

As filed with the Securities and Exchange Commission on November 8, 2021

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

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

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**Conformis, Inc.**  
(Exact Name of Registrant as Specified in Its Charter)

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Delaware  
(State or Other Jurisdiction of Incorporation  
or Organization)

56-2463152  
(I.R.S. Employer Identification  
No.)

600 Technology Park Drive, 4<sup>th</sup> Floor  
Billerica, MA 01821  
(Address of Principal Executive Offices) (Zip Code)

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Inducement Restricted Stock Unit Award (November 2021)  
(Full Title of the Plan)

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Mark A. Augusti  
President and Chief Executive Officer  
Conformis, Inc.  
600 Technology Park Drive, 4<sup>th</sup> Floor  
Billerica, MA 01821  
(Name and Address of Agent for Service)  
(781) 345-9001  
(Telephone Number, Including Area Code, of Agent For Service)

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Copy to:  
Brian O'Fahey  
Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
(202) 637-5600

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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," "smaller reporting company" and "emerging growth company"

in Rule 12b-2 of 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.

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### CALCULATION OF REGISTRATION FEE

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Title of Securities To Be Registered	Amount To Be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(3)
Common Stock, par value \$0.00001 per share	150,000 (2)	\$1.155 (3)	\$173,250.00	\$16.07

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- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
  - (2) Consists of 150,000 shares issuable under an inducement restricted stock unit agreement with respect to awards to be granted on November 8, 2021 to a new employee, in accordance with Nasdaq Listing Rule 5635(c)(4), as an inducement material to such person entering into employment with the registrant.
  - (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the registrant's common stock as reported on the Nasdaq Global Market on November 4, 2021.
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**PART I**  
**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

The information required by Item 1 is included in documents sent or given to recipients of the new hire inducement restricted stock unit awards covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act").

**Item 2. Registrant Information and Employee Plan Annual Information.**

The written statement required by Item 2 is included in documents sent or given to recipients of the new hire inducement restricted stock unit awards covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

The registrant is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The following documents, which are on file with the Commission, are incorporated in this registration statement by reference:

- a. The registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act or the latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed.
- b. All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above.
- c. The description of the securities contained in the registrant's registration statement on Form 8-A filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, 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 part hereof from the date of the 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 the 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 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.**

Hogan Lovells US LLP has opined as to the legality of the securities being offered by this registration statement.

**Item 6. Indemnification of Directors and Officers.**

Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his 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 registrant's certificate of incorporation provides that none of its directors shall be personally liable to the registrant or its stockholders for monetary damages for any breach of fiduciary duty as director, notwithstanding any provision of law imposing such liability, except to the extent that the Delaware General Corporation Law prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he or she is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The registrant's certificate of incorporation provides that the registrant will indemnify each person who was or is a party or threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the registrant or is or was serving at the registrant's request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise to the fullest extent permitted by the Delaware General Corporation Law. The registrant's certificate of incorporation provides that expenses must be advanced to these indemnitees under certain circumstances.

The indemnification provisions contained in the registrant's certificate of incorporation are not exclusive. In addition, the registrant has entered into indemnification agreements with each of its directors and officers. These indemnification agreements may require that the registrant will, among other things, indemnify its directors and executive officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of the registrant's directors or officers, or any of its subsidiaries or any other company or enterprise to which the person provides services at the registrant's request.

In addition, the registrant maintains standard policies of insurance under which coverage is provided to its directors and officers against losses arising from claims made by reason of breach of duty or other wrongful act, and to the registrant with respect to payments which may be made by it to such directors and officers pursuant to the above indemnification provisions or otherwise as a matter of law.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

**Item 9. Undertakings.**

1. Item 512(a) of Regulation S-K. 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; and

(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 (i) and (ii) 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 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.

2. Item 512(b) of Regulation S-K. 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 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.

3. Item 512(h) of Regulation S-K. 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 Securities and Exchange 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.

**Item 8. Exhibits.**

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
<a href="#"><u>3.1</u></a>	<a href="#"><u>Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's current report on Form 8-K (File No. 001-37474) filed on July 8, 2015)</u></a>
<a href="#"><u>3.2</u></a>	<a href="#"><u>Articles of Amendment to Restated Certificate of Incorporation of the Registrant dated May 1, 2018 (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-37474) filed on May 4, 2018)</u></a>
<a href="#"><u>3.3</u></a>	<a href="#"><u>Certificate of Amendment to Restated Certificate of Incorporation of the Registrant dated May 25, 2021 (incorporated by reference to Exhibit 3.1 to the Registrant's current report on Form 8-K (File No. 001-37474) filed on May 27, 2021)</u></a>
<a href="#"><u>3.4</u></a>	<a href="#"><u>Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's current report on Form 8-K (File No. 001-37474) filed on July 8, 2015)</u></a>
<a href="#"><u>5.1</u></a>	<a href="#"><u>Opinion of Hogan Lovells US LLP</u></a>
<a href="#"><u>23.1</u></a>	<a href="#"><u>Consent of Hogan Lovells LLP (included in Exhibit 5.1)</u></a>
<a href="#"><u>23.2</u></a>	<a href="#"><u>Consent of Grant Thornton LLP</u></a>
<a href="#"><u>24.1</u></a>	<a href="#"><u>Power of Attorney (included as part of the signature page of this Registration Statement)</u></a>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Form of Inducement Restricted Stock Unit Agreement (incorporated herein by reference to Exhibit 99.2 to the Registrant's Registration Statement on Form S-8 filed on March 3, 2020)</u></a>

## 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 Town of Billerica, Commonwealth of Massachusetts, on November 8, 2021.

CONFORMIS, INC.

By: /s/Mark A. Augusti  
Mark A. Augusti  
President and Chief Executive Officer

## POWER OF ATTORNEY AND SIGNATURES

We, the undersigned officers and directors of Conformis, Inc. (the "Company"), hereby severally constitute and appoint Mark Augusti and J. Brent Alldredge, and each of them singly, our true and lawful attorneys, with full power to them, and to each of them singly, to sign for us and in our names in the capacities indicated below, any and all amendments (including post-effective amendments) to this Registration Statement, and all other documents in connection therewith to be filed with the Securities and Exchange Commission, and generally to do all things in our names and on our behalf in such capacities to enable the Company to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on November 8, 2021:

<u>Signature</u>	<u>Title(s)</u>
<u>/s/Mark A. Augusti</u> Mark A. Augusti	President and Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/Robert S. Howe</u> Robert S. Howe	Chief Financial Officer (Principal Financial Officer) and Principal Accounting Officer
<u>/s/Kenneth Fallon III</u> Kenneth Fallon III	Chairman of the Board of Directors
<u>/s/Carrie Bienkowski</u> Carrie Bienkowski	Director
<u>Philip W. Johnston</u>	Director
<u>/s/Bradley Langdale</u> Bradley Langdale	Director
<u>/s/Richard Meelia</u> Richard Meelia	Director
<u>/s/Michael Milligan</u> Michael Milligan	Director



Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
T +1 202 637 5600  
F +1 202 637 5910  
www.hoganlovells.com

November 8, 2021

Board of Directors  
Conformis, Inc.  
600 Technology Park Drive  
Billerica, MA 01821

To the addressee referred to above:

We are acting as counsel to Conformis, Inc., a Delaware corporation (the "**Company**"), in connection with its registration statement on Form S-8 (the "**Registration Statement**"), filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "**Act**") relating to the proposed offering of up to 150,000 newly issued shares of the common stock, par value \$0.00001 per share (the "**Common Stock**") of the Company (the "**Shares**"), which shares are issuable pursuant to an inducement restricted stock unit agreement providing for an employee inducement grant between the Company and a certain employee, which is being entered into in connection with the commencement of such employee's employment with the Company pursuant to Nasdaq Stock Market Rule 5635(c)(4) (the "**Inducement Award Agreement**"). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including pdfs). As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

This opinion letter is based as to matters of law solely on the Delaware General Corporation Law, as amended. We express no opinion herein as to any other statutes, rules or regulations.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) effectiveness of the Registration Statement, and (ii) issuance of the Shares pursuant to the terms of the Inducement Award Agreement, the Shares will be validly issued, fully paid, and nonassessable.

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. "Hogan Lovells" is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington, D.C. Associated Offices: Budapest Jakarta Riyadh Shanghai FTZ Ulaanbaatar Zagreb. Business Service Centers: Johannesburg Louisville. Legal Services Center: Berlin. For more information see [www.hoganlovells.com](http://www.hoganlovells.com)

This opinion letter has been prepared for use in connection with the Registration Statement. We assume no obligation to advise of any changes in the foregoing subsequent to the effective date of the Registration Statement.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Act.

Very truly yours,

/s/ Hogan Lovells US LLP

HOGAN LOVELLS US LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated March 3, 2021 with respect to the consolidated financial statements of Conformis, Inc. included in the Annual Report on Form 10-K for the year ended December 31, 2020 which are incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned report in this Registration Statement.

/s/ GRANT THORNTON LLP

Boston, Massachusetts  
November 8, 2021