an office holder against the following liabilities incurred for acts performed by him or her as an office holder if and to the extent provided in the company's articles of association:

a breach of the duty of loyalty to the company, provided that the office holder acted in good faith and had a reasonable basis to believe that the act would not harm the company;

a breach of duty of care to the company or to a third party, to the extent such a breach arises out of the negligent conduct of the office holder; and

a financial liability imposed on the office holder in favor of a third party.

Under the Israeli Companies Law, a company may not indemnify, exculpate or insure an office holder against any of the following:

a breach of the duty of loyalty, except for indemnification and insurance for a breach of the duty of loyalty to the company to the extent that the office holder acted in good faith and had a reasonable basis to believe that the act would not prejudice the company;

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a breach of duty of care committed intentionally or recklessly, excluding a breach arising out of the negligent conduct of the office holder;

- an act or omission committed with intent to derive illegal personal benefit; or

- a fine or forfeit levied against the office holder.

-4-

Under the Israeli Companies Law, exculpation, indemnification and insurance of office holders in a public company must be approved by the compensation committee and the board of directors and, with respect to certain office holders or under certain circumstances, also by the shareholders. See “Management—Approval of Related Party Transactions under Israeli Law.”

The Company has entered into indemnification agreements with its office holders to exculpate, indemnify and insure them to the fullest extent permitted or to be permitted by its articles of association, the Israeli Companies Law, the Israeli Securities Law, 5728-1968 and the Israeli Restrictive Trade Practices Law, 5758-1988.

The Company has obtained directors’ and officers’ liability insurance for the benefit of its office holders and intends to continue to maintain such coverage and pay all premiums thereunder to the fullest extent permitted by the Israeli Companies Law.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

The exhibits listed on the exhibit index at the end of this Registration Statement are included in this Registration Statement.

Item 9. Undertakings

The undersigned Registrant, CyberArk Software Ltd., hereby undertakes:

- (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (a) to include any prospectus required by Section 10(a)(3) of the Securities Act; 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; and
 - (b)
 - (c)

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) and (b) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic 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 therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(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; and

The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Sections 13(a) or 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 therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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 Boston, Massachusetts on this 19th day of November, 2014.

CYBERARK SOFTWARE LTD.

By: /s/ Ehud Mokady

Name: Ehud Mokady

Title: Chief Executive Officer, President, Founder and Director

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below hereby constitutes and appoints Ehud Mokady or Joshua Siegel, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power to act separately and 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 sign any and all amendments (including post-effective amendments) to this registration statement and all additional registration statements pursuant to Rule 462(b) of the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them or his or 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, as amended, this registration statement has been signed by the following persons on November 19, 2014 in the capacities indicated:

Signatures

/s/ Ehud Mokady

Ehud Mokady

Title

Chief Executive Officer, President, Founder and
Director
(Principal Executive Officer)

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| | |
|--|---|
| /s/ Joshua Siegel Joshua Siegel | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) |
| /s/ Gadi Tirosh Gadi Tirosh | Chairman of the Board |
| /s/ David Campbell David Campbell | Director |
| /s/ Ron Gutler Ron Gutler | Director |
| /s/ Raphael Kesten Raphael Kesten | Director |
| /s/ Kim Perdikou Kim Perdikou | Director |
| /s/ David Schaeffer David Schaeffer | Director |
| /s/ Amnon Shoshani Amnon Shoshani | Director |
| CYBER-ARK SOFTWARE, INC. | Authorized Representative in the United States |

By: /s/ Ehud Mokady

Name: Ehud Mokady
Title: Chief Executive Officer, President, Founder and
Director

EXHIBITS

| Exhibit No. | Description |
|--------------------|--|
| 5.1 | Opinion of Meitar Liquornik Geva Leshem Tal, Attorneys at Law, Israeli counsel to the Registrant, as to the validity of the ordinary shares (including consent) |
| 23.1 | Consent of Kost, Forer, Gabbay and Kasierer, a member of Ernst & Young Global |
| 23.2 | Consent of Meitar Liquornik Geva Leshem Tal, Attorneys at Law (included in Exhibit 5.1) |
| 24.1 | Power of Attorney (included in signature page to this Registration Statement) |
| 99.1 | Cyber-Ark Software Ltd. 2001 Stock Option Plan (incorporated by reference to Exhibit 10.5 of the Registration Statement on Form F-1 of the Registrant (File No. 333-196991) |
| 99.2 | Cyber-Ark Software Ltd. Section 102 2001 Stock Option Plan (incorporated by reference to Exhibit 10.6 of the Registration Statement on Form F-1 of the Registrant (File No. 333-196991) |
| 99.3 | First Amendment to Cyber-Ark Software Ltd. Section 102 2001 Stock Option Plan (incorporated by reference to Exhibit 10.7 of the Registration Statement on Form F-1 of the Registrant (File No. 333-196991) |
| 99.4 | Cyber-Ark Software Ltd. 2011 Share Incentive Plan (incorporated by reference to Exhibit 10.8 of the Registration Statement on Form F-1 of the Registrant (File No. 333-196991) |
| 99.5 | CyberArk Software Ltd. 2014 Share Incentive Plan 10.9 of the Registration Statement on Form F-1 of the Registrant (File No. 333-196991) |