

HCP-FVA, LLC

Form 3

November 21, 2017

FORM 3**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

OMB APPROVAL

OMB
Number: 3235-0104Expires: January 31,
2005Estimated average
burden hours per
response... 0.5**INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF
SECURITIES**Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935 or Section
30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting
Person *

Â HCP-FVA, LLC

(Last)

(First)

(Middle)

2. Date of Event Requiring
Statement

(Month/Day/Year)

11/17/2017

3. Issuer Name **and** Ticker or Trading Symbol

FALCONSTOR SOFTWARE INC [FALC]

4. Relationship of Reporting
Person(s) to Issuer5. If Amendment, Date Original
Filed(Month/Day/Year)

(Check all applicable)

☒ Director ☒ 10% Owner
☐ Officer ☐ Other
(give title below) (specify below)

6. Individual or Joint/Group

Filing(Check Applicable Line)

☒ Form filed by One Reporting
Person☐ Form filed by More than One
Reporting PersonC/O HALE CAPITAL
PARTNERS, LP,Â 17 STATE
STREET, SUITE 3230

(Street)

NEW YORK,Â NYÂ 10004

(City)

(State)

(Zip)

Table I - Non-Derivative Securities Beneficially Owned1. Title of Security
(Instr. 4)2. Amount of Securities
Beneficially Owned
(Instr. 4)3. Ownership
Form:
Direct (D)
or Indirect
(I)
(Instr. 5)4. Nature of Indirect Beneficial
Ownership
(Instr. 5)

Common Stock

851,354

D

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Reminder: Report on a separate line for each class of securities beneficially
owned directly or indirectly.

SEC 1473 (7-02)

**Persons who respond to the collection of
information contained in this form are not
required to respond unless the form displays a
currently valid OMB control number.****Table II - Derivative Securities Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)**1. Title of Derivative
Security
(Instr. 4)2. Date Exercisable and
Expiration Date
(Month/Day/Year)3. Title and Amount of
Securities Underlying
Derivative Security
(Instr. 4)4. Conversion
or Exercise
Price of
Derivative5. Ownership
Form of
Derivative
Security:6. Nature of
Indirect Beneficial
Ownership
(Instr. 5)

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	Date Exercisable	Expiration Date	Title	Amount or Number of Shares	Security	Direct (D) or Indirect (I) (Instr. 5)
Series A Convertible Preferred Stock	09/16/2013	À (1)	Common Stock, par value \$0.001, per share	8,781,515 (2) (3)	\$ (4)	D À
Warrants	11/17/2017	11/17/2027	Common Stock, par value \$0.001, per share	13,859,128 (5)	\$ 0.001	D À

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
HCP-FVA, LLC C/O HALE CAPITAL PARTNERS, LP 17 STATE STREET, SUITE 3230 NEW YORK, NY 10004	À X	À X	À	À

Signatures

HCP-FVA, LLC, By: Hale Capital Partners, LP, its sole member /s/ Martin M. Hale, Jr.,
CEO

11/21/2017

**Signature of Reporting Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 5(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) The Series A Convertible Preferred Stock (the "Preferred Stock") of Falconstor Software Inc. (the "Issuer") is convertible at any time, at the holder's election, into common stock of the Issuer (the "Common Stock") and has no expiration date. The Preferred Stock accrues dividends which may, under circumstances, be paid in shares of Common Stock.
- (2) The Preferred Stock reported herein is held by HCP-FVA, LLC, a Delaware limited liability company ("HCP-FVA"). Hale Capital Partners, LP, a Delaware limited partnership ("HCP"), is the sole member of HCP-FVA. The securities reported herein were purchased from the Issuer pursuant to a Preferred Stock Purchase Agreement, dated as of September 16, 2013, between HCP and the Issuer.
- (3) The shares of Preferred Stock held by HCP-FVA are convertible into 8,781,515 shares of Common Stock (without giving effect any limitations on conversion due to the Blocker, as defined below). The Certificate of Designations for the Preferred Stock contains a 9.99% beneficial ownership blocker (the "Blocker") and, as a result, the number of shares of Common Stock issuable upon conversion of the shares of the Preferred Stock held by HCP-FVA are limited pursuant to the terms of the Blocker.
- (4) Each share of Preferred Stock has a stated value of \$10 (the "Stated Value"). Each share Preferred Stock is initially convertible into such number of shares of Common Stock determined by dividing the Stated Value by \$1.02488, the initial conversion price of the Preferred Stock. The conversion price of the Preferred Stock is subject to adjustment from time to time in accordance with the terms of the Certificate of Designations of the Preferred Stock.
- (5) The Warrants were issued to HCP-FVA in connection with (i) a loan made to the Issuer by HCP-FVA in the principal amount of \$500,000 and (ii) a commitment from HCP to purchase up to \$3,000,000 worth of units from the Issuer in a proposed private placement of units subject to, and on the terms and conditions set forth in, a certain commitment letter, dated as of November 17, 2017, by and

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between HCP and the Issuer.

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Remarks:

HCP-FVAÂ hasÂ theÂ rightÂ toÂ designateÂ aÂ directorÂ ofÂ theÂ IssuerÂ pursuantÂ toÂ theÂ termsÂ ofÂ theÂ Certific

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *See* Instruction 6 for procedure.

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