

EBAY INC  
Form S-3ASR  
February 06, 2017  
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As filed with the Securities and Exchange Commission on February 6, 2017

Registration No. 333-

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

Form S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

eBay Inc.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

77-0430924  
(I.R.S. Employer  
Identification No.)

**2025 Hamilton Avenue**

**San Jose, CA 95125**

**(408) 376-7400**

**(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)**

**Marie Oh Huber**

**Senior Vice President, Legal Affairs, General Counsel and Secretary**

**eBay Inc.**

**2025 Hamilton Avenue**

**San Jose, CA 95125**

**(408) 376-7400**

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

**With a copy to:**

**Eric S. Haueter**

**Sidley Austin LLP**

**555 California Street**

**San Francisco, CA 94104**

**(415) 772-1200**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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. (Check one):

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 Each Class of Securities to be Registered	Amount to be	Proposed	Amount of Registration Fee
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	<b>Registered</b>	<b>Maximum Aggregate</b>	<b>Offering Price</b>
Debt securities			
Common stock			
Preferred stock			
Warrants	(1)	(1)	(2)
Depository shares			
Purchase contracts			
Units			

(1) Omitted pursuant to Form S-3 General Instruction II.E. Such indeterminate amount of securities is being registered as may from time to time be sold at indeterminate prices or issued from time to time upon conversion, exercise or exchange of securities registered hereby or pursuant to anti-dilution adjustments with respect to any securities registered hereby that provide for such adjustments.

(2) The registrant is deferring payment of all registration fees in accordance with Rules 456(b) and 457(r) under the Securities Act of 1933.

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**PROSPECTUS**

**eBay Inc.**

**Debt Securities**

**Common Stock**

**Preferred Stock**

**Warrants**

**Depository Shares**

**Purchase Contracts**

**Units**

We may offer and sell our debt securities, common stock, preferred stock, warrants, depository shares or purchase contracts, as well as units that include any of these securities, from time to time in one or more offerings. These securities may, if applicable, be convertible into, or exercisable or exchangeable for, other securities described in this prospectus. This prospectus provides you with a general description of the securities that we may offer.

We will provide specific terms of any securities we offer, and the manner in which they are being offered, in supplements to this prospectus, which we refer to as prospectus supplements. You should read this prospectus, the documents incorporated and deemed to be incorporated by reference herein, the applicable prospectus supplement and any related free writing prospectus carefully before you invest.

We may offer and sell any of the securities described in this prospectus to or through one or more underwriters, dealers and agents, or directly to purchasers, on an immediate, continuous or delayed basis. If any agents or underwriters are involved in the sale of any of these securities, their names, and any applicable purchase price, commission or discount arrangement between us and them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. None of these securities may be sold without delivery of a prospectus supplement describing the method and terms of the offering of those securities.

Our common stock is listed on The Nasdaq Global Select Market under the ticker symbol EBAY. On February 3, 2017, the last reported sale price of our common stock on The Nasdaq Global Select Market was \$32.07 per share.

**Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading Risk Factors on page 3 of this prospectus and under similar**

**headings in the documents that are incorporated or deemed to be incorporated by reference into this prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is February 6, 2017.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a shelf registration statement that we have filed with the Securities and Exchange Commission (the SEC). By using a shelf registration statement, we may sell one or more classes or series of the securities described in this prospectus from time to time in one or more offerings. This prospectus provides you with a general description of some of the terms of the securities we may offer. Each time we sell any securities, we will provide you with a supplement to this prospectus that describes the terms of that offering and the securities being offered. In addition, each prospectus supplement and any related free writing prospectus may also add, update or change information contained in this prospectus or any document incorporated or deemed to be incorporated by reference herein and, accordingly, any statement in this prospectus or in any document incorporated or deemed to be incorporated by reference herein will be deemed modified or superseded to the extent that any statement contained in the applicable prospectus supplement or any related free writing prospectus modifies or supersedes that statement. We urge you to read carefully this prospectus, the applicable prospectus supplement and any related free writing prospectus, together with the documents incorporated and deemed to be incorporated by reference in this prospectus as described under the heading Where You Can Find More Information, before deciding whether to invest in any of the securities being offered.

The distribution of this prospectus, the applicable prospectus supplement and any related free writing prospectus and the offering of the securities in certain jurisdictions may be restricted by law. Persons into whose possession this prospectus, the applicable prospectus supplement and any related free writing prospectus come should inform themselves about and observe any such restrictions. No action has been or will be taken by us or by any underwriter, agent or dealer involved in the distribution of any securities that would permit a public offering of the securities or the possession or distribution of this prospectus or any related prospectus supplement or free writing prospectus in any jurisdiction where action for that purpose is required, other than the United States. Neither this prospectus nor any related prospectus supplement or free writing prospectus constitutes, and none of the foregoing may be used in connection with, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

You should rely only on the information contained and incorporated and deemed to be incorporated by reference in this prospectus, the applicable prospectus supplement and any related free writing prospectus. We have not authorized any person to provide you with different or inconsistent information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and any underwriters, agents or dealers involved in the distribution of any securities will not be, making an offer to sell these securities or soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, the documents incorporated and deemed to be incorporated by reference herein, the applicable prospectus supplement and any related free writing prospectus is accurate only as of the respective dates of those documents. Our business, financial condition, results of operations and prospects may have changed since those dates.

This prospectus, the documents incorporated and deemed to be incorporated by reference herein, any prospectus supplement and any related free writing prospectus include or may include trademarks, service marks and trade names owned by us or others. All trademarks, service marks and trade names included in this prospectus, the documents incorporated and deemed to be incorporated by reference herein, any prospectus supplement and any related free writing prospectus are the property of their respective owners.

Unless we otherwise specify or the context otherwise requires, references in this prospectus to we, us, our or eBay refer to the current Delaware corporation (eBay Inc.) and its California predecessor, as well as all of our consolidated



subsidiaries; and references in this prospectus to eBay Inc. refer to eBay Inc. excluding its subsidiaries.

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**EBAY INC.**

*This following highlights information contained elsewhere in this prospectus or contained in documents incorporated or deemed to be incorporated by reference herein and does not contain all of the information that you should consider in your evaluation of an investment in our securities. You should read carefully this prospectus, including the information set forth under the heading Risk Factors, the documents incorporated and deemed to be incorporated by reference in this prospectus, the related prospectus supplement and any related free writing prospectus in their entirety before making an investment decision.*

eBay Inc. was formed as a sole proprietorship in September 1995 and was incorporated in California in May 1996. In April 1998 we reincorporated in Delaware and in September 1998 we completed the initial public offering of our common stock.

We are a global commerce leader, which includes our Marketplace, StubHub and Classifieds platforms. Collectively, we connect millions of buyers and sellers around the world. The technologies and services that power our platforms are designed to enable sellers worldwide to organize and offer their inventory for sale, and buyers to find and purchase it, virtually anytime and anywhere.

Our principal executive offices are located at 2025 Hamilton Avenue, San Jose, California 95125 and our telephone number is (408) 376-7400. Our internet address is [www.ebay.com](http://www.ebay.com). Our investor relations website is located at <https://investors.ebayinc.com>. The information contained in, or that can be accessed through, any of our websites is not part of this prospectus, the registration statement of which this prospectus is a part, any document incorporated or deemed to be incorporated by reference herein, any prospectus supplement or any related free writing prospectus.

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**RISK FACTORS**

Investing in our securities involves a high degree of risk. Before you decide to invest in our securities, you should consider carefully the risks and uncertainties set forth under the caption "Risk Factors" in our most recent Annual Report on Form 10-K and our subsequent Quarterly Reports on Form 10-Q, if any, which are incorporated or deemed to be incorporated by reference in this prospectus and may be obtained as described under "Where You Can Find More Information," and any risk factors that may be set forth in the applicable prospectus supplement, any related free writing prospectus and any other documents that are incorporated or deemed to be incorporated by reference herein, as well as the other information contained in this prospectus, the documents incorporated and deemed to be incorporated by reference herein, the applicable prospectus supplement and any related free writing prospectus. Each of these risks could have a material adverse effect on our business, results of operations and financial condition and the occurrence of any of these risks might cause you to lose all or part of your investment in our securities. In addition, the information contained in this prospectus, the applicable prospectus supplement, any related free writing prospectus and the documents incorporated and deemed to be incorporated by reference in this prospectus include forward-looking statements that involve risks and uncertainties. We refer you to the "Forward-Looking Statements" section of this prospectus, as well as the "Forward-Looking Statements" or other comparable sections in the applicable prospectus supplement, any related free writing prospectus and the documents incorporated and deemed to be incorporated by reference in this prospectus, for information regarding some of the risks and uncertainties inherent in forward-looking statements. Our actual results could differ materially from those expressed in or implied by the forward-looking statements as a result of many factors, including the risks described under the caption "Risk Factors" in the documents referred to above and the risks described elsewhere in this prospectus, the applicable prospectus supplement, any related free writing prospectus and the documents incorporated and deemed to be incorporated by reference in this prospectus.

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**FORWARD-LOOKING STATEMENTS**

This prospectus and the documents incorporated and deemed to be incorporated by reference herein contain, and any prospectus supplement and related free writing prospectus may contain, forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). All statements, other than statements of historical fact, included or incorporated by reference in this prospectus, any prospectus supplement or related free writing prospectus, including statements that involve expectations, plans or intentions (such as those relating to future business, future results of operations or financial condition, new or planned features or services, or management strategies), are forward-looking statements. You can identify these forward-looking statements by words such as may, will, would, should, could, expect, anticipate, believe, estimate, intend, plan and other similar expressions. We do not base these forward-looking statements on our expectations and projections about future conditions, events or results at the respective dates of the documents in which they appear. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those expressed or implied in these forward-looking statements. Such risks and uncertainties include, among others, those discussed in the sections entitled Risk Factors in this prospectus, in our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q, which are incorporated by reference in this prospectus and may be obtained as described below under Where You Can Find More Information, and, if applicable, in the applicable prospectus supplement and any related free writing prospectus, as well as the risks and uncertainties discussed in our consolidated financial statements, related notes and the other information included in this prospectus, the applicable prospectus supplement, any related free writing prospectus and the documents incorporated and deemed to be incorporated by reference herein.

These forward-looking statements speak only as of the respective dates of the documents in which they appear. We do not intend, and undertake no obligation, to update any such forward-looking statements to reflect actual results or future results or circumstances. Given these risks and uncertainties, you are cautioned not to place undue reliance on any forward-looking statements contained in this prospectus, any documents incorporated or deemed to be incorporated by reference herein, any prospectus supplement or any free writing prospectus.

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Except as described in any applicable prospectus supplement or in any related free writing prospectus, we anticipate using the net proceeds we receive from the sale of our securities described in this prospectus for general corporate purposes, which may include working capital, acquisitions, capital expenditures, repayment of indebtedness and repurchases of our common stock.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for each of the periods indicated below. For purposes of determining the ratio of earnings to fixed charges, earnings consist of income from continuing operations before income taxes, noncontrolling interest and income/loss of equity method investees plus fixed charges. Fixed charges consist of interest expense and our estimate of an appropriate portion of rentals representative of the interest factor. The estimate of interest within rental expense is estimated to be one-third of rental expense. No shares of our preferred stock were outstanding during any of the periods set forth in the following table. Accordingly, our ratios of earnings to combined fixed charges and preferred stock dividends for those periods are the same as the ratios appearing in the following table.

	<b>Year Ended December 31,</b>				
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Ratio of earnings to fixed charges	28.3x	21.8x	18.2x	15.1x	15.5x

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**DESCRIPTION OF DEBT SECURITIES**

This prospectus describes certain general terms and provisions of our debt securities and the related indenture (as defined below). When we offer to sell a particular series of debt securities, we will describe the specific terms of that series in a supplement to this prospectus and, if applicable, one or more free writing prospectuses relating to such series and such description will supplement and, to the extent inconsistent with any portion of the description of our debt securities and the indenture contained in this prospectus, supersede the applicable portion of the description contained in this prospectus.

The debt securities will be issued under an indenture dated as of October 28, 2010 (the "base indenture"), as amended and supplemented by a supplemental indenture dated as of October 28, 2010 (the "supplemental indenture"; the base indenture, as amended and supplemented by the supplemental indenture, is hereinafter called the "indenture"), each between us and Wells Fargo Bank, National Association, as trustee. We have described some of the provisions of the indenture and the debt securities below. This description is not complete and is subject to, and qualified in its entirety by reference to, the indenture and the form of debt security, which have been filed or incorporated by reference as exhibits to the registration statement of which this prospectus is a part and may be obtained as described under "Where You Can Find More Information." You should read the indenture and the form of debt security for a complete statement of the provisions described in this prospectus and for other provisions that may be important to you. The indenture is subject to and governed by the Trust Indenture Act of 1939, as amended. In the following description, we have included references to some of the section numbers of the base indenture and the supplemental indenture so that you can easily locate those provisions.

References in this section to "eBay," "eBay Inc.," "we," "our" and "us" and similar references mean eBay Inc. excluding, unless the context otherwise requires or otherwise expressly stated, its subsidiaries.

**General**

The terms of each series of debt securities will be established by or pursuant to a resolution of our board of directors or a committee thereof, and set forth or determined in the manner provided in a resolution of our board of directors or a committee thereof, an officers' certificate or a supplemental indenture. (Section 2.2 of the base indenture)

An unlimited aggregate principal amount of debt securities may be issued under the indenture. We may issue debt securities under the indenture from time to time in one or more series with the same or various maturities, interest rates, public offering prices and other terms and provisions. We need not issue all debt securities of one series at the same time. In addition, unless otherwise provided in the applicable prospectus supplement, we may, without the consent of the holders or beneficial owners of the debt securities of any series, reopen a series of debt securities and issue additional debt securities of that series from time to time. Any such additional debt securities of any series, together with the debt securities of that series previously issued, will constitute a single series of debt securities under the indenture. We will set forth in a prospectus supplement and, if applicable, one or more free writing prospectuses relating to any series of debt securities being offered, the aggregate principal amount and other terms of the debt securities of that series, which may include the following, if applicable:

the title of the debt securities of that series;

the price or prices at which the debt securities of that series will be offered to the public;

any limit on the aggregate principal amount of the debt securities of that series;

the date or dates on which we will pay the principal of the debt securities of that series;

the rate or rates (which may be fixed or variable) or the method used to determine the rate or rates at which the debt securities of that series will bear interest, if any; the date or dates from which interest, if

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any, will accrue; the date or dates on which interest, if any, will be payable; and any regular record date for the interest payable on any interest payment date;

our right, if any, to defer payment of interest, if any, on the debt securities of that series and the length of any deferral period;

the terms and conditions upon which we may redeem the debt securities of that series;

any obligation we may have to redeem or repurchase the debt securities of that series pursuant to any sinking fund or analogous provisions or at the option of the holders of debt securities of that series;

the denominations in which the debt securities of that series will be issued, if other than denominations of \$2,000 and integral multiples of \$1,000 in excess thereof;

the portion of principal amount of the debt securities of that series payable upon acceleration of the maturity thereof, if other than the entire principal amount;

the currency of denomination of the debt securities of that series, if other than U.S. dollars;

the currency or currencies in which payment of principal of and premium and interest, if any, on the debt securities of that series will be made, if other than U.S. dollars;

if payments of principal of or premium or interest, if any, on the debt securities of that series will be made in one or more currencies, other than that or those in which the debt securities of that series are denominated, the manner in which the currency exchange rate with respect to those payments will be determined;

the manner in which the amounts of payments of principal of or premium or interest, if any, on the debt securities of that series will be determined, if those amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or other index;

any provisions relating to any collateral provided as security for the payment of the debt securities of that series;

any additions to or changes in the events of default described in this prospectus or in the indenture with respect to the debt securities of that series;



any provisions for the conversion of the debt securities of that series into, or the exchange of the debt securities of that series for, other securities (including, without limitation, other securities described in this prospectus) or property;

any additions to or changes in the covenants described in this prospectus or in the indenture with respect to the debt securities of that series; and

any other terms of the debt securities of that series, which may supplement, modify or delete any provision of the indenture as it applies to that series. (Section 2.2 of the base indenture)

Without limitation to the foregoing, the terms of the debt securities of any series described in a prospectus supplement or free writing prospectus may modify, supplement or supersede any of the terms of the debt securities or the indenture described in this prospectus.

Unless otherwise stated in the applicable prospectus supplement, interest on the debt securities of each series will be computed on the basis of a 360-day year comprised of twelve 30-day months.

In addition, the indenture will allow us to issue subordinated debt securities. Any subordination provisions of a particular series of debt securities will be described in the relevant prospectus supplement. We may issue debt securities (which we refer to as discount securities ) that provide for an amount less than their stated principal amount to be due and payable upon acceleration of their maturity pursuant to the terms of the indenture. We will provide you with information on the U.S. federal income tax considerations applicable to any such discount securities in the applicable prospectus supplement.

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### **Ranking**

Unless otherwise specified in the prospectus supplement relating to a particular series of debt securities, the debt securities of each series will be our unsecured and unsubordinated obligations and will rank equally in right of payment with all of our other existing and future unsecured and unsubordinated indebtedness. The debt securities of each series will be effectively subordinated in right of payment to all of our secured indebtedness, if any, to the extent of the value of the collateral securing that indebtedness and will be effectively subordinated in right of payment to all existing and future indebtedness and other liabilities of our subsidiaries, which are separate legal entities having no contractual obligation to pay any amounts due pursuant to the debt securities or to make funds available for such purpose.

### **Form; Transfer and Exchange**

Unless otherwise indicated in the applicable prospectus supplement:

the debt securities of each series will be issued in fully registered form without coupons and in the form of one or more global debt securities ( global securities ) registered in the name of The Depository Trust Company ( DTC ) or its nominee, and

investors will not be entitled to receive debt securities of such series in definitive certificated form ( certificated securities ) or to have debt securities of such series registered in their names except under the limited circumstances described below under Book-Entry Form and Transfer.

For additional information concerning global securities, see Book-Entry Form and Transfer below.

Debt securities may be surrendered for registration of transfer or exchange at any office we maintain for this purpose in accordance with the terms of the indenture. No service charge will be made for any transfer or exchange of debt securities (except as otherwise expressly provided by the indenture), but we may (subject to limited exceptions) require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with a transfer or exchange. (Section 2.7 of the base indenture)

The indenture provides that neither we nor any registrar for the debt securities will be required (a) to issue, register the transfer of or exchange debt securities of any series during the period beginning at the opening of business 15 days preceding the mailing of a notice of redemption of debt securities of that series and ending at the close of business on the day of that mailing or (b) to register the transfer of or exchange debt securities (or portions thereof) selected, called or being called for redemption or, if applicable, surrendered for repurchase by us at the option of the holder, except any portion thereof not so selected, called or being called or so surrendered. (Section 2.7 of the base indenture)

The indenture provides that, prior to due presentment of a debt security for registration of transfer, we, the trustee and any agent of ours or the trustee may treat the person in whose name such debt security is registered in the register maintained for that purpose as the owner of such debt security for the purpose of receiving payment of the principal of and premium and interest, if any, on such debt security and for all other purposes whatsoever, whether or not any payment with respect to such debt security shall be overdue, and neither we, the trustee nor any agent of ours or the trustee shall be affected by notice to the contrary. (Section 2.16 of the base indenture)

### **No Sinking Fund or Protection In the Event of a Change of Control**

Unless otherwise stated in the prospectus supplement relating to a particular series of debt securities, the debt securities will not be entitled to the benefit of any sinking fund, will not be subject to repurchase by us at the option of the holders prior to maturity and, except to the limited extent described under Covenants Consolidation, Merger and Sale of Assets below, will not be entitled to the benefit of any provisions which are intended to protect holders of debt securities in the event of a change of control of eBay or a highly leveraged transaction (whether or not related to a change in control) involving eBay.

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**Covenants**

The following covenants will apply to the debt securities of each series unless otherwise expressly stated in the applicable prospectus supplement.

***Limitation on Liens***

In the indenture, we covenant and agree, for the benefit of the holders of the debt securities of each series, that we will not, nor will we permit any Significant Subsidiary to, issue, incur, create, assume or guarantee any debt for borrowed money (including debt for borrowed money evidenced by bonds, debentures, notes or similar instruments) (collectively, Debt ) secured by a mortgage, deed of trust, security interest, pledge, lien, charge or similar encumbrance (each, a Lien ) upon any Principal Property, shares of Capital Stock of any Significant Subsidiary or intercompany Debt owed by any Significant Subsidiary to us or any of our other Subsidiaries ( Intercompany Debt ) (whether such Principal Property, shares of Capital Stock or Intercompany Debt is existing or owed on the date the debt securities of such series are first issued or thereafter created or acquired), without in any such case effectively providing, substantially concurrently with or prior to the issuance, incurrence, creation, assumption or guarantee of any such secured Debt or the grant of such Lien securing any such secured Debt, that the debt securities of such series (together with, if we shall so determine, any other indebtedness or other obligations (including, without limitation, debt securities of other series issued under the indenture) of or guarantees by us or any Significant Subsidiary ranking equally in right of payment with the debt securities of such series or any such guarantee) shall be secured equally and ratably with (or, at our option, prior to) such secured Debt (but only so long as such secured Debt is so secured). The foregoing restriction, however, will not apply to any of the following:

- (1) Liens on property, Capital Stock, Debt or other assets of any person existing at the time such person becomes a Subsidiary of ours, *provided* that such Liens are not incurred in anticipation of such person becoming a Subsidiary of ours and do not extend to any assets other than those of such person;
- (2) Liens on property, Capital Stock, Debt or other assets existing at the time of acquisition thereof (including, without limitation, by merger, consolidation or acquisition of Capital Stock) by us or a Subsidiary of ours, or Liens thereon to secure the payment of all or any part of the purchase price thereof, or Liens on property, Capital Stock, Debt or other assets to secure any Debt incurred prior to, at the time of, or within 18 months after, the latest of the acquisition (including, without limitation, by merger, consolidation or acquisition of Capital Stock) thereof or, in the case of property, the completion of construction, the completion of improvements or the commencement of substantial commercial operation of such property for the purpose of financing all or any part of the purchase price thereof, such construction or the making of such improvements, as the case may be;
- (3) Liens in favor of, or which secure Debt owing to, us or any of our Subsidiaries;
- (4) Liens existing on the date the debt securities of such series were first issued;
- (5) Liens on property of a person existing at the time such person is merged with or into, or consolidated with, us or a Subsidiary of ours or otherwise acquired by us or a Subsidiary of ours or at the time of a sale, lease or other disposition of the properties of any person as an entirety or substantially as an entirety to us or a Subsidiary of ours, *provided* that such Liens were not incurred in anticipation of such merger, consolidation, sale, lease or other disposition and do not extend to any assets other than those of the person merged with or into, or consolidated with, us or a Subsidiary of ours or such property sold, leased or disposed of;

(6) Liens in favor of the United States of America or any state, territory or possession thereof (or the District of Columbia), or any department, agency, instrumentality or political subdivision of the United States of America or any state, territory or possession thereof (or the District of Columbia), to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any Debt incurred for the purpose of financing all or any part of the purchase price of or the cost of constructing or improving the property subject to such Liens;

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(7) Liens securing the debt securities of such series;

(8) Liens created in connection with a project financed with, or created to secure, Non-recourse Obligations;

(9) Liens to secure bonds, notes, debentures or similar instruments on which the interest is exempt from federal income tax; and

(10) extensions, renewals, refinancings or replacements (in whole or in part) of any Liens or Debt which is secured by Liens that were permitted to be incurred by the indenture; *provided, however*, that (a) the principal or accreted amount of any Debt of ours or any of our Significant Subsidiaries secured by such Lien immediately after such extension, renewal, refinancing or replacement shall not exceed the sum of the principal or accreted amount, as the case may be, of any Debt of ours or any of our Significant Subsidiaries so secured immediately prior to such extension, renewal, refinancing or replacement plus any costs and expenses (including, without limitation, any fees, premiums and penalties) related to such extension, renewal, refinancing or replacement and (b) such extension, renewal, refinancing or replacement Liens are limited to all or part of the same Principal Property (and any improvements thereon), shares of Capital Stock of any Significant Subsidiary or Intercompany Debt which secured any Debt of ours or any of our Significant Subsidiaries immediately prior to such extension, renewal, refinancing or replacement.

Notwithstanding the foregoing, we and our Significant Subsidiaries may, without securing the debt securities of such series or any other debt securities issued under the indenture, issue, incur, create, assume or guarantee Debt secured by any Liens which would otherwise be subject to the restrictions set forth in the immediately preceding paragraph if, immediately after giving effect thereto and, if applicable, to the application of any proceeds therefrom to repay Debt on a pro forma basis, our Aggregate Debt does not exceed the greater of (1) 20% of our Consolidated Net Tangible Assets, determined as of the date of such issuance, incurrence, creation, assumption or guarantee, and (2) \$500 million. (Section 4.1 of the supplemental indenture)

***Limitation on Sale and Lease-Back Transactions***

In the indenture, we covenant and agree, for the benefit of the holders of the debt securities of each series, that we will not, nor will we permit any Significant Subsidiary to, enter into any Sale and Lease-Back Transaction with respect to any Principal Property, unless:

(1) such Sale and Lease-Back Transaction involves a lease for a term of not more than three years;

(2) such Sale and Lease-Back Transaction is between us and one of our Subsidiaries or between any Subsidiaries of ours;

(3) we or such Significant Subsidiary would be entitled, at the time of such Sale and Lease-Back Transaction, to incur Debt secured by a Lien on the Principal Property involved in such Sale and Lease-Back Transaction at least equal in amount to the Attributable Debt with respect to such Sale and Lease-Back Transaction, without equally and ratably securing the debt securities of such series, pursuant to the first paragraph under *Limitation on Liens* above;

(4) we or any of our Subsidiaries applies an amount equal to the net proceeds of such Sale and Lease-Back Transaction within 365 days after such Sale and Lease-Back Transaction to any of (or a combination of) (i) the prepayment or retirement of the debt securities of such series, (ii) the prepayment or retirement of other bonds, notes, debentures or similar instruments (including, without limitation, debt securities of any other series issued under the indenture) or Debt of ours or a Subsidiary of ours (other than bonds, notes, debentures, similar instruments or Debt of ours that is by its terms subordinated in right of payment to the debt securities of such series) that by its terms matures

more than 12 months after its creation or (iii) the purchase, construction, development, expansion or improvement of properties or facilities that are used in or useful to our business or the business of any of our Subsidiaries; or

(5) such Sale and Lease-Back Transaction was entered into on or prior to the date the debt securities of such series were first issued.

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Notwithstanding the foregoing, we and our Significant Subsidiaries may, without securing the debt securities of such series or any other debt securities issued under the indenture, enter into a Sale and Lease-Back Transaction which would otherwise be subject to the restrictions set forth in the immediately preceding paragraph if, immediately after giving effect thereto and, if applicable, to the application of any proceeds therefrom to repay Debt on a pro forma basis, our Aggregate Debt does not exceed the greater of (1) 20% of our Consolidated Net Tangible Assets, determined as of the date of such Sale and Lease-Back Transaction, and (2) \$500 million. (Section 4.1 of the supplemental indenture)

### ***Consolidation, Merger and Sale of Assets***

In the indenture, we covenant and agree, for the benefit of the holders of the debt securities of each series, that we will not consolidate with or merge into, or convey, transfer or lease all or substantially all of our properties and assets to, any person (a successor person ) unless:

we are the surviving person or the successor person (if other than us) is organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and expressly assumes our obligations under the debt securities of each series and the indenture;

immediately after giving effect to the transaction, no event of default (as defined below), and no event which, after notice or lapse of time or both, would be an event of default, shall have occurred and be continuing under the indenture; and

certain other conditions are met.

Notwithstanding the above, any Subsidiary of eBay Inc. may consolidate with, merge into or convey, transfer or lease all or part of its properties or assets to eBay Inc. or any other Subsidiary of eBay Inc.

Upon compliance with the provisions above, the successor person (if other than eBay) will succeed to and be substituted for and may exercise every right and power of us under the debt securities and the indenture with the same effect as if such successor person had been the original obligor under the debt securities and the indenture, and thereafter (except in the case of a lease) we will be released from all obligations and covenants under the debt securities and the indenture. (Section 5.1 of the base indenture)

### ***Certain Definitions***

As used in this Description of Debt Securities section, the following terms have the meanings set forth below.

*Aggregate Debt* means, with respect to the debt securities of any series, the sum of the following, calculated as of the date of determination on a consolidated basis in accordance with GAAP:

- (1) the aggregate amount of then outstanding Debt of us and our Significant Subsidiaries incurred after the date the debt securities of such series were first issued and secured by Liens not permitted under the first paragraph under Limitation on Liens above, and



- (2) the aggregate amount of Attributable Debt of us and our Significant Subsidiaries then outstanding in respect of Sale and Lease-Back Transactions entered into by us and our Significant Subsidiaries after the date the debt securities of such series were first issued pursuant to the second paragraph under Limitation on Sale and Lease-Back Transactions above.

*Attributable Debt* with regard to a Sale and Lease-Back Transaction with respect to any Principal Property means, at the time of determination, the lesser of:

- (1) the fair market value (as determined in good faith by our board of directors, which term, as defined in the indenture, includes committees thereof) of the Principal Property subject to such Sale and Lease-Back Transaction; and

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- (2) the present value of the total net amount of rent required to be paid under the applicable lease during the remaining contractual term thereof (including any period for which such lease has been extended but subject to the last sentence of this subparagraph), discounted at the rate of interest per annum set forth or implicit in the terms of such lease (or, if not practicable to determine such rate, the weighted average interest rate per annum borne (at the time of determination) by the debt securities then outstanding under the indenture) compounded semi-annually (assuming a 360-day year consisting of twelve 30 day months). For purposes of clarity, it is understood and agreed that (a) the total net amount of rent required to be paid under, and the term of, the applicable lease shall be determined upon the basis of the contractual terms of such lease and shall not be affected by the fact that all or any portion of such rent may, under GAAP, be characterized as interest or some other amount or that the amount of such rent or the term of such lease, as determined under GAAP, may be different from the amount of rent or the term specified by the contractual terms of such lease and (b) the total net amount of rent shall exclude any amounts required to be paid by the lessee, whether or not designated as rent or additional rent, on account of maintenance, repairs, insurance, taxes, assessments, water rates or similar charges or any amounts required to be paid by such lessee contingent upon the amount of sales or similar contingent amounts. In the case of any lease that is terminable by the lessee upon the payment of a penalty, such total net amount of rent shall be the lesser of (1) the net amount determined assuming termination upon the first date such lease may be terminated (in which case the net amount shall also include the present value, calculated as provided above, of the amount of the penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated) or (2) the net amount determined assuming no such termination, in each case determined in accordance with the contractual terms of such lease.

*Capital Stock* of any person means any and all shares, interests, participations or other equivalents (however designated) in the equity of such person.

*Consolidated Net Tangible Assets* means, as of any date on which we effect a transaction requiring such Consolidated Net Tangible Assets to be measured under the indenture, the aggregate amount of assets (less applicable reserves) after deducting therefrom (a) all current liabilities, except for current maturities of long-term debt and obligations under capital leases, and (b) all intangible assets (including goodwill), to the extent included in said aggregate amount of assets, all as set forth in the most recent consolidated balance sheet of us and our consolidated Subsidiaries prepared in accordance with GAAP contained in an annual report on Form 10-K or a quarterly report on Form 10-Q (in each case as amended, if applicable) filed by us with the Securities and Exchange Commission (or any successor thereto) or if, at such date, we shall have ceased filing such reports with the Securities and Exchange Commission (or any successor thereto), our then most recent consolidated annual or quarterly balance sheet prepared in accordance with GAAP.

*GAAP* means accounting principles generally accepted in the United States of America, which are in effect as of the date of application thereof.

*holder* means any person in whose name a debt security is registered.

*Non-recourse Obligation* means indebtedness or other obligations substantially related to (1) the acquisition of assets not previously owned by us or any of our Subsidiaries or (2) the financing of a project involving the development or expansion of properties of ours or any of our Subsidiaries, as to which the obligee with respect to such indebtedness or obligation has no recourse to us or any Subsidiary of ours or to our or any such Subsidiary's assets other than the assets which were acquired with the proceeds of such transaction or the project financed with the proceeds of such transaction (and the proceeds thereof).

*person* means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization or any other entity, including any government or any agency or political subdivision thereof.

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*Principal Property* means (1) our principal corporate office (whether owned on the date of the indenture or thereafter acquired, and including any leasehold interest therein) and (2) each data center, service and support facility or research and development facility (in each case, whether owned on the date of the indenture or thereafter acquired) which is owned by or leased to us or any of our Subsidiaries and is located within the United States of America, unless, with respect to clause (2), our board of directors (which term, as defined in the indenture, includes committees thereof) has determined in good faith that such center or facility is not of material importance to the total business conducted by us and our Subsidiaries, taken as a whole; *provided, however*, that any such center or facility (a) owned by us or any of our Subsidiaries for which the book value (less accumulated depreciation) on the date as of which the determination is being made is equal to or less than 1.0% of our Consolidated Net Tangible Assets as of such date, all determined in accordance with GAAP, or (b) leased by us or any of our Subsidiaries for which the annual lease obligation on the date as of which the determination is being made is equal to or less than \$2.0 million shall in no event be deemed a Principal Property.

*Sale and Lease-Back Transaction* means any arrangement with any person providing for the leasing by us or any Significant Subsidiary of ours of any Principal Property, whether owned on the date of the indenture or thereafter acquired, which Principal Property has been or is to be sold or transferred by us or such Significant Subsidiary of ours to such person with the intention of taking back a lease of such Principal Property.

*Significant Subsidiary* means any Subsidiary of ours that is a significant subsidiary as defined in Rule 1-02(w) of Regulation S-X as promulgated by the Securities and Exchange Commission (or any successor thereto) or any successor to such Rule.

*Subsidiary* of any specified person means any corporation, partnership, limited liability company or other entity of which more than 50% of the total voting power of outstanding shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or persons performing similar functions) is at the time owned (and, in the case of a partnership, more than 50% of whose total general partnership interests then outstanding is at the time owned), directly or indirectly, by such person or other Subsidiaries of such person or a combination thereof and, in the case of an entity other than a corporation or a partnership, such person has the power to direct, directly or indirectly, the policies, management and affairs of such entity.

## **Events of Default**

Unless otherwise specified in the applicable prospectus supplement, an event of default with respect to the debt securities of any series means any of the following:

default in the payment of any interest on any debt security of that series when it becomes due and payable, and continuance of that default for a period of 30 days (unless the entire amount of such payment is deposited by us with the trustee or with a paying agent prior to the expiration of such 30-day period); or

default in the payment of principal of or premium (if any) on any debt security of that series when due and payable; or

default in the performance or breach of any covenant or warranty of ours in the indenture (other than a covenant or warranty for which the consequences of nonperformance or breach are addressed by another event of default applicable to debt securities of that series and other than a covenant or warranty that has been included in the indenture solely for the benefit of a series of debt securities other than that series), which default or breach continues uncured for a period of 90 days after there has been given, by registered or certified mail, to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount of the outstanding debt securities of that series, a written notice containing the statements required by the indenture; or

certain events of bankruptcy, insolvency or reorganization of eBay; or

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any other event of default with respect to the debt securities of that series that is specified in a resolution of our board of directors (or a committee thereof), supplemental indenture or officer's certificate establishing the terms of the debt securities of that series as provided in the indenture and described in the applicable prospectus supplement. (Section 6.1 of the base indenture)

No event of default with respect to a particular series of debt securities necessarily constitutes an event of default with respect to any other series of debt securities. The occurrence of certain events of default or an acceleration of the debt securities of one or more series under the indenture may constitute an event of default under certain of our other indebtedness outstanding from time to time.

If an event of default with respect to the debt securities of any series at the time outstanding occurs and is continuing (other than an event of default relating to certain events of bankruptcy, insolvency or reorganization of eBay), then the trustee or the holders of not less than 25% in principal amount of the outstanding debt securities of that series may declare the principal (or, if any debt securities of that series are discount securities, such portion of the principal as may be specified in the terms of such debt securities) of and accrued and unpaid interest, if any, on all of the debt securities of that series to be due and payable immediately, by a notice in writing to us (and to the trustee if given by the holders). If an event of default resulting from certain events of bankruptcy, insolvency or reorganization of eBay occurs and is continuing with respect to the debt securities of any series, the principal (or such specified amount) of and accrued and unpaid interest, if any, on all outstanding debt securities of such series will become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder of debt securities of such series. At any time after acceleration with respect to debt securities of any series has occurred and before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in principal amount of the outstanding debt securities of that series may rescind and annul such acceleration and its consequences if all events of default with respect to the debt securities of such series, other than non-payment of the principal and interest, if any, of the debt securities of such series which have become due solely by such acceleration, have been cured or waived as provided in the indenture. (Section 6.2 of the base indenture) We refer you to the prospectus supplement relating to any series of debt securities that are discount securities for the particular provisions relating to acceleration of a portion of the principal amount of such discount securities upon the occurrence of an event of default.

The indenture provides that the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any of the holders of debt securities of any series unless such holders shall have offered to the trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. (Section 7.2(f) of the base indenture) Subject to certain rights of the trustee and to certain conditions specified in the indenture, the holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee with respect to the debt securities of that series. (Section 6.12 of the base indenture)

No holder of any debt security of any series will have any right to institute any proceeding, judicial or otherwise, with respect to the indenture or the debt securities of such series, or for the appointment of a receiver, trustee or similar official, or for any other remedy under the indenture, unless:

that holder has previously given written notice to the trustee of a continuing event of default with respect to debt securities of that series;

the holders of at least a majority in principal amount of the outstanding debt securities of that series have made written request to the trustee to institute proceedings in respect of such event of default in its own name as trustee under the indenture;

such holder or holders have offered to the trustee indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;

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the trustee for 90 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

no direction inconsistent with such written request has been given to the trustee during such 90-day period by holders of a majority in principal amount of the outstanding debt securities of that series. (Section 6.7 of the base indenture)

Notwithstanding the foregoing, the holder of any debt security will have an absolute and unconditional right to receive payment of the principal of and premium and interest, if any, on that debt security on the due dates expressed in that debt security and to institute suit for the enforcement of any such payment. (Section 6.8 of the base indenture)

The indenture requires that we deliver to the trustee, within 120 days after the end of each of our fiscal years, an officers' certificate stating whether or not, to the knowledge of the signers thereof, we are in default in the performance or observance of any of the terms, provisions and conditions of the indenture and, if we are in default, specifying all such defaults and the nature and status thereof of which the signers may have knowledge. The indenture also requires that, so long as any debt securities are outstanding, we deliver to the trustee promptly upon becoming aware of any default or event of default under the indenture, an officers' certificate specifying such default or event of default and what action we are taking or propose to take with respect thereto. (Section 4.3 of the base indenture) The indenture provides that the trustee may withhold notice to the holders of debt securities of any series of any default or event of default with respect to debt securities of that series (except a default in payment of principal of or premium or interest, if any, on any debt securities of that series) if it in good faith determines that withholding notice is in the interest of the holders of the debt securities of that series. (Section 7.5 of the base indenture)

**Modification and Waiver**

We and the trustee may enter into a supplemental indenture in order to amend or supplement the indenture with respect to the debt securities of one or more series or amend or supplement the debt securities of one or more series, without notice to or the consent of any holders of any debt securities, to:

cure any ambiguity, defect or inconsistency;

make any change that does not adversely affect the rights of any holder of debt securities in any material respect;

comply with the provisions described above under Covenants Consolidation, Merger and Sale of Assets;

provide for the issuance of uncertificated debt securities in addition to or in place of certificated debt securities or reflect any changes in the rules or procedures of any depository for global securities;

add to the covenants or the events of default for the benefit of holders of all or any series of debt securities or surrender any right or power conferred on us by the indenture with respect to the debt securities of one or more series or to secure the debt securities of one or more series or to provide guarantees for the benefit of



one or more series of debt securities;

amend or supplement any of the provisions of the indenture in respect of one or more series of debt securities, *provided, however*, that any such amendment or supplement either (A) shall not apply to any outstanding debt security of any series issued prior to the date of such amendment or supplement and entitled to the benefit of such provision or (B) shall become effective only if or when, as the case may be, there is no outstanding debt security of any series issued prior to the date of such amendment or supplement and entitled to the benefit of such provision;

establish the form and terms of any series of debt securities as permitted by the indenture;

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evidence and provide for the acceptance of appointment under the indenture by a successor trustee with respect to the debt securities of one or more series and add to or change any of the provisions of the indenture as shall be necessary to provide for or facilitate the administration of the trusts thereunder by more than one trustee;

supplement any provisions of the indenture as is necessary to permit or facilitate the legal defeasance, covenant defeasance or satisfaction and discharge of any debt securities as described below under Defeasance of Debt Securities and Certain Covenants or Satisfaction and Discharge; and

comply with the requirements of the Securities and Exchange Commission or any applicable law or regulation in order to effect or maintain the qualification of the indenture under the Trust Indenture Act of 1939, as amended, or conform the indenture with any other mandatory provision of law or regulation, or conform the indenture or the debt securities of any series to the description thereof contained in any applicable prospectus, prospectus supplement, free writing prospectus, offering memorandum, term sheet or other offering document. (Section 9.1 of the base indenture)

We and the trustee may enter into supplemental indentures for the purpose of supplementing or amending in any manner the indenture with respect to the debt securities of any series, or supplementing or amending the debt securities of any series, with the consent of the holders of at least a majority in principal amount of the outstanding debt securities of such series; *provided* that no such consent of holders of debt securities shall be required for any amendment or supplement described in the immediately preceding paragraph. In addition, the holders of at least a majority in principal amount of the outstanding debt securities of any series may, on behalf of the holders of all debt securities of that series, waive compliance by us with any covenants or other provisions of the indenture and the debt securities of such series.

However, the indenture provides that, subject to the provisions described in the next succeeding paragraph, an amendment, supplement or waiver described in the immediately preceding paragraph affecting the debt securities of any series may not, without the consent of the holder of each debt security of such series then outstanding:

reduce the rate of or extend the time for payment of interest (including default interest, if any) on any debt security of that series;

reduce the principal of or premium on or change the s