
Section 1: S-8 (S-8)

As filed with the Securities and Exchange Commission on December 7, 2017

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

GMS INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

100 Crescent Centre Parkway, Suite 800
Tucker, Georgia
(Address of Principal Executive Offices)

46-2931287
(I.R.S. Employer
Identification No.)

30084
(Zip Code)

Registrant's telephone number, including area code: **(800) 392-4619**

GMS Inc. Equity Incentive Plan
GMS Inc. Employee Stock Purchase Plan
(Full titles of the Plans)

G. Michael Callahan, Jr.
President and Chief Executive Officer
GMS Inc.
100 Crescent Centre Parkway, Suite 800
Tucker, Georgia 30084
(800) 392-4619

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

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 (Do not check if a smaller reporting company)

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

PROPOSED

PROPOSED

TITLE OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)	MAXIMUM OFFERING PRICE PER SHARE	MAXIMUM AGGREGATE OFFERING PRICE	AMOUNT OF REGISTRATION FEE
Common Stock, \$0.01 par value per share	2,500,000(2)\$	36.88(3)	\$ 92,200,002.50	\$ 11,478.90
Common Stock, \$0.01 par value per share	2,000,000(4)\$	36.88(3)	\$ 73,760,002.00	\$ 9,183.12

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement on Form S-8 (the "Registration Statement") shall also cover any additional shares of common stock, par value \$0.01 per share, of GMS, Inc. (the "Common Stock") that become issuable under the GMS Inc. Equity Incentive Plan (the "Equity Incentive Plan") and the GMS Inc. Employee Stock Purchase Plan (the "ESPP") by reason of any stock dividend, stock split, reclassification, recapitalization, spin-off or any other similar transaction that results in an increase in the number of shares of Common Stock.
- (2) Represents the number of shares of Common Stock that may be issued pursuant to the Equity Incentive Plan.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act. The proposed maximum offering price per share is based upon the average of the high and low prices of a share of Common Stock on November 30, 2017, as reported on the New York Stock Exchange.
- (4) Represents the number of shares of Common Stock that may be issued pursuant to the ESPP.

EXPLANATORY NOTE

This Registration Statement on Form S-8 (the "Registration Statement") is filed by GMS Inc. (the "Registrant"), relating to an aggregate of 4,500,000 shares of the Registrant's common stock, par value \$0.01 per share (the "Common Stock"), that may be issued pursuant to the GMS Inc. Equity Incentive Plan and the GMS Inc. Employee Stock Purchase Plan. The purpose of this Registration Statement is to register the aforementioned 4,500,000 shares on this Registration Statement.

PART I

The documents containing the information specified in Part I of Form S-8 will be sent or given to plan participants as specified in Rule 428(b) (1) promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). Such documents are not required to be filed with the Commission but constitute (along with the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents, which have been filed with the Commission by the Registrant, are incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended April 30, 2017 (Registration No. 001-37784), filed by the Registrant with the Commission under the Securities Act on June 30, 2017.

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- (b) The Registrant's Quarterly Report on Form 10-Q for the period ended July 31, 2017, filed by the Registrant with the Commission under the Securities Act on September 6, 2017.
- (c) The Registrant's Quarterly Report on Form 10-Q for the period ended October 31, 2017, filed by the Registrant with the Commission under the Securities Act on December 7, 2017.
- (d) The Registrant's Current Reports on Form 8-K filed with the Commission on May 8, 2017, June 9, 2017, September 6, 2017 and October 20, 2017.
- (e) The description of the Common Stock, which is registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), contained in the Registration Statement on Form 8-A (File No. 001-37784) filed by the Registrant with the Commission on May 23, 2016, which incorporates by reference the description of the Common Stock contained in the Form S-1 Registration Statement first filed by the Registrant with the Commission under the Securities Act on July 28, 2015 (including any amendment or report filed for the purpose of updating such description) and the related prospectus dated May 25, 2016.

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the effective date of this Registration Statement but prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or deregistering all securities then remaining unsold (other than those Current Reports on Form 8-K which "furnish" information pursuant to Item 2.02 or Item 7.01 of such report and exhibits furnished in connection therewith) shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Certain legal matters with respect to the issuance of securities offered hereby will be passed upon for the Registrant by Fried, Frank, Harris, Shriver & Jacobson LLP.

Item 6. Indemnification of Directors and Officers

Indemnification Agreements

The Registrant's second amended and restated certificate of incorporation and amended and restated bylaws contain provisions indemnifying its directors and officers to the fullest extent permitted by Delaware law. The Registrant has entered into indemnification agreements with each of its directors which are, in some cases, broader than the specific indemnification provisions contained under Delaware law.

In addition, to the fullest extent permitted by Delaware law, the Registrant's second amended and restated certificate of incorporation provides that no director will be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. The effect of this provision is to restrict the Registrant's rights and the rights of its stockholders in derivative suits to recover monetary damages from a director for breach of fiduciary duty as a director, except that a director will be personally liable for:

- any breach of his or her duty of loyalty to the Registrant or its stockholders;
- acts or omissions not in good faith which involve intentional misconduct or a knowing violation of law;
- the payment of dividends or the redemption or purchase of stock in violation of the Delaware General Corporation Law ("DGCL"); or
- any transaction from which the director derived an improper personal benefit.

This provision does not affect a director's liability under the federal securities laws.

To the extent that the Registrant's directors, officers and controlling persons are indemnified under the provisions of the Registrant's second amended and restated certificate of incorporation, the DGCL or contractual arrangements against liabilities arising under the Securities Act, the Registrant has been advised that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Section 102 of the DGCL allows a corporation to eliminate the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except in cases where the director breached his or her duty of loyalty to the corporation or its stockholders, failed to act in good faith, engaged in intentional misconduct or a knowing violation of the law, willfully or negligently authorized the unlawful payment of a dividend or approved an unlawful stock redemption or repurchase or obtained an improper personal benefit. The Registrant's second amended and restated certificate of incorporation contains a provision which eliminates directors' personal liability as set forth above.

The Registrant's second amended and restated certificate of incorporation and amended and restated bylaws provide in effect that the Registrant shall indemnify its directors and officers to the extent permitted by Delaware law. Section 145 of the DGCL provides that a Delaware corporation has the power to indemnify its directors, officers, employees, and agents in certain circumstances. Subsection (a) of Section 145 of the DGCL empowers a corporation to indemnify any director, officer, employee or agent, or former director, officer, employee or agent, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, provided that such director, officer, employee or agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, provided that such director, officer, employee or agent had no reasonable cause to believe that his or her conduct was unlawful.

Subsection (b) of Section 145 of the DGCL empowers a corporation to indemnify any director, officer, employee or agent, or former director, officer, employee or agent, who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine that despite the adjudication of liability such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 145 further provides that to the extent that a present or former director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145 or in the defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith; that indemnification provided by Section 145 shall not be deemed exclusive of any other rights to which the party seeking indemnification may be

entitled; that the corporation is empowered to purchase and maintain insurance on behalf of a director, officer, employee or agent of the corporation against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the corporation would have the power to indemnify him or her against such liabilities under Section 145; and that, unless indemnification is ordered by a court, the determination that indemnification under subsections (a) and (b) of Section 145 is proper because the director, officer, employee or agent has met the applicable standard of conduct under such subsections shall be made by (1) a majority vote of the directors who are not parties to such action, suit or proceeding (or a committee of such directors designated by majority vote of such directors), even though less than a quorum, or (2) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (3) by the stockholders.

The right to indemnification conferred by the Registrant's second amended and restated certificate of incorporation and amended and restated bylaws also includes the right to be paid the expenses (including attorneys' fees) incurred by a present or former director or officer in defending any civil, criminal, administrative, or

investigative action, suit, or proceeding in advance of its final disposition, provided, however, that if Delaware law requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer shall be made only upon delivery to the Registrant of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it is ultimately determined that such person is not entitled to be indemnified for such expenses under the Registrant's second amended and restated certificate of incorporation, amended and restated bylaws, or otherwise.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
3.1	Second Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to Amendment No. 5 to the Registrant's Registration Statement on Form S-1 filed on May 16, 2016 (File No. 333-205902)).
3.2	Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to Amendment No. 5 to the Registrant's Registration Statement on Form S-1 filed on May 16, 2016 (File No. 333-205902)).
4.1	Specimen Common Stock Certificate of the Registrant (incorporated by reference to Exhibit 4.1 to Amendment No. 5 to the Registrant's Registration Statement on Form S-1 filed on May 16, 2016 (File No. 333-205902)).
4.2	GMS Inc. Equity Incentive Plan (incorporated by reference to Appendix A to the Registrant's definitive proxy statement, filed August 22, 2017).
4.3	GMS Inc. Employee Stock Purchase Plan (incorporated by reference to Appendix B to the Registrant's definitive proxy statement, filed August 22, 2017).
5.1*	Opinion of Fried, Frank, Harris, Shriver & Jacobson LLP.
23.1*	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.
23.2*	Consent of Fried, Frank, Harris, Shriver & Jacobson LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on signature page).

*Filed herewith.

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes as follows:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for the purpose of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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*Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, hereunto duly authorized, in the City of Tucker, State of Georgia, on this 7th day of December, 2017.

GMS INC.

By: /s/ H. Douglas Goforth
H. Douglas Goforth
Chief Financial Officer

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POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby appoints G. Michael Callahan, Jr. and H. Douglas Goforth and each of them severally, acting alone and without the other, his or her true and lawful attorney-in-fact with full power of substitution or re-substitution, for such person and in such person's name, place and stead, in any and all capacities, to sign on such person's behalf, individually and in each capacity stated below, 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 other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact full power and authority to do and perform each and every act and thing requisite or 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 said attorneys-in-fact, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ G. Michael Callahan, Jr.</u> G. Michael Callahan, Jr.	President, Chief Executive Officer and Director (Principal Executive Officer)	December 7, 2017
<u>/s/ H. Douglas Goforth</u> H. Douglas Goforth	Chief Financial Officer (Principal Financial Officer)	December 7, 2017
<u>/s/ Lynn Ross</u> Lynn Ross	Corporate Controller and Chief Accounting Officer (Principal Accounting Officer)	December 7, 2017
<u>/s/ Richard K. Mueller</u> Richard K. Mueller	Chairman of the Board	December 7, 2017
<u>/s/ Peter C. Browning</u> Peter C. Browning	Director	December 7, 2017
<u>/s/ Justin de La Chapelle</u> Justin de La Chapelle	Director	December 7, 2017
<u>/s/ John J. Gavin</u> John J. Gavin	Director	December 7, 2017
<u>/s/ Theron I. Gilliam</u> Theron I. Gilliam	Director	December 7, 2017

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<u>/s/ Brian R. Hoesterey</u> Brian R. Hoesterey	Director	December 7, 2017
<u>/s/ Ronald R. Ross</u> Ronald R. Ross	Director	December 7, 2017

/s/ J. Louis Sharpe

J. Louis Sharpe

Director

December 7, 2017

/s/ J. David Smith

J. David Smith

Director

December 7, 2017

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Section 2: EX-5.1 (EX-5.1)

Exhibit 5.1

[Letterhead of Fried, Frank, Harris, Shriver & Jacobson LLP]

December 7, 2017

GMS Inc.
100 Crescent Centre Parkway, Suite 800
Tucker, Georgia 30084

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to GMS Inc., a Delaware corporation (the "Company"), in connection with the Company's Registration Statement on Form S-8 (together with any amendments thereto, the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of an aggregate of 4,500,000 shares of the Company's common stock, par value \$0.01 per share (the "Shares"), consisting of (i) 2,500,000 Shares issuable under the GMS Inc. Equity Incentive Plan (the "Equity Incentive Plan") and (ii) 2,000,000 Shares issuable under the GMS Inc. Employee Stock Purchase Plan (the "Employee Stock Purchase Plan" and together with the Equity Incentive Plan, the "Plans"). With your permission, all assumptions and statements of reliance herein have been made without any independent investigation or verification on our part and we express no opinion with respect to the subject matter or accuracy of such assumptions or items relied upon.

In connection with this opinion, we have (i) investigated such questions of law, (ii) examined the originals or certified, conformed, facsimile, electronic or reproduction copies of such agreements, instruments, documents and records of the Company, such certificates of public officials and such other documents and (iii) received such information from officers and representatives of the Company and others as we have deemed necessary or appropriate for the purposes of this opinion.

In all such examinations, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of original and certified documents and the conformity to original or certified documents of all copies submitted to us as conformed, facsimile, electronic or reproduction copies. As to various questions of fact relevant to the opinion expressed herein, we have relied upon, and assume the accuracy of, certificates and oral or written statements and other information of or from public officials and officers and representatives of the Company.

Based upon the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares registered pursuant to the Registration Statement to be issued by the Company have been duly authorized and, when issued, delivered and paid for in accordance with the terms of the Plans, as applicable, and the applicable award agreement for consideration in an amount at least equal to the par value of such Shares, will be validly issued, fully paid and nonassessable.

The opinion expressed herein is limited to the applicable provisions of the General Corporation Law of the State of Delaware, as currently in effect, and no opinion is expressed with respect to any other laws or any effect that such other laws may have on the opinion expressed herein. The opinion expressed herein is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein. We undertake no responsibility to update or supplement this letter after the effectiveness of the Registration Statement.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not hereby 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.

Very truly yours,

/s/ FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

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Section 3: EX-23.1 (EX-23.1)

Exhibit 23.1

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 June 30, 2017 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in GMS Inc.'s Annual Report on Form 10-K for the year ended April 30, 2017.

/s/ PricewaterhouseCoopers LLP

Atlanta, GA
December 7, 2017

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