

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 5, 2021

CLOUDCOMMERCE, INC.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

000-13215

(Commission File Number)

30-0050402

IRS Employer
Identification No.)

**321 Sixth Street
San Antonio, TX**

(Address of Principal Executive Offices)

78215

(Zip Code)

(805) 964-3313

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter)

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 13(a) of the Exchange Act. ☐

Item 1.01 Entry Into a Material Definitive Agreement.

On February 19, 2021, CloudCommerce, Inc. (the "Company") entered into a securities purchase agreement with the purchaser set forth on the signature page thereto for the purchase and sale of an aggregate of 85,000,000 shares of common stock (the "Shares"), (ii) pre-funded warrants to purchase up to 57,857,143 shares of common stock (the "Pre-funded Warrants"), and (iii) warrants to purchase up to 142,857,143 shares of common stock (the "Common Warrants," and together with the Pre-Funded Warrants, the "Warrants"), in a registered direct offering at a purchase price of \$0.07 per Share and Common Warrant, or \$0.069 per Pre-Funded Warrant and Common Warrant. The Common Warrants will be exercisable for a period of five years commencing upon issuance, at an exercise price of \$0.07 per share, subject to certain adjustments set forth therein. The Pre-funded Warrants will be exercisable commencing upon issuance and expiring upon the exercise of the Pre-funded Warrants in full, at an exercise price of \$0.001 per share, subject to certain adjustments set forth therein.

On March 5, 2021, we and the purchaser entered into an amendment agreement to the Purchase Agreement (the "Amendment Agreement") to reduce the exercise price of the Common Warrants from \$0.07 to \$0.0454 per share of common stock. We also agreed to issue an additional 28,571,421 Common Warrants to the purchaser. No other changes to the Common Warrants or other terms of the Purchase Agreement were made.

The (and underlying shares) were offered, and will be issued, pursuant to the Prospectus Supplement, dated March 8, 2021, to the Prospectus included in the Company's Registration Statement on Form S-3 (Registration No. 333-252358) filed with the Securities and Exchange Commission on January 22, 2021, and amended and declared effective February 16, 2021.

Sichenzia Ross Ference LLP, counsel to the Company, has issued an opinion to the Company regarding the validity of the securities to be issued in the offering. A copy of the opinion is filed as Exhibit 5.1 to this Current Report on Form 8-K.

The foregoing description of the Purchase Agreement, Common Warrant, Pre-funded Warrant, and Engagement Letter does not purport to be complete and is qualified in its entirety by reference to the complete text thereof, which are filed as exhibits to this report.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No	Exhibit
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5.1	Opinion of Sichenzia Ross Ference LLP
10.1	Form of Amendment Agreement

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CLOUDCOMMERCE, INC.

Date: March 5, 2021

By: /s/ Andrew Van Noy
Name: Andrew Van Noy
Title: Chief Executive Officer



March 8, 2021

CloudCommerce, Inc.
321 Sixth Street
San Antonio, TX 78215

Re: Common Stock, Warrants, Pre-funded Warrants and Placement Agent Warrants registered under Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to CloudCommerce, Inc., a Nevada corporation (the "Company"), in connection with the issuance and sale by the Company of (a) pursuant to the Securities Purchase Agreement dated February 19, 2021 (the "Purchase Agreement") by and between the Company and the purchaser signatory thereto, an aggregate of (i) 85,000,000 shares of the Company's common stock (the "Shares"), (ii) pre-funded warrants to purchase up to 57,857,143 shares of common stock (the "Pre-funded Warrants"), and (iii) warrants to purchase up to 142,857,143 shares of the Company's common stock (the "Common Warrants," and together with the Pre-Funded Warrants, the "Purchaser Warrants"), in a registered direct offering; and (b) pursuant to the engagement agreement, dated February 17, 2021 (the "Engagement Agreement"), between the Company and H.C. Wainwright & Co., LLC, warrants to purchase up to 10,714,286 shares of common stock to be issued to the placement agent thereunder or its designees (the "Placement Agent Warrants," and together with the Purchaser Warrants, the "Warrants"). On March 5, 2021, we and the purchaser entered into an amendment agreement to the Purchase Agreement (the "Amendment Agreement") to reduce the exercise price of the Common Warrants from \$0.07 to \$0.0454 per share of common stock. We also agreed to issue an additional 28,571,421 Common Warrants to the purchaser. No other changes to the Common Warrants or other terms of the Purchase Agreement were made.

This opinion is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act").

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following:

1. Articles of Incorporation of the Company, as amended;
2. Bylaws of the Company, as amended;
3. The Purchase Agreement;
4. The Amendment Agreement;

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5. Registration Statement on Form S-3 (Registration No. 333-252358) as filed by the Company with the Securities and Exchange Commission (the "Commission") on January 22, 2021, as amended and declared effective February 16, 2021 (the "Registration Statement") pursuant to the Securities Act;

6. The prospectus supplement filed with the Commission on March 8, 2021 pursuant to Rule 424(b)(5) promulgated under the Securities Act (the "Prospectus Supplement"), together with the base prospectus dated February 16, 2021; and

7. Written consent of the Board of Directors of the Company approving the Purchase Agreement.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinions stated below.

In our examination, we have assumed the genuineness of all signatures, including endorsements, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making our examination of executed documents, we have assumed (i) that the parties thereto, other than the Company, had the power, corporate or other, to enter into and perform all obligations thereunder and (ii) the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents, and the validity and binding effect thereof on such parties.

The opinion expressed below is limited to the federal securities laws of the United States of America, the laws of the State of New York and the corporate laws of the State of Nevada and we express no opinion as to the effect on the matters covered by the laws of any other jurisdiction.

Based upon and subject to the foregoing, we are of the opinion that (i) the issuance and sale of the Shares and Warrants has been duly authorized by all necessary corporate action on the part of the Company and, when issued and sold in the manner described in the Prospectus Supplement, the Shares and Warrants will be validly issued, fully paid and non-assessable, (ii) when issued and sold in the manner described in the Prospectus Supplement, the Warrants will constitute the valid and binding obligations of the Company in accordance with the terms thereof, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, and (iii) the shares of common stock issuable upon exercise of the Warrants (the "Warrant Shares") have been duly authorized and, when issued in the manner described in the Prospectus Supplement and in accordance with the terms and conditions of the Warrants (including the due payment of any exercise price therefor specified in the Warrants), the Warrant Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Company's Current Report on Form 8-K being filed on the date hereof and incorporated by reference into the Registration Statement. We also hereby consent to the reference to our firm under the caption "Legal Matters" in the Prospectus Supplement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder. This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

Very truly yours,

/s/ Sichenzia Ross Ference LLP

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AMENDMENT NO. 1 TO SECURITIES PURCHASE AGREEMENT

THIS AMENDMENT NO. 1 TO SECURITIES PURCHASE AGREEMENT (this "Amendment") is made as of March 5, 2021, by and among CloudCommerce, Inc., a Nevada corporation (the "Company"), and the undersigned investor (the "Purchaser") that is a party to that certain Securities Purchase Agreement dated as of February 19, 2021 (the "Purchase Agreement"), by and among the Company and the investor party hereto. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

WHEREAS, the Purchaser entered into the Purchase Agreement for the purchase of (i) the aggregate number common shares, par value \$0.001 per share, of the Company, set forth below the Purchaser's name on the signature page of the Purchase Agreement, (ii) the aggregate number of warrants of the Company set forth below the Purchaser's name on the signature page of the Purchase Agreement (the "Warrants") and (iii) the aggregate number of pre-funded warrants of the Company set forth below the Purchaser's name on the signature page of the Purchase Agreement;

WHEREAS, pursuant to Section 5.5 of the Purchase Agreement, the Purchase Agreement may be amended with the written consent of the Company and the Purchaser;

WHEREAS, in consideration of the promises and the mutual benefits to the parties arising out of this Amendment, the receipt and sufficiency of which are hereby acknowledged by the parties' execution and delivery hereof, the parties hereto hereby amend the Purchase Agreement as follows.

1. Amendments.

1.1 Number of Warrants. The Number of Warrants to be acquired by the Purchaser set forth on the Purchaser's signature page shall be amended to read in its entirety as follows:

"Warrant Shares: 171,428,572"

1.2 Exercise Price. Section 2.2(a)(v), which identifies one of the deliveries the Company agreed to deliver to the Purchaser, shall be amended to read in its entirety as follows:

"a Warrant registered in the name of such Purchaser to purchase up to a number of shares of Common Stock equal to 120% of the sum of the Purchaser's Shares and, if applicable, the Warrant Shares underlying the Purchaser's Prefunded Warrants, with an exercise price equal to \$0.0454 subject to adjustment therein;"

2. Miscellaneous.

2.1 No Additional Changes. Except as specifically set forth in this Amendment, the terms and provisions of the Purchase Agreement shall remain unmodified.

2.2 Entire Agreement. This Amendment, together with the Purchase Agreement (to the extent not amended hereby) and all exhibits thereto and references therein, constitute the entire agreement among the parties and shall supersede any and all previous contracts, arrangements or understandings between the parties with respect to the subject matter herein.

2.3 Successors and Assigns

2.4. Except as otherwise expressly provided herein, this Amendment shall bind and inure to the benefit of the Company and the Purchaser and the respective permitted successors and assigns of the Purchasers and the permitted successors and assigns of the Company. Neither party hereto shall have the right to assign or otherwise transfer this Amendment to any other person without the prior written consent of the other parties hereto.

2.5 Governing Law. This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York (without reference to the conflicts of law provisions thereof).

2.6 Counterparts. This Amendment may be executed in any number of counterparts and by the different parties on separate counterparts each of which, when so executed and delivered, shall be an original but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

2.7 Titles and Subtitles. The titles and subtitles used in this Amendment are used for convenience only and are not to be considered in construing or interpreting this Amendment.

2.8 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Securities Purchase Agreement, effective as of the date first above written.

CloudCommerce, Inc.

By: _____

Name: _____

Title: _____

PURCHASER

By: _____

Name: _____

Title:

[Signature Page to Amendment No. 1 to Securities Purchase Agreement]