

**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): November 6, 2019

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))

Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Pursuant to the articles of incorporation of Sphere 3D Corp. (the "Company"), the Company is authorized to issue an unlimited number of Preferred Shares, issuable in series and the directors are authorized to fix the number of shares in each series of Preferred Shares and to determine the designation, rights, privileges, restrictions and conditions attaching to each series of Preferred Shares.

On October 30, 2019 the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a third series of Preferred Shares, being, an unlimited number of series C preferred shares (the "Series C Preferred Shares") and to provide for the rights, privileges, restrictions and conditions attaching thereto.

On November 6, 2019, the Company filed Articles of Amendment to create the Series C Preferred Shares (the "Amendment"). The foregoing description is qualified in its entirety by reference to the Amendment, a copy of which is filed as Exhibit 3.1 hereto and is incorporated by reference into this report.

Item 8.01. Other Items.

As previously disclosed, on May 14, 2019, the Company received a written notice from the Listing Qualifications Department of The Nasdaq Stock Market LLC ("Nasdaq") indicating that the Company had not demonstrated compliance with the \$2.5 million minimum stockholders' equity requirement set forth in Nasdaq Listing Rule 5550(b)(1) for continued listing on The Nasdaq Capital Market (the "Stockholders' Equity Requirement"), or with any alternative standard under the Nasdaq Listing Rules.

On July 22, 2019, the Nasdaq Hearings Panel (the "Panel") issued a decision granting the request of the Company for continued listing of the common stock on The Nasdaq Capital Market pursuant to an extension through September 30, 2019 to demonstrate compliance. As required pursuant to the Panel's decision, on August 15, 2019, the Company reported to the Panel that it had completed certain components of its compliance plan. On September 30, 2019, the Company requested an additional extension until October 30, 2019 to complete the final components of its compliance plan, which the Panel granted in a letter to the Company on October 8, 2019.

On November 6, 2019, the Company received notification from the Panel that the Company has regained compliance with the Stockholders' Equity Requirement based on the Company's disclosures contained in its Form 8-K filed with the Securities and Exchange Commission on November 1, 2019. The Panel further advised that if the Company again falls below the Stockholders' Equity Requirement on or before November 1, 2020, it will be notified of such non-compliance and will at that time be afforded a hearing before the Panel, which could result in the Company's delisting.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
-------------------	-------------

3.1	Certificate and Articles of Amendment of the Company dated November 6, 2019.
-----	--

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.

Dated: November 8, 2019

SPHERE 3D CORP.

By: /s/ Peter Tassiopoulos
Peter Tassiopoulos
Chief Executive Officer

EXHIBIT INDEX

(d) Exhibits

**Exhibit
Number**

Description

3.1	Certificate and Articles of Amendment of the Company dated November 6, 2019.
---------------------	--

5. The articles of the Corporation are amended as follow:

To amend the authorized capital of the Company as follows:

1. To increase the authorized capital of the Corporation by creating the third series of Preferred shares, being an unlimited number of Series C Preferred Shares;
2. After giving effect to the foregoing, the authorized capital of the Corporation shall consist of an unlimited number of common shares, an unlimited number of Preferred Shares, issuable in series, and an unlimited number of Series A Preferred Shares, an unlimited number of Series B Preferred Shares and an unlimited number of Series C Preferred Shares; and
3. To provide that the rights, privileges, restrictions and conditions (the “**Series C Preferred Share Provisions**”) attaching to the Series C Preferred Shares are as follows:

SERIES C PREFERRED SHARE TERMS

1. DEFINITIONS

- 1.1 In these Series C Preferred Share Provisions, the following words and phrases shall have the following meanings:
 - (a) “**Act**” means the *Business Corporations Act* (Ontario), as now enacted or as it may from time to time be amended, re-enacted or replaced (and in the case of such amendment, re-enactment or replacement, any references herein to specific provisions thereof shall be read as referring to such amended, re-enacted or replaced provisions);
 - (b) “**Aggregate Consideration**” has the meaning given thereto in Section 6(b);
 - (c) “**As Adjusted**” with respect to any share or per share amount, means subject to appropriate adjustment from the date hereof in the event of any stock dividend, stock split, consolidation, combination, conversion, exchange, reclassification, substitution or other similar recapitalization with respect to the applicable shares;
 - (d) “**Business Day**” means a day other than a Saturday, Sunday or any other statutory holiday in the City of New York, New York or in the City of Toronto, Ontario;
 - (e) “**Common Shares**” means the common shares of the Corporation;
 - (f) “**Contemplated Transaction**” has the meaning given thereto in Section 6(b);
 - (g) “**Corporation**” means Sphere 3D Corp.;
 - (h) “**Deemed Liquidation**” has the meaning given thereto in Section 6;
 - (i) “**Holder**” in respect of any Series C Preferred Share, means the registered holder thereof;

- (j) **“Initial Issue Date”** means the date of initial issuance of Series C Preferred Shares;
- (k) **“Redemption Amount per Series C Preferred Share”** in respect of a Series C Preferred Share, means US\$1, As Adjusted;
- (l) **“Series C Conversion Rate”** at any time means the number of Common Shares into which one Series C Preferred Share may be converted As Adjusted from time to time pursuant to these Series C Preferred Share Provisions;
- (m) **“Series C Subscription Price”** of each Series C Preferred Share means US\$1, As Adjusted;
- (n) **“Series C Preferred Holder Approval”** means the approval of the Holders of the Series C Preferred Shares given in writing by the Holders of a majority of the outstanding Series C Preferred Shares (or such greater percentage as may be required by applicable law) or by a resolution passed by a majority of the votes cast by the Holders of Series C Preferred Shares who voted in respect of that resolution (or such greater percentage as may be required by applicable law);
- (o) **“Series C Preferred Shares”** means the Series C Preferred Shares of the Corporation; and
- (p) **“Stock Option Plan”** means (i) any performance incentive plan, stock option plan or stock purchase plan of the Corporation that either (x) has been approved by the board of directors and the shareholders of the Corporation prior to the Initial Issue Date of first issuance of a Preferred Share or (y) is approved by the board of directors and the Holders by way of Preferred Holder Approval and, in either of (x) or (y) above, as such plan or plans may be amended, replaced or substituted from time to time with approval of the board of directors and the Holders by way of Preferred Holder Approval; and (ii) the Company’s 2015 performance incentive plan, as it may be amended as described in the definitive proxy statement and information circular filed with the Securities Exchange Commission on September 27, 2018.

2. REDEMPTION BY THE CORPORATION

Subject to the provisions of subsection 32(2) of the Act and subject to applicable law, the Corporation may, at any time and from time to time, redeem, in whole or in part, the then outstanding Series C Preferred Shares on payment for each Series C Preferred Share to be redeemed of the Redemption Amount per Series C Preferred Share.

The Corporation shall, at least 20 days before the date specified for redemption of Series C Preferred Shares pursuant to the provisions of Section 2, provide notice in writing to each person who at the date of mailing is a registered Holder of shares to be redeemed of the intention of the Corporation to redeem such Series C Preferred Shares. Such notice shall be sent to each such Holder in accordance with the provisions of Section 9.1; provided, however, that accidental failure to give any such notice to one or more of such shareholders shall not affect the validity of such

redemption. Such notice shall set out the Redemption Amount per Series C Preferred Share and the date on which redemption is to take place.

On the date specified for redemption of Series C Preferred Shares pursuant to Section 2, the Corporation shall pay or cause to be paid to or to the order of the registered Holders of the Series C Preferred Shares to be redeemed their respective Redemption Amount per Series C Preferred Share on presentation and surrender of the certificates representing the Series C Preferred Shares called for redemption at the registered office of the Corporation or any other place or places designated in the notice of redemption. Subject to the provisions of Section 2, on and after the date specified for redemption in any such notice the Series C Preferred Shares called for redemption shall cease to be entitled to dividends and the Holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Redemption Amount per Series C Preferred Share shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case the rights of the shareholders shall remain unaffected.

The Corporation shall after the mailing of notice of its intention to redeem any Series C Preferred Shares in accordance with Section 2 deposit the Redemption Amount per Series C Preferred Share so called for redemption or of such of the said Series C Preferred Shares represented by certificates as have not at the date of such deposit been surrendered by the Holders thereof in connection with such redemption to a special account in a specified chartered bank or a specified trust company in Canada or the United States, named in such notice of redemption, to be paid without interest to or to the order of the respective Holders of such shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same. Upon such deposit being made or upon the date specified for redemption in such notice, whichever is the later, the Series C Preferred Shares in respect whereof such deposit shall have been made shall be deemed to be redeemed and all rights of the Holders thereof after such deposit or such redemption date, as the case may be, shall be limited to receiving without interest their proportionate part of the total Redemption Amount per Series C Preferred Share so deposited, against presentation and surrender of the said certificates held by them respectively. Any interest allowed on any such deposit shall belong to the Corporation. Redemption moneys that are represented by a cheque which has not been presented to the Corporation's bank for payment or that otherwise remain unclaimed (including moneys held on deposit to a special account as provided for above) for a period of one year from the date specified for redemption shall be forfeited to the Corporation.

3. CANCELLATION OF SHARES

Series C Preferred Shares that are redeemed by the Corporation pursuant to any of the provisions hereof shall be cancelled on and as of the date of such redemption.

4. VOTING RIGHTS

The Holders of the Series C Preferred Shares shall be entitled to receive notice of, to attend (in a non-voting capacity) all meetings of the shareholders of the Corporation, other than at meetings of the Holders of any other class of shares meeting separately as a class. Other than with respect to the matters contained herein which specifically provide the Holders with certain limited voting rights, no Holder shall have any right to any vote with respect to the Series C Preferred Shares.

5. CONVERSION

5.1 CONVERSIONS AND ADJUSTMENTS

Upon and subject to the terms and conditions set out in this Section 5.1, Overland Storage, Inc (“**Overland**”) shall have the right, provided (and only if and to the extent) that prior shareholder approval of the issuance of all Common Shares issuable upon conversion of the Series C Preferred Shares has been obtained in accordance with the rules of the Nasdaq Stock Market and/or any other exchange on which the Common Shares are then traded, to convert all or any part of its Series C Preferred Shares into the number of fully paid and non-assessable Common Shares that is equal to the number of Series C Preferred Shares to be converted multiplied by the Series C Conversion Rate in effect on the date of conversion.

Overland may, at any time, convert all or any part of the Series C Preferred Shares held by it into the number of fully paid and non-assessable Common Shares that is equal to the number of Series C Preferred Shares to be converted multiplied by the Series C Conversion Rate in effect on the date of conversion; provided that, (x) after such conversion, the Common Shares issuable upon such conversion, together with all Common Shares held by such Holder that are or would be deemed to be aggregate under the rules of the Nasdaq Stock Market, in the aggregate would not exceed 19.9% of the total number of Common Shares of the Corporation then outstanding and (y) such conversion and issuance would not otherwise violate or cause the Corporation to violate the Corporation’s obligations under the rules or regulations of the Nasdaq Capital Market. Unless and until adjusted in accordance with these Series C Preferred Share Provisions, the Series C Conversion Rate shall be equal to (a) the Series C Subscription Price divided by (b) an amount equal to the greater of (i) the closing price of the Common Shares on the trading day immediately preceding notice of conversion by the Holder to the Corporation, As Adjusted, and (ii) US\$0.50, As Adjusted, subject to any stock exchange or regulatory limitations on such Series C Conversion Rate.

5.2 AVOIDANCE OF FRACTIONAL SHARES

In any case where a fraction of a Common Share would otherwise be issuable on conversion of one or more Series C Preferred Shares, the Corporation shall adjust such fractional interest by the payment to the Holder of an amount in cash equal to the then current market value of such fractional interest, as determined by the board of directors.

5.3 RESERVATION OF COMMON SHARES

So long as any of the Series C Preferred Shares are outstanding and entitled to the right of conversion herein provided, the Corporation shall at all times reserve a sufficient number of unissued Common Shares to enable all of the Series C Preferred Shares outstanding to be converted upon the basis and upon the terms and conditions herein provided in this Section 5.

6. LIQUIDATION, DISSOLUTION OR WINDING-UP

- (a) In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, unless

Holder of the Series C Preferred Shares have previously exercised its option to convert the Series C Preferred Shares into shares of a newly incorporated special purpose entity pursuant to a conversion agreement dated as of October 31, 2019 between the Corporation, HVE Inc. and Overland (as it may be amended from time to time), the Series C Preferred Shares shall entitle each of the Holders thereof to receive an amount equal to the Series C Subscription Price per Series C Preferred Share, the whole to be paid before any amount is paid or any assets of the Corporation are distributed to the holders of Common Shares or any other shares ranking junior to the Series C Preferred Shares on any such liquidation, dissolution, winding-up or distribution. Upon payment of the amounts so payable to them, the Holders of Series C Preferred Shares shall not be entitled to share in any further distribution of assets of the Corporation.

- (b) For the purposes of Section 6(a) above, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur (each a “**Deemed Liquidation**”) upon: (i) a sale, conveyance, exclusive license or other disposition of all or substantially all of the undertaking, property or assets (including, without limitation, the material intellectual property) of the Corporation, where the shareholders of the Corporation immediately prior to the transaction do not collectively own, directly or indirectly, a majority interest in any purchasing or acquiring entity following the transaction; provided however that the transactions contemplated by that certain Share Purchase Agreement by and among Silicon Valley Technology Partners, Inc. (formerly, Silicon Valley Technology Partners LLC), Overland and the Corporation dated as of February 20, 2018 (as it may be amended from time to time) (the “**Contemplated Transaction**”) shall not be deemed to constitute a “Deemed Liquidation”) and the assets disposed of, transferred or exclusively licensed in the Contemplated Transaction shall be disregarded for purposes of determining whether a separate sale, conveyance, exclusive license or other disposition of assets constitutes a “Deemed Liquidation”; (ii) a merger or amalgamation of the Corporation with or into, or consolidation of the Corporation with, any other corporation in which the shareholders of the Corporation immediately prior to the transaction do not collectively own, directly or indirectly, a majority of the voting power of the surviving corporation following the transaction; or (iii) the sale, exchange or other disposition of the outstanding Common Shares of the Corporation or any reorganization or other transaction in which the shareholders of the Corporation immediately prior to the transaction do not own, directly or indirectly, a majority of the voting power of the surviving corporation following the transaction. In the event of a Deemed Liquidation where the nature of the transaction is such that the consideration (whether in the form of cash, securities or other property) in connection with such Deemed Liquidation would be receivable by the shareholders of the Corporation, then the Holders of the Series C Preferred Shares shall be entitled to receive at the closing of such Deemed Liquidation such portion of the aggregate consideration (whether in the form of cash, securities or other property) receivable by the shareholders of the Corporation in connection with such Deemed Liquidation (the “**Aggregate Consideration**”) as is required by applying Section 6(a) to the distribution and payment of the Aggregate Consideration in the same manner as the assets of the Corporation are required to be distributed among its
-

shareholders in the event of a liquidation, dissolution or winding up in accordance with such section.

The Corporation shall provide the Holders with at least ten (10) Business Days' prior written notice of the consummation of any Deemed Liquidation.

7. ADDITIONAL RESTRICTIONS

The Common Shares shall rank junior to the Series C Preferred Shares and shall be subject in all respects to the rights, privileges, restrictions and conditions attaching to the Series C Preferred Shares.

So long as any of the Series C Preferred Shares are outstanding, except as specifically contemplated in the Series C Preferred Share Provisions, the Corporation shall not, without the approval of a majority of the Holders (with each such share having one vote):

- (a) redeem or call for redemption, purchase or otherwise pay off, retire or make any return of capital in respect of any shares of the Corporation ranking as to capital junior to the Series C Preferred Shares (other than with respect to Common Shares issued pursuant to a Stock Option Plan in connection with the cessation of service of the holder of such shares);
- (b) redeem or call for redemption, purchase or otherwise pay off, retire or make any return of capital in respect of any shares, ranking as to the payment of dividends or return of capital on a parity with the Series C Preferred Shares; or
- (c) issue any additional Series C Preferred Shares in excess of the number of Series C Preferred Shares authorized for issuance as of the Initial Issue Date, or securities convertible or exchangeable for Series C Preferred Shares, or any shares or securities convertible or exchangeable therefor ranking as to the payment of dividends or the return of capital prior to or on a parity with the Series C Preferred Shares.

8. MODIFICATION

Subject to the provisions of the Act, the rights, privileges, restrictions and conditions attaching to the Series C Preferred Shares may be deleted, varied, modified, amended or amplified with prior Series C Preferred Holder Approval.

9. MISCELLANEOUS

9.1 NOTICES

Any notice required or permitted to be given to any Holder shall be delivered by courier to such Holder at its address as it appears on the records of the Corporation or in the event of the address of any such Holder not so appearing, then to the last address of such Holder known to the Corporation.

9.2 GENDER, ETC.

Words importing only the singular number include the plural and vice versa and words importing any gender include all genders.

9.3 CURRENCY

All monetary amounts referred to herein shall be in lawful money of the United States unless otherwise indicated.

9.4 HEADINGS

The division of these Series C Preferred Share Provisions into sections, paragraphs or other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

9.5 BUSINESS DAY

In the event that any date upon which any dividends on the Series C Preferred Shares are payable by the Corporation, or upon or by which any other action is required to be taken by the Corporation or any Holder hereunder, is not on a Business Day or during a Business Day, then such dividend shall be payable or such other action shall be required to be taken on or by the next succeeding day which is a Business Day.

6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*.
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la *Loi sur les sociétés par actions*.
7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2019/10/30

(Year, Month, Day)
(année, mois, jour)

These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

SPHERE 3D CORP.

(Print name of corporation from Article 1 on page 1)
(Veuillez écrire le nom de la société de l'article un à la page unis).

By/
Par

(Signature)
(Signature)

Director

(Description of Office)
(Fonction)