

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

Amendment No. 6
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

HEARTBEAM, INC.

(Exact name of Registrant as specified in its charter)

Delaware

*(State or other jurisdiction of
incorporation or organization)*

541714

*(Primary Standard Industrial
Classification Code Number)*

47-4881450

*(I.R.S. Employer
Identification No.)*

**Chief Executive Officer
2118 Walsh Avenue, Suite 210
Santa Clara, CA 95050
Telephone: 408-899-4443**

(Address and telephone number of principal executive offices)

**Corporation Trust Center
1209 Orange Street
Wilmington New Castle County, De 19801
Telephone: (866) 539-8692**

(Name, address and telephone number of agent for service)

Copies to:

**Joseph M. Lucosky, Esq.
Scott E. Linsky, Esq.
Lucosky Brookman LLP
101 Wood Avenue South, 5th Floor
Woodbridge, NJ 08830
(732) 395-4400**

**Ralph V. De Martino, Esq.
Cavas Pavri, Esq.
Schiff Hardin LLP
901 K Street NW
Suite 700
Washington, DC 20001
Telephone: (202) 778-6400
Facsimile: (202) 778-6460**

Approximate Date of Commencement of Proposed Sale to the Public: As soon as practicable after the effective date of this registration statement.

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, 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, 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 post-effective amendment filed pursuant to Rule 462(d) 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.

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. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

This amendment is being filed solely to file certain Exhibits to the Registration Statement.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth the expenses in connection with this registration statement. All of such expenses are estimates, other than the filing fees payable to the Securities and Exchange Commission and to FINRA.

	Amount to be paid
SEC registration fee	\$ 4,000
FINRA filing fee	\$ 20,000
The Nasdaq Capital Market initial listing fee	\$ 50,000
Accounting fees and expenses	\$ 76,000
Legal fees and expenses	\$ 265,000
Printing and engraving expenses	\$ 60,000
Miscellaneous	\$ 175,000
Total	\$ 650,000

All amounts are estimated except the SEC registration fee, the FINRA filing fee, and The Nasdaq Capital Market initial listing fee.

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Our Articles of Incorporation and our Bylaws provide for indemnification of our directors and officers. Our Bylaws provide that we will indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director or officer of the corporation, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent will not, without more, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Company may by action of its Board of Directors, grant rights to indemnification and advancement of expenses to employees and agents of the Company with the same scope and effects as the indemnification provisions for officers and directors.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES.

On August 21, 2015, our Board of Directors approved the 2015 Note Subscription Agreement (the "2015 Notes") authorizing financing through the sale and issuance of 2015 convertible promissory notes (the "Financing"). These are the only securities not registered under the Securities Act. These 2015 Notes accrue interest payable at the rate of eight percent (8%) and the conversion price is equal to seventy percent (70%) of the per share price at which shares of stock is to be sold in a qualifying financing, which would include an Initial Public Offering under this Prospectus. They otherwise mature December 31, 2021.

Sales of these securities for the last three years have been to three groups, our directors and officers, consultants and other accredited investors.

Timeframe	Directors and Officers	Consultants	Other Accredited Investors
August – December 2018	\$ —	\$ —	\$ —
2019	\$ 175,000	\$ 58,000	\$ 97,000
2020	\$ 52,000	\$ 140,000	\$ 447,000
2021 to the date of this Prospectus	\$ 550,000	\$ 400,000	\$ 765,000

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In connection with short term notes issued in 2019, we issued 15,277 fully vested warrants. The warrants convert into a fixed number of shares of our common stock at \$2.75 per share, exercisable, in whole or in part, for a period of 4 years from the date of issuance. None have been exercised to date.

Issuance of these warrants have been to three groups, our directors and officers, consultants and other accredited investors.

Timeframe	Directors and Officers	Consultants	Other Accredited Investors
2019	10,912	3,637	728

On February 12, 2019, we issued 407,272 milestone warrants to two of our Directors and Officers. These Penny Warrants were valued on the date of grant at \$0.0003 and vest upon meeting certain milestones as defined in the agreements, which would include an Initial Public Offering under this Prospectus and the date on which the Company has a market capitalization of at least \$50,000,000 for five consecutive business days.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

Exhibit No.	Description
1.1*	Form of Underwriting Agreement
3.1*	Articles of Incorporation filed with the State of Delaware on June 11, 2015.
3.2*	Bylaws
3.3*	Amendment to Articles of Incorporation filed with the State of Delaware on September 27, 2021.
4.1*	Form of 2015 Note Subscription Agreement
4.2*	Form of 2015 Convertible Promissory Note
4.3*	Amendment No. 1 dated as of May 3, 2016 to the 2015 Note Subscription Agreement
4.4*	Amendment No. 2 dated as of March 2, 2017 to the 2015 Note Subscription Agreement

4.5*	Amendment No. 2 dated as of March 2, 2017 to the 2015 Convertible Promissory Note
4.6*	Amendment No. 3 dated as of January 18, 2018 to the Note Subscription Agreement and the Convertible Promissory Note
4.7*	Amendment No. 4 dated as of September 6, 2018 to the 2015 Note Subscription Agreement
4.8*	Amendment No. 4 dated as of September 6, 2018 to the 2015 Convertible Promissory Note
4.9*	Amendment No. 5 dated as of May 13, 2020 to the 2015 Note Subscription Agreement
4.10*	Amendment No. 5 dated as of May 13, 2020 to the 2015 Convertible Promissory Note
4.11*	Amendment No. 6 dated as of March 22, 2021 to the 2015 Convertible Promissory Note
4.12*	Amendment No. 7 dated as of October 7, 2021 to the 2015 Convertible Promissory Note
4.13*	Form of Representative's Warrant
4.14*	Form of Warrant Agency Agreement
5.1**	Opinion of Lucosky Brookman LLP
10.1*	Employment Agreement with Branislav Vajdic
10.2*	Employment Agreement with Richard Brounstein
10.3*	Employment Agreement with Jon Hunt
10.4*	Standard Business Terms and Conditions Agreement with Ximedica, dated August 20, 2021
23.1*	Consent of Friedman LLP
23.2**	Consent of Lucosky Brookman LLP (included as Exhibit 5.1)
24*	Power of Attorney (included in the signature page of this Registration Statement)

* Previously filed.

** Filed herewith

ITEM 17. UNDERTAKINGS.

The undersigned registrant hereby undertakes:

- (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 the 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 the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the 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.
- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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 Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

The undersigned registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus 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.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Santa Clara, State of California, on the 9TH day of November 2021.

HEARTBEAM, INC.

By: /s/ Branislav Vajdic
Name: Branislav Vajdic
Title: Chief Executive Officer

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Branislav Vajdic</u> Branislav Vajdic	Chief Executive Officer and Director (Principal Executive Officer)	November 9, 2021
<u>*</u> Richard Brounstein	Chief Financial Officer (Principal Financial and Accounting Officer)	November 9, 2021
<u>*</u> Richard Ferrari	Executive Chairman of the Board of Directors	November 9, 2021
<u>*</u> Willem Elfrink	Director	November 9, 2021
<u>*</u> Marga Ortigas-Wedekind	Director	November 9, 2021
<u>*</u> George de Urioste	Director	November 9, 2021
<u>*/s/ Branislav Vajdic</u> Branislav Vajdic Attorney-in Fact		

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LUCOSKY BROOKMAN LLP

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3rd Floor

Woodbridge, NJ 08830

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November 9, 2021

HeartBeam, Inc.
2118 Walsh Avenue, Suite 210
Santa Clara, CA 95050

45 Rockefeller Plaza
Suite 2000
New York, NY 10111

RE: Form S-1 Registration Statement File No. 333-259358

Ladies and Gentlemen:

We have acted as counsel to you, HeartBeam, Inc., a Delaware corporation, (the “Company”) in connection with the Company’s Registration Statement on Form S-1 filed with the Securities and Exchange Commission (the “Commission”) pursuant to the Securities Act of 1933, as amended (the “Securities Act”) on September 7, 2021 (File No.333-259358) (the “Initial Registration Statement”, as amended, the “Registration Statement”) with respect to the registration of 2,750,000 Units (the “Units”), consisting of (1) one share of the Company’s Common Stock, par value \$0.0001 per share (“Common Stock”) and (2) one warrant (the “Warrants”) to purchase one share of Common Stock, including shares of Common Stock and/or Warrants issuable upon the exercise of an over-allotment option granted by the Company and representative’s Warrants (the “Representative’s Warrants”) to purchase additional Common Stock. This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act.

In connection with this opinion, we have examined the originals or copies certified or otherwise identified to our satisfaction of the following: (a) Articles of Incorporation of the Company, as amended to date, (b) Bylaws of the Company, as amended to date, (c) the Registration Statement and all exhibits thereto; and (d) the terms of the Warrants and Representative’s Warrants and such certificates, documents and records as we have deemed to appropriate in order to enable us to render the opinions set forth herein. In addition to the foregoing, we also have relied as to matters of fact upon the representations made by the Company and its representatives and we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us certified or photostatic copies.

Based upon the foregoing, and in reliance thereon, we are of the opinion that:

1. The Units, the Common Stock, the Warrants, the Representative’s Warrants, the Common Stock underlying the Warrants and the Common Stock underlying the Representative’s Warrants covered by the Registration Statement when issued, sold, delivered, and paid for as contemplated by the Registration Statement, will be validly issued, fully paid, and non-assessable.
2. When (i) the terms of any Warrants and Representative’s Warrants and their issuance and sale have been duly authorized by all necessary corporate action of the Company and (ii) such Warrants and Representative’s Warrants have been duly executed, countersigned and delivered in accordance with the applicable warrant agreement and against payment of the purchase price therefor in accordance with the applicable purchase, underwriting or other agreement, and as contemplated by the Registration Statement, such Warrants and Representative’s Warrants will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

The opinion expressed herein is limited to the laws of the State of Delaware, including the Constitution of the State of Delaware, all applicable provisions of the statutory provisions, and reported judicial decisions interpreting those laws. This opinion letter is limited to the laws in effect as of the date the Registration Statement is declared effective by the Commission and is provided exclusively in connection with the public offering contemplated by the Registration Statement.

This opinion letter speaks only as of the date hereof and we assume no obligation to update or supplement this opinion letter if any applicable laws change after the date of this opinion letter or if we become aware after the date of this opinion letter of any facts, whether existing before or arising after the date hereof, that might change the opinions expressed above.

This opinion letter is furnished in connection with the filing of the Registration Statement and may not be relied upon for any other purpose without our prior written consent in each instance. Further, no portion of this letter may be quoted, circulated or referred to in any other document for any other purpose without our prior written consent.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference of this firm under the caption “Legal Matters” in the prospectus which is made part of the Registration Statement. In giving this consent, we do not thereby admit that we come within 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/ Lucosky Brookman LLP

Lucosky Brookman LLP