

KIRKLAND'S, INC
Form S-8
March 29, 2019

As filed with the Securities and Exchange Commission on March 29, 2019
Registration No. 333-

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

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

Kirkland's, Inc.
(Exact name of registrant as specified in its charter)

| | |
|---|---|
| Tennessee | 62-1287151 |
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |

| | |
|--|------------|
| 5310 Maryland Way, Brentwood, Tennessee | 37027 |
| (Address of principal executive offices) | (Zip Code) |

2002 Employee Stock Purchase Plan, as amended and restated
(Full title of plan)

Carter Todd
Vice President, General Counsel and Corporate Secretary
5310 Maryland Way
Brentwood, Tennessee 37027
(615) 660-1300
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Mitch Walker, Esq.
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
(615) 742-6200

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.

| | |
|-------------------------|---------------------------|
| Large accelerated filer | Accelerated filer |
| Non-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.

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered (1)(2) | Proposed Maximum Offering Price Per Share (3) | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--------------------------------------|--------------------------------|---|---|----------------------------|
| Common Stock, no par value per share | 35,000 | \$7.37 | \$257,950.00 | \$31.26 |

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers an indeterminate number of additional shares which may be offered and issued under the 2002 Employee Stock Purchase Plan, as amended and restated (the "ESPP") to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Represents 35,000 shares of common stock available for issuance as a result of the annual evergreen increase for 2019 pursuant to the ESPP.

(3) Estimated in accordance with Rule 457(h)(1) and (c) under the Securities Act of 1933 solely for the purposes of calculating the registration fee, based on the average of the high and low prices of the Registrant's common stock reported on March 25, 2019, as reported by The Nasdaq Stock Market.

EXPLANATORY NOTE

Registration of Additional Securities

This Registration Statement on Form S-8 (this "Registration Statement") is filed pursuant to General Instruction E of Form S-8 for the purpose of registering 35,000 additional shares of Common Stock, issuable pursuant to the Kirkland's, Inc. 2002 Employee Stock Purchase Plan, as amended and restated (the "ESPP"), as a result of the ESPP's evergreen increase for 2019 as determined by our Board of Directors. In accordance with General Instruction E of Form S-8, the content of Registrant's previously filed Registration Statements on Form S-8 (File No. 333-100157), as filed with the Securities and Exchange Commission on September 27, 2002, and Form S-8 (File No. 333-217082), as filed with the Securities and Exchange Commission on March 31, 2017, are hereby incorporated herein by reference.

The ESPP includes an evergreen provision that provides that the total number of shares reserved for issuance under the ESPP will be increased on January 1 of each calendar year for a period of up to ten years, commencing on January 1, 2017 and ending on (and including) January 1, 2026, in an amount equal to the lesser of (i) .5% of the total number of shares of Common Stock of the Company outstanding on December 31st of the preceding calendar year, and (ii) 35,000 shares of Common Stock; provided that, notwithstanding the foregoing, the Compensation Committee of the Company's Board of Directors may determine prior to any January 1 annual increase that there will be no such increase for such year, or that the annual increase shall be a lesser number of shares of Common Stock than would otherwise occur pursuant to the evergreen provision of the ESPP.

Item 8. Exhibits.

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

| Exhibit No. | Description |
|-------------|---|
| 4.1 | <u>2002 Employee Stock Purchase Plan of Kirkland's, Inc., as amended and restated, dated June 1, 2016 (incorporated herein by reference to Exhibit 10.13 of the Company's Annual Report on Form 10-K for the year ended January 28, 2017)</u> |
| 5.1 | <u>Opinion of Bass, Berry & Sims PLC*</u> |
| 23.1 | <u>Consent of Bass, Berry & Sims PLC (included in Exhibit 5.1 hereto)*</u> |
| 23.2 | <u>Consent of Ernst & Young LLP*</u> |
| 24.1 | <u>Power of Attorney (included on signature page of this registration statement)*</u> |

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company 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 Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Brentwood, State of Tennessee, on this 29th day of March 2019.

Kirkland's, Inc.

By: /s/ Carter R. Todd

Name: Carter R. Todd

Title: Vice President, General Counsel and Corporate Secretary

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Carter R. Todd, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and re-substitution, for him or her and in his or her name, place and stead, in any and all capacities, in connection with this registration statement, including to sign and file in the name and on behalf of the undersigned as director or officer of the registrant any and all amendments or supplements (including any and all stickers and post-effective amendments) to this registration statement, with all exhibits thereto, and other documents in connection therewith with the Securities and Exchange Commission and any applicable securities exchange or securities self-regulatory body, granting unto said attorney-in-fact and agent, with full power and authority to do and perform each and every act and things requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agents, or any substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signature | Capacity | Date |
|--|---|----------------|
| /s/ Steve C. Woodward Steve C. Woodward | Chief Executive Officer (Principal Executive Officer) | March 29, 2019 |
| /s/ Nicole A. Strain Nicole A. Strain | Interim Chief Financial Officer (Principal Financial and Accounting Officer) | March 29, 2019 |
| /s/ R. Wilson Orr, III R. Wilson Orr, III | Director | March 29, 2019 |
| /s/ Miles T. Kirkland Miles T. Kirkland | Director | March 29, 2019 |
| /s/ Steven J. Collins Steven J. Collins | Director | March 29, 2019 |
| /s/ Jeffery C. Owen Jeffery C. Owen | Director | March 29, 2019 |
| /s/ Susan S. Lanigan Susan S. Lanigan | Director | March 29, 2019 |
| /s/ Charlie Pleas, III Charlie Pleas, III | Director | March 29, 2019 |
| /s/ Gregory Sandfort Gregory Sandfort | Director | March 29, 2019 |
| /s/ Chris Shimojima Chris Shimojima | Director | March 29, 2019 |