

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

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Sphere 3D Corp.

(Exact Name of Registrant as Specified in Its Charter)

Ontario, Canada
(State or Other Jurisdiction of
Incorporation or Organization)

98-1220792
(I.R.S. Employer
Identification No.)

**895 Don Mills Road,
Bldg. 2, Suite 900
Toronto, Ontario M3C 1W3**
(Address, Including Zip Code, of Principal Executive Offices)

Sphere 3D Corp. 2015 Performance Incentive Plan
(Full Title of the Plan)

**CCS Global Solutions, Inc.
500 Seventh Avenue, Office 12B101
New York, NY 10018
(917) 566-7046**
(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

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 7(a)(2)(B) of the Securities Act.

PART I

**INFORMATION REQUIRED IN THE
SECTION 10(a) PROSPECTUS**

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Securities Act Rule 428(b)(1).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents of the Company filed with the U.S. Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

- (a) The Company's Registration Statements on Form S-8, filed with the Commission on March 31, 2015 (Commission File No. 333-203149), March 31, 2015 (Commission File No. 333-203151), June 25, 2015 (Commission File No. 333-205236), February 1, 2016 (Commission File No. 333-209251), November 15, 2016 (Commission File No. 333-214605), February 24, 2017 (Commission File No. 333-216209), August 24, 2017 (Commission File No. 333-220152), January 29, 2018 (Commission File No. 333-222771); November 14, 2018 (Commission File No. 333-228380); May 14, 2019 (Commission File No. 333-231472); May 11, 2020 (Commission File No. 333-238145); February 2, 2021 (Commission File No. 333-252632); and January 13, 2022 (Commission File No. 333-262154);
- (b) The Company's Annual Report of Foreign Private Issuer on Form 20-F (File No. 001-36532) for its fiscal year ended December 31, 2021, filed with the Commission on March 31, 2022 (the "Form 20-F"), which includes the audited consolidated balance sheets of the Company and subsidiaries as of December 31, 2021 and 2020, and the related audited consolidated statements of operations, comprehensive loss, cash flows and shareholders' equity (deficit) for each of the years in the three-year period ended December 31, 2021;
- (c) The Company's Reports of Foreign Private Issuer on Form 6-K (File No. 001- 36532) furnished to the Commission on May 16, 2022, August 12, 2022 and November 10, 2022, which include unaudited consolidated financial statements of the Company and subsidiaries for the three months ended March 31, 2022 and 2021, three and six months ended June 30, 2022 and 2021, and three and nine months ended September 30, 2022 and 2021, respectively;
- (d) The description of the Company's Common Shares contained in its Annual Report of Foreign Private Issuer on Form 20-F (File No. 001-36532) for its fiscal year ended December 31, 2021, filed with the Commission on March 31, 2022 pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and any other amendment or report filed for the purpose of updating such description; and
- (e) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Exchange Act since December 31, 2021.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with Commission rules shall not be deemed incorporated by reference into this Registration Statement. Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

Under the *Business Corporations Act* (Ontario) (the "OBCA"), the Company may indemnify a director or officer, a former director or officer or another individual who acts or acted at the Company's request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Company or another entity on condition that (i) the individual acted honestly and in good faith with a view to the Company's best interests or, as the case may be, to the best interests of the other entity for which the individual acted as a director or officer or in a similar capacity at the Company's request, and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual also had reasonable grounds for believing that his or her conduct was lawful. Further, the Company may, with court approval, indemnify an individual described above in respect of an action by or on the Company's behalf or other entity to obtain a judgment in its favor, to which the individual is made a party because of the individual's association with the Company or another entity, against all costs, charges and expenses reasonably incurred by the individual in connection with such action if the individual fulfills condition (i) above. An individual as described above is entitled as a matter of right to indemnification from the Company in respect of all costs, charges and expenses reasonably incurred by such individual in connection with the defense of any civil, criminal, administrative, investigative or other proceedings to which such individual is subject if he or she was not judged by a court or other competent authority to have committed any fault or omitted to do anything that he or she ought to have done, and has fulfilled conditions (i) and (ii) above.

In accordance with the OBCA, the Company has agreed to indemnify each of the Company's directors and officers against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by such individual in respect of any civil, criminal, administrative action or proceeding in which such individual is involved by reason of his or her association with the Company or another entity if such individual acted honestly and in good faith with a view to the best interests of the Company or such other entity, and such individual had reasonable grounds for believing that his or her conduct was lawful.

The Company maintains a policy of directors' and officers' liability insurance, which insures directors and officers for losses, subject to deductibles and exclusions, as a result of claims against the Company's directors and officers in their capacity as directors and officers and also reimburses the Company for payments made pursuant to the indemnity provisions under the Company's bylaws and the OBCA.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

[4](#) [Sphere 3D Corp. 2015 Performance Incentive Plan. \(Incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for its fiscal quarter ended March 31, 2019, filed with the Commission on May 15, 2019 \(Commission File No. 001-36532\)\).](#)

[5](#) [Opinion of Meretsky Law Firm.](#)

[23.1](#) [Consent of Smythe LLP.](#)

[23.2](#) [Consent of Meretsky Law Firm \(included in Exhibit 5\).](#)

[24](#) [Power of Attorney \(included in this Registration Statement under "Signatures"\).](#)

[107](#) [Calculation of Filing Fee Table](#)

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Form S-8 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on January 18, 2023.

SPHERE 3D CORP.

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

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Patricia Trompeter and Kurt Kalbfleisch, or either one or both of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Patricia Trompeter</u> Patricia Trompeter	Chief Executive Officer and Director (Principal Executive Officer)	January 18, 2023
<u>/s/ Kurt Kalbfleisch</u> Kurt Kalbfleisch	Chief Financial Officer (Principal Financial and Accounting Officer)	January 18, 2023
<u>/s/ David Danziger</u> David Danziger	Director	January 18, 2023
<u>/s/ Timothy Hanley</u> Timothy Hanley	Director	January 18, 2023
<u>/s/ Susan Harnett</u> Susan Harnett	Director	January 18, 2023
<u>/s/ Vivekanand Mahadevan</u> Vivekanand Mahadevan	Director	January 18, 2023
<u>/s/ Duncan McEwan</u> Duncan McEwan	Director	January 18, 2023

SIGNATURE OF AUTHORIZED REPRESENTATIVE IN THE UNITED STATES

Pursuant to the requirements of the Securities Act, the undersigned, the duly authorized representative in the United States of the Registrant, has signed this registration statement in the City of San Diego, State of California on January 18, 2023.

AUTHORIZED U.S. REPRESENTATIVE

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



Meretsky Law Firm Barristers & Solicitors
121 King Street West, Suite 2150, Toronto, Ontario, Canada M5H 3T9
Tel: (416) 943-0808 Fax: (416) 943-0811 www.meretsky.com

January 18, 2023

Sphere 3D Corp.
895 Don Mills Road
Building 2, Suite 900
Toronto, Ontario, M3C 1W3
Canada

Dear Sirs/Mesdames:

Re: Registration of 6,863,207 common shares of Sphere 3D Corp.

We have acted as Canadian special counsel to Sphere 3D Corp., a corporation amalgamated under the *Business Corporations Act* (Ontario) (the "**Company**"), in connection with the registration under the United States Securities Act of 1933, as amended (the "**Act**"), pursuant to a Registration Statement on Form S-8 (the "**Registration Statement**"), filed on or about the date hereof with the United States Securities and Exchange Commission, of 6,863,207 common shares of the Company (the "**Registration Shares**") to be issued pursuant to awards granted or that may be granted under the Company's 2015 Performance Incentive Plan (the "**2015 PIP**").

For the purposes of this opinion, we have examined a copy of the 2015 PIP. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of and relied upon the following documents (collectively, the "**Corporate Documents**"):

- (a) the certificate and articles of amendment of the Company;
 - (b) the by-laws of the Company;
 - (c) certain resolutions of the Company's directors and shareholders; and
 - (d) a certificate of an officer of the Company (the "**Officer's Certificate**").
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We also have reviewed such other documents, and have considered such questions of law, as we have deemed relevant and necessary as a basis for the opinion expressed herein. We have relied upon the Corporate Documents without independent investigation of the matters provided for therein for the purpose of providing our opinion expressed herein.

In examining all documents and in providing our opinion expressed herein we have assumed that:

- (a) all individuals had the requisite legal capacity;
- (b) all signatures are genuine;
- (c) all documents submitted to us as originals are complete and authentic and all photostatic, certified, telecopied, notarial or other copies conform to the originals;
- (d) all facts set forth in the official public records, certificates and documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate;
- (e) all facts set forth in the certificates supplied by the respective officers and directors, as applicable, of the Company including, without limitation, the Officer's Certificate, are complete, true and accurate;
- (f) the Registration Shares will be issued pursuant to a written award agreement in all material respects in the form prescribed by or in accordance with the terms of the 2015 PIP.

Our opinion is expressed only with respect to the laws of the Province of Ontario (the "**Jurisdiction**") and the laws of Canada applicable therein. Any reference to the laws of the Jurisdiction includes the laws of Canada that apply in the Jurisdiction.

Our opinion is expressed with respect to the laws of the Jurisdiction in effect on the date of this opinion. We have no responsibility or obligation to: (i) update this opinion, (ii) take into account or inform the addressee or any other person of any changes in law, facts or other developments subsequent to this date that do or may affect the opinion we express, or (iii) advise the addressee or any other person of any other change in any matter addressed in this opinion, nor do we have any responsibility or obligation to consider the applicability or correctness of this opinion to any person other than the addressee.

Where our opinion refers to any of the Registration Shares as being issued as being "fully-paid and non-assessable", such opinion assumes that all required consideration (in whatever form) has been paid or provided and no opinion is expressed as to the adequacy of any such consideration paid or provided.

Based and relying upon the foregoing, we are of the opinion that the Registration Shares have been validly authorized and reserved for issuance pursuant to the 2015 PIP, as applicable, and will, when issued in accordance with such authorization and the 2015 PIP, as applicable, be validly issued as fully paid and non-assessable common shares of the Company.

This opinion has been prepared for your use in connection with the Registration Statement and is expressed as of the date hereof. Our opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the Registration Statement or the Registration Shares.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under the Act or the rules and regulations promulgated thereunder. This opinion may not be quoted from or referred to in any documents other than the Registration Statement as provided for herein without our prior written consent.

Yours truly,

/s/ Meretsky Law Firm

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our auditors' report dated March 30, 2022 relating to the consolidated financial statements of Sphere 3D Corp. and its subsidiaries (the "Company") comprising the consolidated balance sheets as of December 31, 2021 and 2020, and the related consolidated statements of operations, comprehensive loss, cash flows and shareholders' equity (deficit) for each of the years in the three-year period ended December 31, 2021 (which expresses an unqualified opinion and includes an explanatory paragraph relating to a going concern uncertainty) which report was included in the Company's Annual Report on Form 20-F for the year ended December 31, 2021 filed with the Securities and Exchange Commission.

/s/ Smythe LLP

Chartered Professional Accountants

Vancouver, Canada

January 18, 2023

Calculation of Filing Fee Tables

.....S-8.....
(Form Type)

.....Sphere 3D Corp.....
(Exact Name of Registrant as Specified in its Charter)

.....Not Applicable.....
(Translation of Registrant's Name into English)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Share(2)	Maximum Aggregate Offering Price(2)	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial effective date	Filing Fee Previously Paid In Connection with Unsold Securities to be Carried Forward
Newly Registered Securities												
Fees to Be Paid	Equity	Common Shares, no par value	Rule 457(c)	6,863,207	\$0.331	\$2,271,721.52	\$0.0001102	\$250.34	N/A	N/A	N/A	N/A
Fees Previously Paid									N/A	N/A	N/A	N/A
Carry Forward Securities												
Carry Forward Securities												
	Total Offering Amounts					\$2,271,721.52		\$250.34				
	Total Fees Previously Paid											
	Total Fee Offsets											
	Net Fee Due							\$250.34				

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this Registration Statement covers, in addition to the number of common shares, no par value per share (the "Common Shares") of Sphere 3D Corp., a corporation amalgamated under the laws of the Province of Ontario (the "Company" or the "Registrant"), stated above, options and other rights to purchase or acquire the Common Shares covered by this Registration Statement and, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), an additional indeterminate number of shares, options and rights that may be offered or issued pursuant to the Sphere 3D Corp. 2015 Performance Incentive Plan (the "Plan") as a result of one or more adjustments under the Plan to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions.
 - (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) and 457(c) under the Securities Act, based upon the average of the high and low prices of the Common Shares on January 11, 2022 (which is within five business days prior to the date of this filing), as quoted on the Nasdaq Global Select Market.
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