

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K/A

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **November 13, 2018**

SPHERE 3D CORP.

(Exact name of registrant as specified in its charter)

Ontario, Canada
(State or other jurisdiction
of incorporation)

001-36532
(Commission File Number)

98-1220792
(IRS Employer Identification No.)

895 Don Mills Road,
Bldg. 2, Suite 900
Toronto, Ontario
(Address of principal executive offices)

M3C 1W3
(Zip Code)

Registrant's telephone number, including area code

(858) 571-5555

Not Applicable

(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):

- 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 2.01. Completion of Acquisition or Disposition of Assets.

On November 14, 2018, Sphere 3D Corp. (the “Company”) filed a Current Report on Form 8-K (the “Original Report”) reporting the completion of the sale of all the issued and outstanding shares of capital stock of Overland Storage, Inc. (“Overland”) to Silicon Valley Technology Partners, Inc. (the “Purchaser”) in accordance with the Share Purchase Agreement, dated as of February 20, 2018, as amended, by and among the Company, Overland, and the Purchaser (the “Overland Disposition”). This Current Report on Form 8-K/A is being filed solely to amend the Original Report to provide the unaudited pro forma financial statements required by Item 9.01(b). No other changes have been made to the Original 8-K.

Item 9.01. Financial Statements and Exhibits.

(b) Pro Forma Financial Information

The following Unaudited Pro Forma Condensed Consolidated Financial Statements giving effect to the Overland Disposition are included as Exhibit 99.1 to this Current Report on Form 8-K/A and are incorporated herein by reference:

- Unaudited Pro Forma Condensed Consolidated Balance Sheet of as of September 30, 2018.
- The unaudited pro forma condensed consolidated statements of operations for the nine months ended September 30, 2018 and the year ended December 31, 2017 give effect to the proposed sale of shares as if it had occurred on January 1, 2017.

(d) Exhibits

| Exhibit Number | Description |
|----------------------|---|
| 99.1 | Unaudited pro forma condensed consolidated financial statements |

Forward Looking Statements

This Current Report on Form 8-K contains forward-looking statements, which include, among others, Sphere 3D’s expectations, beliefs, plans, objectives, prospects, financial condition, assumptions or future events or performance, that may involve risks, uncertainties, and assumptions concerning the Company’s business and products, including our ability to continue operations without the business of our former subsidiary, Overland Storage, Inc., our ability to raise additional capital through equity or debt financings, the market adoption, actual performance and functionality of our products; our inability to comply with the covenants associated with our preferred shares; any increase in our future cash needs; our ability to maintain compliance with NASDAQ Capital Market listing requirements; unforeseen and proposed changes in the course of Sphere 3D’s business or the business of its wholly-owned subsidiaries; the level of success of our collaborations and business partnerships; possible actions by customers, partners, suppliers, competitors or regulatory authorities; and other risks detailed from time to time in our periodic reports contained in our Annual Information Form and other filings with Canadian securities regulators (www.sedar.com) and in periodic reports filed with the United States Securities and Exchange Commission (www.sec.gov). All forward-looking statements speak only as of the date of this written communication. Sphere 3D undertakes no obligation to update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise, except as required by law.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: November 19, 2018

SPHERE 3D CORP.

By: /s/ Kurt L. Kalbfleisch
Kurt L. Kalbfleisch
Chief Financial Officer

EXHIBIT INDEX

Exhibit Number

Description

[99.1](#)

[Unaudited pro forma condensed consolidated financial statements](#)

Unaudited Pro Forma Condensed Consolidated Financial Statements

The following unaudited pro forma condensed consolidated financial statements are based upon the historical condensed consolidated statements of Sphere 3D Corp. (the “**Company**”), adjusted to give effect to the sale of all of the shares of capital stock of Overland Storage, Inc. (“**Overland**”) in accordance with the Share Purchase Agreement (as amended by that certain First Amendment to Share Purchase Agreement dated August 21, 2018, and as further amended by that certain Second Amendment to Share Purchase Agreement dated November 1, 2018, the “**Purchase Agreement**”), dated February 20, 2018, by and among Company, Overland Storage, Inc., a California corporation and a wholly owned subsidiary of the Company (“**Overland**”), and Silicon Valley Technology Partners, Inc. (“**Purchaser**”) (formerly Silicon Valley Technology Partners LLC) excluding (a) the businesses of (i) Unified ConneXions, Inc. and (ii) HVE ConneXions, LLC, and (b) the SNAP network attached storage business. These unaudited pro forma condensed consolidated financial statements are derived from, and should be read in conjunction with the Company’s Annual Report on Form 10-K as of and for the year ended December 31, 2017 filed with the United States Securities and Exchange Commission on March 21, 2018 and the Quarterly Report on Form 10-Q as of and for the nine months ended September 30, 2018 filed with the United States Securities and Exchange Commission on November 7, 2018.

The unaudited pro forma condensed consolidated balance sheet gives effect to the proposed sale as if it had occurred on September 30, 2018. The unaudited pro forma condensed consolidated statements of operations for the nine months ended September 30, 2018 and the year ended December 31, 2017 give effect to the proposed sale of shares as if it had occurred on January 1, 2017. The unaudited pro forma condensed consolidated statements of operations also give effect to the transactions contemplated by the Purchase Agreement pursuant to which the Company sold to Purchaser all of the issues and outstanding capital stock of Overland (the “**Share Purchase**”) in consideration for (i) the issuance to the Company of shares of Series A Preferred Stock of Purchaser (the “**SVTP Shares**”) representing 19.9% of the outstanding shares of capital stock of Purchaser as of the closing of the Share Purchase, (ii) the conversion of \$6.5M of the outstanding principal amount of that certain 8% Senior Secured Convertible Debenture, dated December 1, 2014, by and between the Company and FBC Holdings S.A.R.L (“**FBC**”), having an outstanding principal amount of \$24.5 million (as amended, the “**Debenture**”) into 6,500,000 non-voting preferred shares of the Company (the “**Preferred Shares**”), and (iii) the release of the Company and all of its subsidiaries from all the obligations and liabilities under the Closing Indebtedness (as defined below) and assumption thereof by Purchaser. “Closing Indebtedness” means the Indebtedness (as defined in the Purchase Agreement) evidenced by (i) the Debenture, provided that only \$18 million of the outstanding principal amount of the Debenture shall be included in the definition of Closing Indebtedness, (ii) that certain Credit Agreement, dated April 6, 2016, by and among Overland, Tandberg Data GMBH, and Opus Bank, as amended and as assigned to FBC, having an outstanding principal amount of \$18.9 million, and (iii) that certain Subordinated Promissory Note, dated December 11, 2017, by and between Overland and MF Ventures, LLC (“**MFV**”), having an outstanding principal amount of \$2.2 million.

The unaudited pro forma adjustments related to the sale of the shares of Overland are based on available information and assumptions that management believes are (1) directly attributable to the sale of the shares; (2) factually supportable; and (3) with respect to the unaudited pro forma condensed consolidated statements of operations, expected to have a continuing impact on consolidated operating results. The SNAP network attached storage business was not a separate legal entity of the Company and was never operated as a stand-alone business, division or subsidiary. The Company has never prepared full stand-alone financial statements for the SNAP network attached storage business and has not maintained the distinct and separate accounts necessary to prepare such financial statements. Therefore, certain costs and expenses presented in the unaudited pro forma condensed consolidated statements of operations have been allocated to the SNAP network attached storage business based on a specific identification basis or, when specific identification was not practicable, a proportional cost allocation method. Management considers that such allocations have been made on a reasonable basis, but may not necessarily be indicative of the costs that would have been incurred if the Company had been operated on a stand-alone basis for the periods presented. Furthermore, the unaudited pro forma condensed consolidated financial information included herein is for informational purposes only and is not necessarily indicative of what the Company's financial performance and financial position would have been had the Share Purchase been completed on the dates assumed, nor is such unaudited pro forma condensed consolidated financial information necessarily indicative of the results to be expected in any future period. Certain significant assumptions are set forth under the Note to Unaudited Pro Forma Condensed Consolidated Financial Statements.

The unaudited pro forma condensed consolidated financial information is not necessarily indicative of the results of operations or financial position that might have been achieved for the dates or periods indicated, nor is it indicative of the results of operations or financial position that may occur in the future. The Company cautions shareholders that its future results of operations, including uses of cash and financial position, may significantly differ from those described in these unaudited pro forma condensed consolidated financial statements, and accordingly, these unaudited pro forma condensed consolidated financial statements should be read in conjunction with the disclosures in the proxy statement filed with the United States Securities and Exchange Commission on April 26, 2018 regarding the nature of the Company's business following completion of the transactions contemplated by the Purchase Agreement.

Sphere 3D Corp.
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET
(in thousands)
As of September 30, 2018

| | Pro Forma | | | |
|---|------------------|-----------------------|-----------|------------------|
| | Sphere 3D | Pro Forma Adjustments | Notes | |
| Assets | | | | |
| Current Assets: | | | | |
| Cash and cash equivalents | \$ 2,081 | \$ (581) | (a)(b) | \$ 1,500 |
| Accounts receivable, net | 7,298 | (6,765) | (b) | 533 |
| Investment | - | 2,500 | (m) | 2,500 |
| Inventories | 8,000 | (6,532) | (b) | 1,468 |
| Other current assets | 1,621 | (1,206) | (b) | 415 |
| Total current assets | <u>19,000</u> | <u>(12,584)</u> | | <u>6,416</u> |
| Property and equipment, net | 2,349 | (2,340) | (b) | 9 |
| Goodwill | 11,590 | (10,205) | (b) | 1,385 |
| Intangible assets, net | 38,409 | (34,709) | (b) | 3,700 |
| Other assets | 1,172 | (843) | (b) | 329 |
| Total assets | <u>\$ 72,520</u> | <u>\$ (60,681)</u> | | <u>\$ 11,839</u> |
| Liabilities and Shareholders' Equity | | | | |
| Current liabilities: | | | | |
| Accounts payable | \$ 10,726 | \$ (6,464) | (b) | \$ 4,262 |
| Accrued liabilities | 5,176 | (3,125) | (b)(j)(c) | 2,051 |
| Accrued payroll and employee compensation | 2,560 | (525) | (b)(i) | 2,035 |
| Deferred revenue | 3,235 | (2,365) | (b) | 870 |
| Debt, related party | 45,584 | (45,084) | (c)(n) | 500 |
| Other current liabilities | 880 | (869) | (b) | 11 |
| Total current liabilities | <u>68,161</u> | <u>(58,432)</u> | | <u>9,729</u> |
| Deferred revenue, long term | 1,690 | (996) | (b) | 694 |
| Preferred Shares | - | 6,500 | (o) | 6,500 |
| Other non-current liabilities | 1,962 | (1,945) | (b) | 17 |
| Total liabilities | <u>71,813</u> | <u>(54,873)</u> | | <u>16,940</u> |
| Shareholders' equity: | | | | |
| Common stock | 181,178 | 1,246 | (d) | 182,424 |
| Accumulated other comprehensive (loss) | (1,686) | (9) | (b) | (1,695) |
| Accumulated deficit | (178,785) | (7,045) | (l) | (185,830) |
| Shareholders' equity | <u>707</u> | <u>(5,808)</u> | | <u>(5,101)</u> |
| Total liabilities and equity | <u>\$ 72,520</u> | <u>\$ (60,681)</u> | | <u>\$ 11,839</u> |

Sphere 3D Corp.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

(in thousands, except per share data)

For the Nine Months Ended September 30, 2018

| | Pro Forma | | | |
|--|--------------------|--------------------------|--------|----------------------|
| | Sphere 3D | Pro Forma Adjustments | Notes | Pro Forma Results |
| Net revenue | \$ 53,800 | \$ (47,590) | (e) | \$ 6,210 |
| Cost of revenue | 37,234 | (31,686) | (e) | 5,548 |
| Gross profit | <u>16,566</u> | <u>(15,904)</u> | (e) | <u>662</u> |
| Operating expenses: | | | | |
| Sales and marketing | 11,707 | (9,561) | (e) | 2,146 |
| Research and development | 3,011 | (533) | (e) | 2,478 |
| General and administrative | 13,186 | (8,499) | (e)(h) | 4,687 |
| | <u>27,904</u> | <u>(18,593)</u> | | <u>9,311</u> |
| Loss from operations | (11,338) | 2,689 | | (8,649) |
| Interest expense | (4,956) | 4,956 | (f) | - |
| Other income (expense), net | (229) | 198 | (e)(k) | (31) |
| (Loss) income before income taxes | (16,523) | 7,843 | | (8,680) |
| Provision (benefit) for income taxes | 1,154 | (1,154) | (e)(g) | - |
| Net (loss) income | <u>\$ (17,677)</u> | <u>\$ 8,997</u> | | <u>\$ (8,680)</u> |
| Net loss per share: | | | | |
| Basic and diluted | \$ (11.55) | | | \$ (5.42) |
| Shares used in computing net loss per share: | | | | |
| Basic and diluted | <u>1,531</u> | | (d) | <u>1,601</u> |

Sphere 3D Corp.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

(in thousands, except per share data)

For the Year Ended December 31, 2017

| | Pro Forma | | | Pro Forma Results |
|--|--------------------|--------------------------|--------|----------------------|
| | Sphere 3D | Pro Forma Adjustments | Notes | |
| Net revenue | \$ 81,523 | \$ (69,186) | (e) | \$ 12,337 |
| Cost of revenue | 56,839 | (47,017) | (e) | 9,822 |
| Gross profit | <u>24,684</u> | <u>(22,169)</u> | (e) | <u>2,515</u> |
| Operating expenses: | | | | |
| Sales and marketing | 18,682 | (15,282) | (e) | 3,400 |
| Research and development | 7,281 | (1,783) | (e) | 5,498 |
| General and administrative | 20,112 | (10,539) | (e)(h) | 9,573 |
| Impairment of acquired intangible assets | 2,524 | (230) | (e) | 2,294 |
| | <u>48,599</u> | <u>(27,834)</u> | | <u>20,765</u> |
| Loss from operations | (23,915) | 5,665 | | (18,250) |
| Interest expense | (5,911) | 5,891 | (f)(p) | (20) |
| Other income (expense), net | 2,010 | (209) | (e)(k) | 1,801 |
| (Loss) income before income taxes | (27,816) | 11,347 | | (16,469) |
| Provision (benefit) for income taxes | (1,632) | 780 | (e)(g) | (852) |
| Net (loss) income | <u>\$ (26,184)</u> | <u>\$ 10,567</u> | | <u>\$ (15,617)</u> |
| Net loss per share: | | | | |
| Basic and diluted | \$ (42.10) | | | \$ (21.87) |
| Shares used in computing net loss per share: | | | | |
| Basic and diluted | <u>622</u> | | (d) | <u>714</u> |

1. Note to Unaudited Pro Forma Condensed Consolidated Financial Statements

The unaudited pro forma adjustments are preliminary, based on estimates, and are subject to change as more information becomes available. Accordingly, the final adjustments may be materially different from those presented in this document.

The following pro forma adjustments are included in the unaudited pro forma condensed consolidated balance sheet and/or the unaudited pro forma condensed consolidated statements of operations.

- (a) Reflects the cash and cash equivalents on hand at closing, including \$500,000 provided pursuant to that certain Secured Promissory Note dated November 14, 2018 (the "Note").
 - (b) Reflects the elimination of assets and liabilities attributable to the sale of Overland.
 - (c) Reflects the elimination of debt and accrued interest. As the sale of Overland results in the sale of assets securing the debt, upon the closing of the Share Purchase, the debt is settled at the then principal, plus accrued and unpaid interest to such date. The pro forma adjustment to accrued expenses includes the removal of \$0.7 million of accrued interest as of September 30, 2018.
 - (d) Reflects equity awards which are subject to accelerated vesting at the closing of the Share Purchase.
 - (e) Reflects the elimination of income and expenses attributable to the Share Purchase.
 - (f) Reflects the elimination of interest expense attributable to the debt.
 - (g) Overland has historically not recognized any income tax benefit related to its net losses because Overland maintains a full valuation allowance on its deferred tax assets. A full valuation allowance is maintained, as future profitability is uncertain.
 - (h) Includes (i) an estimated \$0.3 million, for the nine months ended September 30, 2018, and \$0.5 million, for the year ended December 31, 2017, to support the Company during the transition services period, (ii) an estimated reduction in audit fees of \$0.2 million, for the nine months ended September 30, 2018, and \$0.3 million for the year ended December 31, 2017, and (iii) the removal of \$1.6 million, for the nine months ended September 30, 2018, and \$0.2 million for the year ended December 31, 2017, of expenses relating to the direct, incremental costs of the Share Purchase which are reflected in the historical financial statements.
 - (i) Includes severance costs of \$1.1 million associated with the Share Purchase. The Company currently intends to renegotiate portions of these arrangements to reduce the cash payable under them in an effort to conserve cash of the Company following the closing of the Share Purchase.
 - (j) Includes addition of estimated remaining transaction costs of \$0.3 million and Director's and Officer's insurance of \$0.8 million.
 - (k) Includes an estimated reduction of management services of \$0.6 million and \$0.5 million, for the nine months ended September 30, 2018 and the year ended December 31, 2017, respectively.
 - (l) The overall adjustment to accumulated deficit includes the net effect of the sale of Overland, debt repayment and adjustments arising from the transaction as described above.
 - (m) Reflects the investment by Company into Purchaser in connection with Share Purchase, pursuant to which the Company was issued shares of Series A Preferred Stock of Purchaser representing 19.9% of the outstanding shares of capital of Purchaser as of the closing of the Share Purchase.
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- (n) Reflects the Note, which bears interest at 8% per annum and is due in May 2019.
 - (o) Reflects the issuance of \$6.5 million of Preferred Shares.
 - (p) Includes interest expense for the duration of the Note.
-