

HCP-FVA, LLC
Form 4
October 11, 2018

FORM 4

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

Check this box
if no longer
subject to
Section 16.
Form 4 or
Form 5
obligations
may continue.
See Instruction
1(b).

**STATEMENT OF CHANGES IN 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

OMB APPROVAL

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(Print or Type Responses)

1. Name and Address of Reporting Person *
HCP-FVA, LLC

2. Issuer Name **and** Ticker or Trading
Symbol
FALCONSTOR SOFTWARE INC
[FALC]

5. Relationship of Reporting Person(s) to
Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Date of Earliest Transaction
(Month/Day/Year)

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

C/O HALE CAPITAL PARTNERS,
LP, 17 STATE STREET, SUITE
3230

4. If Amendment, Date Original
Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check
Applicable Line)
☒ Form filed by One Reporting Person
☐ Form filed by More than One Reporting
Person

NEW YORK, NY 10004

(City) (State) (Zip)

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(D)	Price

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

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information contained in this form are not
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SEC 1474
(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)**

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1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount Underlying Securities (Instr. 3 and 4)			
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount Number Shares
Series A Convertible Preferred Stock	<u>(1)</u>	10/09/2018		S		342,000		<u>(2)</u>	<u>(2)</u>	Common Stock	3,33
Warrants <u>(2)</u>	\$ 0.001	10/09/2018		D		63,610,935		<u>(4)</u>	<u>(4)</u>	Common Stock	63,61

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	X	X		

Signatures

By: /s/ Martin M. Hale, Jr.; Name: Martin M. Hale, Jr.; Title: CEO Date: 10/11/2018

__Signature of Reporting Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 4(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) Each share of Series A Convertible Preferred Stock ("Preferred Stock") of Falconstor Software Inc. (the "Issuer") has a stated value of \$10 (the "Stated Value"). Each share of Preferred Stock is initially convertible into such number of shares of common stock of Issuer ("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 Amended and Restated Certificate of Designations of the Preferred Stock.
- (2) The Preferred Stock is convertible at any time, at the holder's election, into Common Stock and has no expiration date.
- (3) In connection with the October 9, 2018 closing of the private placement of units (the "Financing") to certain stockholders of the Issuer as contemplated by that certain commitment letter, dated as of November 17, 2017, by and between Hale Capital Partners, LP and the Issuer (the "Commitment"), HCP-FVA, LLC ("HCP-FVA") sold 342,000 shares of Preferred Stock to such participating stockholders for an aggregate purchase price of \$4,120,152.23, which equates to a per share purchase price of \$12.05.
- (4) The warrants to purchase Common Stock that are reported in this Form 4 are presently exercisable and expire on February 23, 2028.
- (5) In connection with the closing of the Financing, 63,610,935 of the warrants previously issued by the Issuer to HCP-FVA in connection with HCP-FVA's purchase of \$3,000,000 of units upon the closing of the Commitment were cancelled for no consideration.
- (6) Includes the backstop warrants held by HCP-FVA to purchase 1,543,630 shares of Common Stock as set forth in the previous filings of HCP-FVA.

Remarks:

HCP-FVA has the right to designate a director of the Issuer pursuant to the terms of the Amended and Restated Certificate of Incorporation.

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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