

**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): September 11, 2023

CANOO INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-38824
(Commission
File Number)

82-1476189
(I.R.S. Employer
Identification Number)

19951 Mariner Avenue
Torrance, California
(Address of principal executive offices)

90503
(Zip Code)

(424) 271-2144
(Registrant's telephone number,
including area code)

N/A
(Former name or former address, if changed since last report)

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 (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- 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
Common Stock, \$0.0001 par value per share	GOEV	The Nasdaq Global Select Market
Warrants, each whole warrant exercisable for one share of Common Stock at an exercise price of \$11.50 per share	GOEVW	The Nasdaq Global Select Market

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 July 20, 2022, Canoo Inc. (the “Company”) entered into a Pre-Paid Advance Agreement (as amended and supplemented from time to time, the “PPA”) with YA II PN, Ltd. (“Yorkville”). In accordance with the terms of the PPA, the Company may request advances of up to \$50,000,000 in cash from Yorkville (or such greater amount that the parties may mutually agree).

On September 11, 2023, the Company entered into a third Supplemental Agreement (the “Third Supplemental Agreement”) with Yorkville to the PPA. Pursuant to the Third Supplemental Agreement, Yorkville agreed to advance \$12,500,000 to the Company (the “Third Supplemental Advance”) and waive certain terms and conditions set forth in the PPA with respect to such Supplemental Advance. After giving effect to the commitment fee and the purchase price discount provided for in the PPA, net proceeds of the Third Supplemental Advance to the Company will be \$11,750,000.

The Third Supplemental Agreement provides that solely with respect to the Third Supplemental Advance, the Purchase Price (as such term is used in the PPA) will be equal to the lower of (a) \$0.57 per share, or (b) 95% of the lowest daily VWAP during five Trading Days immediately preceding each Purchase Notice Date (as such term is used in the PPA), but not lower than the Floor Price (as defined in the PPA). Further, the Company agreed to pay Yorkville a commitment fee of \$625,000 in connection with the Third Supplemental Agreement, which shall be deducted from the proceeds of the Third Supplemental Advance.

The foregoing description of the Third Supplemental Agreement is qualified in its entirety by reference to the Third Supplemental Agreement, which is filed hereto as Exhibit 10.1 and which is incorporated herein by reference.

The Company is attaching to this Current Report on Form 8-K as Exhibit 5.1 the opinion of Kirkland & Ellis LLP relating to the validity of the shares to be offered pursuant to the Company’s prospectus supplement dated September 13, 2023.

Item 9.01 Financial Statements and Exhibits.**(d) Exhibits**

The following exhibits are filed herewith:

Exhibit No.	Description
5.1	Opinion of Kirkland & Ellis LLP
10.1	Supplemental Agreement, dated September 11, 2023, by and between Canoo Inc. and YA II PN, Ltd.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

Forward-Looking Statements

This report contains forward-looking statements, and any statements other than statements of historical fact could be deemed to be forward-looking statements. These forward-looking statements include, among other things, statements regarding the amount of shares of common stock the Company may issue to Yorkville pursuant to the Third Supplemental Advance, the amount of proceeds to be received by the Company from the sale of shares of common stock and the uses thereof and related matters. These statements are subject to risks and uncertainties, and actual results may differ materially from these statements. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. The Company undertakes no obligation to revise or update any forward-looking statements to reflect events or circumstances after the date hereof.

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 hereunto duly authorized.

Date: September 13, 2023

CANOO INC.

By: /s/ Hector Ruiz

Name: Hector Ruiz

Title: General Counsel and Corporate Secretary

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

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Chicago, IL 60654
United States
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September 13, 2023

Facsimile:
+1 312 862 2200

Canoo Inc.
19951 Mariner Avenue
Torrance, California 9050

Re: Registration Statement of Canoo Inc. on Form S-3

Ladies and Gentlemen:

We are acting as special counsel to Canoo Inc., a Delaware corporation (the “Company”), in connection with the registration by the Company of the offer and sale of up to \$12,500,000 of its common stock, par value \$0.0001 per share (the “Common Stock”), consisting of up to 25,000,000 shares (the “Shares”) pursuant to the terms of the Pre-Paid Advance Agreement, dated July 20, 2022 between the Company and YA II PN, Ltd., as modified by the Side Letter, dated October 5, 2022, the Supplemental Agreement, dated November 9, 2022, the Supplemental Agreement, dated December 31, 2022, and the Supplemental Agreement, dated September 11, 2023 (as amended and supplemented, the “Agreement”). The Shares are being offered and sold pursuant to a Registration Statement on Form S-3 (Registration No. 333-266666) filed by the Company with the Securities and Exchange Commission (the “Commission”) on August 8, 2022 under the Securities Act of 1933, as amended (the “Act”) (such Registration Statement, as amended or supplemented, is hereinafter referred to as the “Registration Statement”), including a base prospectus dated August 18, 2022 (the “Base Prospectus”) and the prospectus supplement dated September 13, 2023 (together with the Base Prospectus, the “Prospectus”).

In that connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary for the purposes of this opinion, including (i) the corporate and organizational documents of the Company, including the Second Amended and Restated Certificate of Incorporation of the Company, as amended through the date hereof, and the Amended and Restated Bylaws of the Company; (ii) resolutions of the Board of Directors of the Company with respect to the issuance and sale of the Shares; (iii) the Registration Statement and the exhibits thereto and the Prospectus; and (iv) the Agreement.

For purposes of this opinion, we have assumed the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals of all documents submitted to us as copies. We have also assumed the legal capacity of all natural persons, the genuineness of the signatures of persons signing all documents in connection with which this opinion is rendered, the authority of such persons signing on behalf of the parties thereto other than the Company and the due authorization, execution and delivery of all documents by the parties thereto other than the Company. We relied upon statements and representations of officers and other representatives of the Company and others as to factual matters.

Based upon and subject to the foregoing qualifications, assumptions and limitations and the further limitations set forth below, we are of the opinion that the Shares are duly authorized, and when the Shares are registered by the Company’s transfer agent and delivered against payment of the agreed consideration therefor, all in accordance with the Agreement, the Shares will be validly issued, fully paid and non-assessable.

Austin Bay Area Beijing Boston Brussels Chicago Dallas Hong Kong Houston London Los Angeles Miami Munich New York Paris Salt Lake City Shanghai Washington, D.C.

KIRKLAND & ELLIS LLP

Canoo Inc.
September 13, 2023
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Our opinion expressed above is subject to the qualifications that we express no opinion as to the applicability of, compliance with, or effect of any laws except the General Corporation Law of the State of Delaware (including the statutory provisions, all applicable provisions of the Delaware constitution and reported judicial decisions interpreting the foregoing).

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the Company's current report on Form 8-K. We also consent to the reference to our firm under the heading "Legal Matters" in the Prospectus constituting part of the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

We do not find it necessary for the purposes of this opinion, and accordingly we do not purport to cover herein, the application of the securities or "Blue Sky" laws of the various states to the issuance and sale of the Shares and the Rights.

This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein.

This opinion is furnished to you in connection with the filing of the Prospectus and in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Act, and is not to be used, circulated, quoted or otherwise relied upon for any other purpose.

Sincerely,

/s/ Kirkland & Ellis LLP

KIRKLAND & ELLIS LLP

SUPPLEMENTAL AGREEMENT

This Supplemental Agreement (the "Agreement"), dated as of September 11, 2023, is entered into by and between **YA II PN, LTD.**, a Cayman Islands exempt limited partnership (the "Investor"), **CANOO INC.**, a corporation organized and existing under the laws of the State of Delaware (the "Company"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Pre-Paid Advance Agreement (as defined below).

BACKGROUND

- (A) On July 20, 2022, the parties entered into that Pre-Paid Advance Agreement (the "Pre-Paid Advance Agreement") pursuant to which the Company may, provided that the conditions precedent to a Pre-Paid Advance set forth in Section 2.02 are then satisfied, request a Pre-Paid Advance in an amount not to exceed the Maximum Advance Amount from the Investor by providing a written Request.
- (B) On November 9, 2022, the parties entered into a Supplemental Agreement (the "First Supplemental Agreement") pursuant to which the Investor agreed to advance \$21,300,00 (the "Third Pre-Paid Advance") to the Company and waive certain terms and conditions set forth in the Pre-Paid Advance Agreement.
- (C) On December 31, 2022, the parties entered into a Second Supplemental Agreement (the "Second Supplemental Agreement") pursuant to which the Investor agreed to advance \$34,045,500, with an option to increase such advance by up to an additional \$8,514,500 (collectively, the "Fourth Pre-Paid Advance") to the Company and waive certain terms and conditions set forth in the Pre-Paid Advance Agreement.
- (D) On January 24, 2023 the Company obtained consent of the shareholders of the Company (i) for the issuance of all shares of its Common Stock that could be issued pursuant to the Pre-Paid Advance Agreement pursuant to Nasdaq Listing Rule 5636(d), and (ii) to amend the Pre-Paid Advance Agreement to provide a Floor Price of \$0.50 per share (such consents, the "Shareholder Approval"). Upon such Shareholder Approval, the Company implemented a reduction to the Floor Price to \$0.50 per share.
- (E) Pursuant to this Agreement, the parties desire to supplement the terms and conditions of the Pre-Paid Advance Agreement in respect of a Request for a Pre-Paid Advance in the amount of \$12,500,000 (the "Fifth Request") to be provided by the Company to the Investor concurrently with the execution of this Supplemental Agreement. This Agreement shall govern the Fifth Pre-Paid Advance (as defined below).
- (F) As of the date hereof, none of the prior Pre-Paid Advances (not including the Fifth Pre-Paid Advance) remain outstanding.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investor hereby agree as follows:

1. Fifth Pre-Paid Advance Amount

1.1. The Company has requested, and the Investor has agreed to fund, a fifth Pre-Paid Advance in the amount of \$12,500,000 (the "Fifth Pre-Paid Advance"). The Fifth Pre-Paid Advance shall be governed by the terms and conditions of the Pre-Paid Advance Agreement, except as set forth in this Agreement. *Solely with respect to the Fifth Pre-Paid Advance*, the parties hereby agree as follows:

- (a) The Pre-Advance Date in respect to the Fifth Pre-Paid Advance shall be September 11, 2023.
- (b) The Purchase Price shall mean the lower of (a) \$0.57 per share (the "Fixed Price"), or (b) 95% of the lowest daily VWAP during five Trading Days immediately preceding each Purchase Notice Date, but not lower than the Floor Price.
- (c) Section 3.01(h) of the Pre-Paid Advance Agreement shall not apply in respect of the Fifth Pre-Paid Advance.
- (d) The Company hereby agrees to pay the Investor a commitment fee of \$625,000, which amount shall be deducted by the Investor from the proceeds of the Fifth Pre-Paid Advance.

1.2. Conditions Precedent

(a) Solely with respect to the Fifth Request, the Investor hereby waives the application of the conditions precedent set forth in Section 2.02(i) (solely with respect to the market value requirement), and Section 2.02(k).

1.3. Additional Agreements

(a) For the avoidance of doubt, any failure by the Company to observe or perform any material covenant, agreement or warranty contained in (i) this Agreement, (ii) the First Supplemental Agreement, (iii) the Second Supplemental Agreement, or (iv) any other agreement between the parties hereof shall be an Event of Default under the Pre-Paid Advance Agreement.

2. Representations, Warranties and Covenants

2.1. Representations and Warranties. Each party represents and warrants to the other as of the date of this Agreement that:

- (a) it has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement;
- (b) it has taken all necessary corporate actions to authorize the execution, delivery and performance of this Agreement and no further action is required by the it, its Board of Directors or managers or members in connection therewith; and
- (c) the obligations assumed by it in this Agreement are legal, valid, and enforceable obligations binding on it in accordance with its terms.

2.2 Cleansing Disclosures. As soon as possible (and prior to the close of business on September 13, 2023) the Company shall file with the SEC a report on Form 8-K or such other appropriate form as determined by counsel to the Company, relating to the transactions contemplated by this Agreement disclosing all information relating to the transaction contemplated hereby required to be disclosed therein, and the Company shall prepare and file with the SEC a preliminary Prospectus Supplement pursuant to Rule 424(b) of the Securities Act, and any other filings, reports, supplements, or amendments that may be required as a result of entering into this Agreement, disclosing all information relating to the closing of the Fifth Pre-Paid Advance required to be disclosed therein and an updated Plan of Distribution, necessary to register the transactions contemplated herein, including, without limitation, all shares of Common Stock issuable pursuant to the Fifth Pre-Paid Advance (collectively, the "Cleansing Disclosure"). From and after the issuance of the Cleansing Disclosure, the Company represents to the Investor that it shall have publicly disclosed all material, non-public information delivered to the Investor by the Company in connection with the transactions contemplated by this Agreement and the Pre-Paid Advance Agreement, and that it shall have made all filings or disclosures as may be necessary to keep the Registration Statement and related Prospectus Supplements used in connection with such Registration Statement updated and effective, including, without limitation, the continued use of the Prospectus in connection with the Fifth Pre-Paid Advance.

2.3 Prior to the special shareholder meeting to be held on October 5, 2023, the Company shall reserve 149,637,448 of its authorized shares of Common Stock for issuance to the Investor (which reserve amount includes reserves under the convertible debentures and warrants currently outstanding and held by Investor). Within five (5) days after the special shareholder meeting to be held on October 5, 2023, the Company shall increase the reserve such that the number of shares of Common Stock reserved for issuance to the Investor shall be equal to the aggregate outstanding balance then owed to the Investor on the Fifth Pre-Paid Advance, divided by the VWAP of the Company's Common Stock on the trading day immediately preceding the date of the such reserve, multiplied by two (2).

2.4 The Company represents and warrants that the issuance of Common Shares to the Investor under the Pre-Paid Advance Agreement in respect of the Fifth Pre-Paid Advance are not subject to the Exchange as a result of the Company obtaining the Shareholder Approval in accordance with Nasdaq Listing Rule 5636(d).

3. Counterparts and delivery. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such ".pdf" signature page were an original thereof.

4. **Governing law.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under the Second Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be signed by their duly authorized officers.

COMPANY:

CANOO INC.

By: /s/ Tony Aquila
Name: Tony Aquila
Title: Chief Executive Officer

INVESTOR:

YA II PN, LTD.

By: Yorkville Advisors Global LP
Its: Investment Manager
By: Yorkville Advisors Global II, LLC
Its: General Partner

By: /s/ Troy Rillo
Name: Troy Rillo
Title: Partner