

Qumu Corp
Form S-8
August 08, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

QUMU CORPORATION
(Exact name of registrant as specified in its charter)

Minnesota 41-1577970
(State or jurisdiction (I.R.S. Employer
of incorporation or organization) Identification No.)

510 1st Avenue North, Suite 305
Minneapolis, Minnesota 55403
(Address of principal executive offices and zip code)

Qumu Corporation
Second Amended and Restated 2007 Stock Incentive Plan
(Full Title of the Plan)

Copy to:

| | |
|---------------------------------------|------------------------------|
| Vern Hanzlik | April Hamlin |
| President and Chief Executive Officer | Ballard Spahr LLP |
| Qumu Corporation | 2000 IDS Center |
| 510 1st Avenue North, Suite 305 | 80 South 8th Street |
| Minneapolis, Minnesota 55403 | Minneapolis, Minnesota 55402 |
| (612) 638-9100 | (612) 371-3211 |

(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 <input type="checkbox"/> | Accelerated filer <input type="checkbox"/> |
| Non-accelerated filer <input type="checkbox"/> | Smaller reporting company <input checked="" type="checkbox"/> |

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(Do not check if a 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.

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee |
|--|-----------------------------|---|---|----------------------------|
| Common Stock, par value \$0.01 per share | 500,000 | \$2.72 | \$1,360,000 | \$169.32 |

(1) The shares registered by this registration statement are additional shares of Common Stock reserved for issuance under the Qumu Corporation Second Amended and Restated 2007 Stock Incentive Plan.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h)(1) under the Securities Act of 1933, as amended (the "Securities Act"), and based upon the average of the high and low prices per share of the Company's Common Stock on The Nasdaq Stock Market on August 6, 2018.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is filed by Qumu Corporation (the “Company”) to register an additional 500,000 shares of its common stock authorized for issuance under the Qumu Corporation Second Amended and Restated 2007 Stock Incentive Plan.

On May 15, 2007, the shareholders of the Company adopted the 2007 Stock Incentive Plan and authorized 730,320 shares of common stock to be reserved for issuance under that plan. The Company filed a Registration Statement on Form S-8 on November 13, 2007 to register the 730,320 shares (File No. 333-147344).

On May 13, 2009, the Company’s shareholders approved the Amended and Restated 2007 Stock Incentive Plan, including an amendment to increase the number of shares authorized under the plan by 500,000. The Company filed a Registration Statement on Form S-8 on August 11, 2009 to register the additional 500,000 shares (File No. 333-161262).

On May 11, 2011, the Company’s shareholders approved the Second Amended and Restated 2007 Stock Incentive Plan, including an amendment to increase the number of shares authorized under the plan by 500,000. The Company filed a Registration Statement on Form S-8 on August 8, 2011 to register the additional 500,000 shares (File No. 333-176145).

On May 20, 2014, the Company’s shareholders approved an amendment to the Second Amended and Restated 2007 Stock Incentive Plan to increase the number of shares authorized under the plan by 500,000. The Company filed a Registration Statement on Form S-8 on August 10, 2015 to register the additional 500,000 shares (File No. 333-206270).

On May 12, 2016, the Company’s shareholders approved amendments to the Second Amended and Restated 2007 Stock Incentive Plan, including an amendment to increase the number of shares authorized under the plan by 500,000. The Company filed a Registration Statement on Form S-8 on January 13, 2017 to register the additional 500,000 shares (File No. 333-215549).

On May 10, 2018, the Company’s shareholders approved amendments to the Second Amended and Restated 2007 Stock Incentive Plan, including an amendment to increase the number of shares authorized under the plan by 500,000. The additional 500,000 shares are covered by this Registration Statement. Pursuant to General Instruction E of Form S-8, the contents of the earlier registration statements are incorporated herein by reference.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Pursuant to the Note to Part I of Form S-8, the information required by Part I of Form S-8 has been omitted from this Registration Statement.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed (but not furnished) by the Company with the Securities and Exchange Commission are hereby incorporated by reference:

(a) The Company's Annual Report on Form 10-K for the year ended December 31, 2017, filed on March 23, 2018.

The Company's Quarterly Report for the quarter ended March 31, 2018, filed on May 15, 2018, Amendment No. 1 (b) to Form 10-Q for the quarter ended March 31, 2018, filed on May 29, 2018, and the Company's Quarterly Report for the quarter ended June 30, 2018, filed on August 7, 2018.

The Company's Current Reports on Form 8-K filed on January 16, 2018 (Items 1.01, 1.02, 2.03, 3.02 and 9.01), February 9, 2018 (Items 2.02 and 9.01), March 2, 2018 (Items 1.01 and 9.01), March 8, 2018 (Items 2.02 and 9.01), (c) May 2, 2018 (Items 2.02 and 9.01), May 9, 2018 (Items 7.01 and 9.01), May 10, 2018 (Item 5.07), July 6, 2018 (Item 7.01), July 18, 2018 (Items 7.01 and 9.01), July 20, 2018 (Item 7.01), and August 1, 2018 (Item 2.02 and 9.01).

The description of the Company's common stock contained in its Registration Statements on Form 8-A (File No. (c) 000-20728) filed pursuant to Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed (but not furnished) by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement that indicates that all of the shares of common stock offered hereby have been sold or that deregisters all shares of the common stock then remaining unsold, shall be deemed to be incorporated by reference in and a part of this Registration Statement from the date of filing of such reports and documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this Registration Statement modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, 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.

Section 302A.521 of the Minnesota Statutes and Article IX of the Company's Amended and Restated Bylaws require, among other things, the indemnification of persons made or threatened to be made a party to a proceeding by reason of acts or omissions performed in their official capacity as an officer, director, employee or agent of the Company against judgments, penalties and fines (including attorneys' fees) if such person is not otherwise indemnified, acted in good faith, received no improper benefit, reasonably believed that such conduct was in the best interests of the Company, and, in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In addition, Section 302A.521, subdiv. 3, of the Minnesota Statutes requires payment by the Company, upon written request, of reasonable expenses in advance of final disposition in certain instances if a decision as to required indemnification is made by a disinterested majority of the Board of Directors present at a meeting at which a disinterested quorum is present, or by a designated committee of the Board, by special legal counsel, by the shareholders or by a court. The Company also maintains an insurance policy to assist in funding indemnification of directors and officers for certain liabilities.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

- 3.1 1992 Restated Articles of Incorporation of Rimage Corporation (n/k/a Qumu Corporation) (Incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2017).
- 3.2 Articles of Amendment to 1992 Restated Articles of Incorporation of Rimage Corporation as filed with the Minnesota Secretary of State effective as of September 16, 2013 (Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated September 16, 2013).
- 3.3 Amended and Restated Bylaws of Rimage Corporation, as amended (Incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K dated March 7, 2007).
- 3.4 Amendments effective March 2, 2016 to Bylaws of Qumu Corporation (Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated March 2, 2016).
- 4.1 Qumu Corporation Second Amended and Restated 2007 Stock Incentive Plan (Incorporated by reference to Appendix A to the Company's Definitive Proxy Statement dated April 9, 2018 for the 2018 Annual Meeting of Shareholders held on May 10, 2018)
- 5.1 Opinion of Ballard Spahr LLP
- 23.1 Consent of Ballard Spahr LLP (included in Exhibit 5.1)
- 23.2 Consent of KPMG LLP, Independent Registered Public Accounting Firm
- 24.1 Power of Attorney (included on signature page)

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 of 1933;

- (ii) To reflect in the prospectus any facts or events arising after the effective date of the 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 the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if 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 Section 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 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 the 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 foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange 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 of 1933, 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 registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Minneapolis, State of Minnesota, on August 8, 2018.

QUMU CORPORATION

By /s/ Vern Hanzlik

Vern Hanzlik, Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature to this registration statement appears below hereby constitutes and appoints Vern Hanzlik and David G. Ristow, signing singly as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, to sign on his or her behalf individually and in the capacity stated below and to perform any acts necessary to be done in order to file with the Securities and Exchange Commission all amendments (including post-effective amendments) to this registration statement, with all exhibits thereto, and any and all instruments or documents filed as part of or in connection with this registration statement or the amendments thereto and each of the undersigned does hereby ratify and confirm all that said attorney-in-fact and agent, or his substitutes, shall do or cause to be done by virtue hereof. The undersigned also grants to said attorney-in-fact, full power and authority to do and perform any and all acts necessary or incidental to the performance and execution of the powers herein expressly granted. This Power of Attorney shall remain in effect until revoked in writing by the undersigned. Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on August 8, 2018.

| | |
|------------------------|--|
| /s/ Vern Hanzlik | President and Chief Executive Officer |
| Vern Hanzlik | (Principal Executive Officer), Director |
| /s/ David G. Ristow | Chief Financial Officer (Principal Financial |
| David G. Ristow | and Accounting Officer) |
| /s/ Neil Cox | Director |
| Neil Cox | |
| /s/ Daniel R. Fishback | Director |
| Daniel R. Fishback | |
| /s/ Kenan Lucas | Director |
| Kenan Lucas | |
| /s/ Thomas F. Madison | Director |
| Thomas F. Madison | |
| /s/ Kimberly K. Nelson | Director |
| Kimberly K. Nelson | |
| /s/ Robert F. Olson | Director |
| Robert F. Olson | |