

# 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): January 12, 2023

## SPHERE 3D CORP.

(Exact name of registrant as specified in its charter)

Ontario  
(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, Canada M3C 1W3**  
(Address of principal executive offices) (ZIP Code)

Registrant's telephone number, including area code: (647) 952 5049

### 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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Common Shares

Trading Symbols

ANY

Name of each exchange on which registered

NASDAQ Capital Market

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

Effective January 1, 2023, Sphere 3D Corp. (the "**Company**") ceased to qualify as a foreign private issuer ("**FPI**") and became a domestic issuer under the United States Securities and Exchange Act of 1933, as amended and as such is required to comply with certain Nasdaq Marketplace Rules that the Company was not subject to as a FPI. Under Nasdaq Marketplace Rule 5620(c) ("**Nasdaq Rule 5620(c)**"), the minimum quorum requirement for a meeting of shareholders is 33-1/3% of the outstanding common shares, present in person or represented by proxy and such quorum requirements are required to be set forth in the issuer's by-laws.

On January 12, 2023, the Board of Directors of the Company approved an amendment to the Company's by-laws to change the minimum quorum requirements for a meeting of shareholders in order to comply with Nasdaq Rule 5620(c) (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 9.01. Financial Statements and Exhibits**

(d) Exhibits

[3.1 Amendment to By-law No. 1](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

**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: January 13, 2023

**SPHERE 3D CORP.**

By: /s/ Patricia Trompeter  
Patricia Trompeter  
Chief Executive Officer

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**SPHERE 3D CORP.**  
(the "Company")

**BY-LAW NO. 1 AMENDING AGREEMENT**

**WHEREAS** effective January 1, 2023, the Company ceased to qualify as a "foreign private issuer" and henceforth shall be a domestic issuer under the *United States Securities and Exchange Act of 1933, as amended*;

**AND WHEREAS** in accordance with Nasdaq Marketplace Rule 5620(c) ("**Nasdaq Rule 5620(c)**"), the minimum quorum requirement for a shareholders meeting is 33-1/3% of the outstanding shares of common stock, present in person or represented by proxy;

**AND WHEREAS** the Company wishes to amend by-law no. 1, being a by-law relating generally to the conduct of the business and affairs of the Company, as amended on November 16, 2021 ("**By-law No. 1**"), to change the minimum quorum requirements for a shareholders meeting in order to comply with Nasdaq Rule 5620(c).

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties) the parties hereto covenant, acknowledge and agree as follows:

1. Unless otherwise defined herein, capitalized terms used in this amending agreement ("**By-law No. 1 Amendment**"), including in the recitals hereto, shall have the meanings ascribed to such terms in By-law No. 1.
2. By-law No. 1 shall be deemed to have been amended as of the date of this By-law No. 1 Amendment. The terms "hereof", "herein", and similar terms used in By-law No. 1, shall mean and refer to By-law No. 1 as amended by this By-law No. 1 Amendment.
3. Section 7.11 [Quorum] of By-law No. 1 shall hereby be amended as follows: *[Note: deletions are in strike through and additions are in bold and underline]*

"7.11 A quorum for the transaction of business at any meeting of shareholders shall be at least two persons present and holding or representing by proxy not less than **thirty-three and one-third percent (33-1/3%)** ~~twenty five percent (25%)~~ of the total number of issued shares of the Corporation having voting rights at such meeting. No business shall be transacted at any meeting unless the requisite quorum shall be present at the commencement of such meeting, provided that if a quorum is present at the commencement of a meeting, a quorum shall be deemed present during the remainder of the meeting."

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4. Except as otherwise provided to the contrary in paragraph 3 above, By-law No. 1 shall continue in full force and effect, unamended.
5. The parties shall sign such further and other documents, and do and perform and cause to be done and performed all such further and other acts and things, as may be necessary or desirable in order to give full effect to this By-law No. 1 Amendment and every part hereof.
6. This By-law No. 1 Amendment shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
7. A certificate of any director or officer of the Company in office at the time of making of the certificate or of an agent of the Company as to facts in relation to the sending of any notice to any shareholder, director, officer or auditor or publication of any notice shall be conclusive evidence thereof and shall be binding on every shareholder, director, officer or auditor of the Company, as the case may be.
8. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this By-law No. 1 Amendment is as effective as delivery of an originally executed counterpart of this By-law No. 1 Amendment.

**EFFECTIVE** the 12<sup>th</sup> day of January, 2023.

Per: "Patricia Trompeter"  
Patricia Trompeter  
Chief Executive Officer

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