

FALCONSTOR SOFTWARE INC

Form 8-K

April 26, 2018

**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): April 23, 2018

FALCONSTOR SOFTWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware                      000-23970      77-0216135  
(State or Other Jurisdiction (Commission (IRS Employer  
of Incorporation)              File Number) Identification No.)

823 Congress Ave, Suite 1300, Austin,      78701  
Texas  
(Address of Principal Executive Offices) (Zip Code)

Registrant's Telephone Number, Including Area Code: 631-777-5188

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 (*see* General Instruction A.2. below):

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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))

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 3.02. Unregistered Sales of Equity Securities.**

As of April 23, 2018, FalconStor Software, Inc. (the “Company”) issued HCP-FVA, LLC (“HCP”), an entity affiliated with Martin Hale, a Director of the Company, 53,370,601 shares of Common Stock, \$.001 par value (the “Common Stock”) pursuant to the cashless exercise of Loan and Backstop Warrants held by HCP. The Loan and Backstop Warrants were acquired by HCP in connection with HCP agreeing to backstop a previously disclosed financing of the Company. The Loan and Backstop Warrants were exercised on a cashless basis in accordance with their terms. The shares of Common Stock were issued pursuant to the exemption contained in Section 4(2) of the Securities Act of 1933, as amended.

**Item 4.01. Changes in Registrant’s Certifying Accountant.**

On April 25, 2018, the Audit Committee of the Board of Directors of the Company approved the engagement of RBSM LLP (“RBSM”) as the Company’s independent registered public accounting firm for the Company’s fiscal year ending December 31, 2018, effective immediately, and dismissed BDO USA, LLP (“BDO”) as the Company’s independent registered public accounting firm. The change in the Company’s independent registered public accounting firm was made to reduce the fees payable by the Company in connection with the audit of its financial statements for the fiscal year ending December 31, 2018.

BDO’s audit reports on the Company’s consolidated financial statements as of and for the fiscal years ended December 31, 2017 and 2016 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles, except that BDO’s audit report for the fiscal year ended December 31, 2016 stated that such financial statements have been prepared assuming that the Company will continue as a going concern.

During the fiscal years ended December 31, 2017 and 2016, and the subsequent interim periods through April 25, 2018, there were (i) no disagreements (as described in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) between the Company and BDO on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to BDO’s satisfaction, would have caused BDO to make reference thereto in their reports on the financial statements for such years, and (ii) no “reportable events” within the meaning of Item 304(a)(1)(v) of Regulation S-K.

The Company provided BDO with a copy of the disclosures it is making in this Current Report on Form 8-K and requested that BDO furnish a letter addressed to the Securities and Exchange Commission stating whether or not it agrees with the statements made herein. A copy of BDO’s letter dated April 25, 2018, is filed as Exhibit 16.1 hereto.

During the fiscal years ended December 31, 2017 and 2016, and the subsequent interim periods through April 25, 2018, neither the Company nor anyone acting on its behalf has consulted with RBSM regarding (i) the application of accounting principles to a specific transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company’s financial statements or the effectiveness of internal control over financial reporting, and neither a written report or oral advice was provided to the Company that RBSM concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing, or financial reporting issue, (ii) any matter that was the subject of a disagreement within the meaning of Item 304(a)(1)(iv) of Regulation S-K, or (iii) any reportable event within the meaning of Item 304(a)(1)(v) of Regulation S-K.

**Item 9.01**

**Financial Statements and Exhibits.**

(d) Exhibits

Exhibit No.

Exhibits

16.1

Letter of BDO USA, LLP, dated April 25, 2018.

## **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: April 26, 2018 **FALCONSTOR SOFTWARE,  
INC.**

By: /s/ Todd Brooks  
Name: Todd Brooks  
Title: Chief Executive Officer

**EXHIBIT INDEX**

Exhibit No. Description

16.1 Letter of BDO USA, LLP, dated April 25, 2018.