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

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

BAKKT HOLDINGS, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

98-1550750
(I.R.S. Employer
Identification No.)

10000 Avalon Boulevard, Suite 1000
Alpharetta, Georgia 30009
(Address of Principal Executive Offices, including zip code)

Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan
(Full title of the plan)

Gavin Michael
Chief Executive Officer
10000 Avalon Boulevard, Suite 1000
Alpharetta, Georgia 30009
(678) 534-5849
(Name, address and telephone number, including area code, of agent for service)

Copies to:

J. Matthew Lyons
Austin D. March
Wilson Sonsini Goodrich & Rosati, P.C.
900 S. Capital of Texas Highway
Las Cimas IV, 5th Floor
Austin, TX 78746
(512) 338-5400

Marc D'Annunzio
General Counsel
10000 Avalon Boulevard, Suite 1000
Alpharetta, Georgia 30009
(678) 534-5849

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
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.

Explanatory Note

Bakkt Holdings, Inc. (the “Registrant” or the “Company”) is filing this Registration Statement with the Securities and Exchange Commission (the “SEC”) to register 26,590,466 shares of Class A Common Stock to be issued under Bakkt Holdings, Inc.’s 2021 Omnibus Incentive Plan (the “Plan”). These 26,590,466 shares represent an increase in the number of shares of Class A Common Stock reserved for issuance under the Plan, which increase was approved by the stockholders on June 6, 2023. As a result of the foregoing, the total number of shares of common stock registered for offer and sale under the Plan is now 52,407,412.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant incorporates by reference the following documents that the Registrant has previously filed with the SEC:

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, filed with the SEC on March 24, 2023 (the “Annual Report”);
- (b) The portions of the Registrant’s Definitive Proxy Statement on [Schedule 14A](#) (other than information furnished rather than filed) that are incorporated by reference into the Annual Report, filed with the SEC on April 24, 2023;
- (c) The Registrant’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2023, June 30, 2023 and September 30, 2023, filed with the SEC on each of [May 11, 2023](#), [August 10, 2023](#) and [November 14, 2023](#), respectively;
- (d) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), since the end of the fiscal year covered by the Annual Report (other than the portions of these documents not deemed to be filed); and
- (e) The description of the Registrant’s common stock contained in the Registrant’s Registration Statement on [Form 8-A](#) (File No. 001-39544) filed with the SEC on October 15, 2021, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description, including [Exhibit 4.7](#) of the Annual Report.

All documents filed by the Registrant with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that 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 filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the SEC (including, without limitation, information furnished under Item 2.02 or Item 7.01 of Current Reports on Form 8-K and the exhibits related to such items furnished under Item 9.01) shall not be deemed incorporated by reference into this Registration Statement.

Any statement contained in this Registration Statement, or in a document incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporate Law (“DGCL”) authorizes a corporation’s board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

The Company’s Certificate of Incorporation contains provisions that limit the liability of the Company’s directors for monetary damages to the fullest extent permitted by the DGCL. Consequently, the Company’s directors will not be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of their duty of loyalty to the Company or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which they derived an improper personal benefit.

Any amendment, repeal or elimination of these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment, repeal or elimination. If the DGCL is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of the Company’s directors will be further limited to the greatest extent permitted by the DGCL.

In addition, the Company’s bylaws (“By-Laws”) provide that the Company will indemnify its directors and officers, and may indemnify its employees, agents and any other persons, to the fullest extent permitted by the DGCL. The Company’s By-Laws also provide that the Company must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to limited exceptions.

Further, the Company has entered into or will enter into indemnification agreements with each of its directors and executive officers that may be broader than the specific indemnification provisions contained in the DGCL. These indemnification agreements require the Company, among other things, to indemnify its directors and executive officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require the Company to advance all expenses reasonably and actually incurred by the directors and executive officers in investigating or defending any such action, suit or proceeding. The Company believes that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

The limitation of liability and indemnification provisions included in the Company’s Certificate of Incorporation, By-Laws and the indemnification agreements that the Company has entered into or will enter into with its directors and executive officers may discourage stockholders from bringing a lawsuit against the Company’s directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against the Company’s directors and executive officers, even though an action, if successful, might benefit the Company and its stockholders. Further, a stockholder’s investment may be adversely affected to the extent that the Company pays the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions.

The Company has obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to the Company’s directors and executive officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or executive officer, including claims relating to public securities matters, and to the Company with respect to payments that may be made by the Company to these directors and executive officers pursuant to the Company’s indemnification obligations or otherwise as a matter of law.

Certain of the Company’s non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of the board of directors.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling the Company pursuant to the foregoing provisions, the Company has been informed that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 8. Exhibits.

EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 3.1 | <u>Certificate of Incorporation of the Registrant, as currently in effect (incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed with the SEC on October 21, 2021).</u> |
| 3.2 | <u>By-Laws of the Registrant, as currently in effect (incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K filed with the SEC on October 21, 2021).</u> |
| 4.1 | <u>Specimen Class A Common Stock Certificate of the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Form 8-K filed with the SEC on October 21, 2021).</u> |
| 4.2 | <u>Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.9 to the Registrant's Form 8-K filed with the SEC on October 21, 2021).</u> |
| 4.3 | <u>Form of Director Restricted Stock Unit Agreement under the Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.11 to the Registrant's Form 10-K filed with the SEC on March 31, 2022).</u> |
| 4.4 | <u>Form of Executive Officer Restricted Stock Unit Agreement under the Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-Q filed with the SEC on May 11, 2023).</u> |
| 4.5 | <u>Form of Performance Unit Agreement under the Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q filed with the SEC on May 11, 2023).</u> |
| 5.1* | <u>Opinion of Wilson Sonsini Goodrich and Rosati, P.C.</u> |
| 23.1* | <u>Consent of Ernst & Young LLP, independent registered public accounting firm.</u> |
| 23.2* | <u>Consent of WithumSmith+Brown, PC, independent registered public accounting firm of VPC Impact Acquisition Holdings</u> |
| 23.3* | <u>Consent of RSM US LLP, independent auditors of Apex Crypto, LLC</u> |
| 23.4* | <u>Consent of Wilson Sonsini Goodrich and Rosati, P.C. (included in Exhibit 5.1).</u> |
| 24.1* | <u>Power of Attorney (included on signature page).</u> |
| 107* | <u>Filing Fee Table</u> |

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 City of Alpharetta, State of Georgia, on the 1st day of December, 2023.

BAKKT HOLDINGS, INC.

By: /s/ Gavin Michael

Gavin Michael
Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

KNOW ALL BY THESE PRESENT, that each individual whose signature appears below hereby constitutes and appoints each of Gavin Michael, Marc D'Annunzio and Karen Alexander, and each or any one of them, as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the SEC granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, may lawfully do or cause to be done by virtue hereof.

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

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|------------------|
| <u>/s/ Gavin Michael</u> Gavin Michael | Chief Executive Officer and Director <i>(Principal Executive Officer)</i> | December 1, 2023 |
| <u>/s/ Karen Alexander</u> Karen Alexander | Chief Financial Officer <i>(Principal Financial Officer)</i> | December 1, 2023 |
| <u>/s/ Chip Goodroe</u> Chip Goodroe | Chief Accounting Officer <i>(Principal Accounting Officer)</i> | December 1, 2023 |
| <u>/s/ David C. Clifton</u> David C. Clifton | Director | December 1, 2023 |
| <u>/s/ Sean Collins</u> Sean Collins | Director | December 1, 2023 |
| <u>/s/ De'Ana Dow</u> De'Ana Dow | Director | December 1, 2023 |
| <u>/s/ Michelle Goldberg</u> Michelle Goldberg | Director | December 1, 2023 |
| <u>/s/ Richard Lumb</u> Richard Lumb | Director | December 1, 2023 |

| Signature | Title | Date |
|---|--------------|------------------|
| <hr/> <i>/s/ Andrew A. Main</i> Andrew A. Main | Director | December 1, 2023 |
| <hr/> <i>/s/ Jill Simeone</i> Jill Simeone | Director | December 1, 2023 |
| <hr/> <i>/s/ Gordon Watson</i> Gordon Watson | Director | December 1, 2023 |



Wilson Sonsini Goodrich & Rosati
Professional Corporation

900 South Capital of Texas Highway
Las Cimas IV, Fifth Floor
Austin, Texas 78746-5546

O: 512.338.5400

F: 512.338.5499

December 1, 2023

Bakkt Holdings, Inc.
10000 Avalon Boulevard
Suite 1000
Alpharetta, Georgia 30009

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

This opinion is furnished to you in connection with the Registration Statement on Form S-8 (the "Registration Statement"), filed by Bakkt Holdings, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") in connection with the registration under the Securities Act of 1933, as amended (the "Securities Act"), of 26,590,466 shares (the "Shares") of the Company's Class A common stock, par value \$0.0001 per share, reserved for future issuance under the Bakkt Holdings, Inc. 2021 Omnibus Employee Incentive Plan (the "2021 Plan").

We are of the opinion that the Shares, when issued pursuant to the terms of the 2021 Plan and pursuant to the agreements that accompany the 2021 Plan and in accordance with the Registration Statement, will have been duly authorized and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI,
Professional Corporation

AUSTIN BEIJING BOULDER BOSTON BRUSSELS HONG KONG LONDON LOS ANGELES NEW YORK PALO ALTO
SALT LAKE CITY SAN DIEGO SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, DC WILMINGTON, DE

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2021 Omnibus Incentive Plan of Bakkt Holdings, Inc. of our report dated March 24, 2023, with respect to the consolidated financial statements of Bakkt Holdings, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Atlanta, Georgia
December 1, 2023

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 28, 2022, relating to the consolidated financial statements of Bakkt Holdings, Inc. (f/k/a VPC Impact Acquisition Holdings), which is contained in Exhibit 99.1 to Form 8-K (File No. 001-39544), filed on April 5, 2022.

/s/ WithumSmith+Brown, PC

New York, New York
December 1, 2023

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Bakkt Holdings, Inc. of our report dated March 29, 2023, except for the second paragraph of Note 16 as of which the date is April 17, 2023, relating to the financial statements of Apex Crypto LLC as of December 31, 2022 and 2021 and for the years then ended, appearing in the Current Report on Form 8-K/A filed by Bakkt Holdings, Inc. on April 18, 2023.

/s/ RSM US LLP

Chicago, Illinois
December 1, 2023

Calculation of Filing Fee Table
Form S-8
(Form Type)
Bakkt Holdings, Inc.
(Exact name of registrant as specified in its charter)

Table 1 - Newly Registered Securities

| Security Type | Security Class Title | Fee Calculation Rule | Amount Registered(1) | Proposed Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|------------------------|--|-----------------------------|----------------------|--|----------------------------------|--------------------------|----------------------------|
| Equity | Class A Common stock, par value \$0.0001 per share | Rule 457(c) and Rule 457(h) | 26,590,466(2) | \$1.78(3) | \$47,331,029.48 | \$147.60 per \$1,000,000 | \$6,986.06 |
| Total Offering Amounts | | | | | \$47,331,029.48 | | \$6,986.06 |
| Total Fee Offsets | | | | | | | — |
| Net Fee Due | | | | | | | \$6,986.06 |

- (1) This Registration Statement covers shares of Class A common stock, \$0.0001 par value per share, of Bakkt Holdings, Inc., or the Registrant, authorized for issuance pursuant to the Registrant's 2021 Omnibus Incentive Plan (the "Plan"). Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers any additional shares that may become issuable under the Plan by reason of any substitutions or adjustments to shares to account for any change in corporate capitalization, such as a merger, consolidation, reorganization, recapitalization, separation, partial or complete liquidation, stock dividend, stock split, reverse stock split, split up, spin-off or other distribution of stock or property of the Registrant, combination or exchange of shares, dividend in kind or other like change in capital structure.
- (2) This Registration Statement registers 26,590,466 shares of Class A common stock for issuance pursuant to the Plan. In accordance with Rule 416 under the Securities Act, this Registration Statement shall be deemed to cover an indeterminate number of additional shares of Class A common stock, as may be issuable pursuant to future stock dividends, stock splits, or similar transactions.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and (h) under the Securities Act, based on the average of the high (\$1.85) and low (\$1.71) prices of the Registrant's Class A common stock as reporting on the New York Stock Exchange, which was \$1.78 on November 28, 2023.