

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): October 25, 2016

FORM HOLDINGS CORP.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of incorporation)

001-34785
(Commission File Number)

20-4988129
(I.R.S. Employer Identification No.)

780 Third Avenue, 12th Floor, New York, NY 10017
(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code: (646) 525-4319

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:

- 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 1.01 Entry into Material Definitive Agreement.

Amendment to Merger Agreement

As previously announced, on August 8, 2016, FORM Holdings Corp., a Delaware corporation (“FORM”), FHXMS, LLC, a Delaware limited liability company and wholly-owned subsidiary of FORM (“Merger Sub”), XpresSpa Holdings, LLC, a Delaware limited liability company (“XpresSpa”), the unitholders of XpresSpa who are parties thereto (the “Unitholders”) and Mistral XH Representative, LLC, as representative of the Unitholders (the “Representative”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which Merger Sub will merge with and into XpresSpa, with XpresSpa being the surviving entity and a wholly-owned subsidiary of FORM (the “Surviving Entity”) and the Unitholders becoming stockholders of FORM (the “Merger”). Upon completion of the Merger, (i) the then-outstanding common units of XpresSpa (other than those held by FORM and its subsidiaries, which will be cancelled without any consideration) and (ii) the then-outstanding preferred units of XpresSpa (other than those held by FORM and its subsidiaries, which will be cancelled without any consideration) will be cancelled and automatically converted into the right to receive an aggregate of:

- (a) 2,500,000 shares of FORM common stock, par value \$0.01 per share (“FORM Common Stock”),
- (b) 494,792 shares of newly designated Series D Convertible Preferred Stock, par value \$0.01 per share, of FORM with an aggregate initial liquidation preference of \$23,750,000, accruing dividends at 9% per annum and are initially convertible into 3,958,336 shares of FORM Common Stock, and
- (c) five-year warrants to purchase an aggregate of 2,500,000 shares of FORM Common Stock, at an exercise price of \$3.00 per share, in each case, subject to adjustment in the event of a stock split, dividend or similar events.

On October 25, 2016, the Company, Merger Sub, XpresSpa and the Representative entered into Amendment No. 2 to the Merger Agreement (the “Amendment”), which clarifies certain indemnification provisions in connection with the Merger and increases the amount to be held in escrow by \$2 million in connection with such right to indemnification.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, which is attached hereto as Exhibit 2.1 and incorporated herein by reference. The Amendment has been incorporated herein by reference to provide information regarding its terms.

Item 9.01. Financial Statements and Exhibits.

- (d) Exhibits:

2.1 Amendment No. 2 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated October 25, 2016.

Important Additional Information Will Be Filed with the SEC

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities of FORM, or XpresSpa or the solicitation of any vote or approval. In connection with the proposed transaction, FORM filed a Registration Statement on Form S-4 with the SEC on September 9, 2016, containing a proxy statement/prospectus. The proxy statement/prospectus contains important information about FORM, XpresSpa, the transaction and related matters. FORM will mail or otherwise deliver the proxy statement/prospectus to its stockholders and the stockholders of XpresSpa when it becomes effective. Investors and security holders of FORM and XpresSpa are urged to read carefully the proxy statement/prospectus relating to the Merger (including any amendments or supplements thereto) in its entirety, because it contains important information about the proposed transaction.

Investors and security holders of FORM will be able to obtain free copies of the proxy statement/prospectus for the proposed Merger (when it is available) and other documents filed with the SEC by FORM through the website maintained by the SEC at www.sec.gov.

FORM and XpresSpa, and their respective directors and certain of their executive officers, may be deemed to be participants in the solicitation of proxies in respect of the transactions contemplated by the Merger Agreement between FORM and XpresSpa. Information regarding FORM's directors and executive officers is contained in FORM's Annual Report on Form 10-K for the fiscal year ended December 31, 2015, which was filed with the SEC on March 10, 2016. Information regarding XpresSpa's directors and officers and a more complete description of the interests of XpresSpa's directors and officers in the proposed transaction is available in the proxy statement/prospectus filed by FORM with the SEC in connection with the proposed transaction.

Cautionary Note Regarding Forward-Looking Statements

Statements in this report regarding the proposed transaction between FORM, Merger Sub and XpresSpa; the expected timetable for completing the transaction; the potential value created by the proposed Merger for FORM's and XpresSpa's stockholders; the potential of FORM's business after completion of the Merger; the continued listing of FORM's securities on the Nasdaq Capital Market; market acceptance of FORM products; the collective ability to protect intellectual property rights; competition from other providers and products; FORM's management and board of directors after completion of the Merger; and any other statements about FORM's or XpresSpa's management teams' future expectations, beliefs, goals, plans or prospects constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Any statements that are not statements of historical fact (including statements containing the words "believes," "plans," "could," "anticipates," "expects," "estimates," "plans," "should," "target," "will," "would" and similar expressions) should also be considered to be forward-looking statements. There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward-looking statements, including: the risk that FORM and XpresSpa may not be able to complete the proposed transaction; the inability to realize the potential value created by the proposed Merger for FORM's and XpresSpa's equity holders; the inability to raise capital to fund operations and business plan; FORM's inability to maintain the listing of its securities on the Nasdaq Capital Market after completion of the Merger; and other risks and uncertainties. Investors and stockholders are also urged to read the risk factors set forth in the proxy statement/prospectus carefully.

In addition, the statements in this report reflect FORM's expectations and beliefs as of the date of this release. We anticipate that subsequent events and developments will cause FORM's expectations and beliefs to change. However, while we may elect to update these forward-looking statements publicly at some point in the future, we specifically disclaim any obligation to do so, whether as a result of new information, future events or otherwise. These forward-looking statements should not be relied upon as representing FORM's views as of any date after the date of this report.

SIGNATURES

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

FORM HOLDINGS CORP.

Dated: October 25, 2016

By: /s/ Andrew D. Perlman

Name: Andrew D. Perlman

Title: Chief Executive Officer

EXHIBIT INDEX

- 2.1 Amendment No. 2 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated October 25, 2016.
-

**AMENDMENT NO. 2
TO AGREEMENT AND PLAN OF MERGER**

AMENDMENT NO. 2 TO AGREEMENT AND PLAN OF MERGER, dated as of October 25, 2016 (this "Amendment"), by and among Form Holdings Corp., a Delaware corporation ("Parent"), FHXMS, LLC, a Delaware limited liability company and wholly-owned subsidiary of Parent ("Merger Sub"), XpresSpa Holdings, LLC, a Delaware limited liability company (the "Company"), the unitholders of the Company who are parties thereto or who become parties thereto by executing a joinder agreement, and Mistral XH Representative, LLC, as representative of the unitholders of the Company (the "Unitholders' Representative"). Each of Parent, Merger Sub, the Company and the Unitholders' Representative is sometimes referred to herein as a "Party" and collectively as the "Parties." Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Merger Agreement (as defined below).

RECITALS

WHEREAS, the Parties have entered into that certain Agreement and Plan of Merger, dated as of August 8, 2016, as amended by Amendment No.1 dated as of September 8, 2016 (collectively, the "Merger Agreement"); and

WHEREAS, each of the Parties has agreed to amend the Merger Agreement to modify certain provisions thereof, as set forth herein.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendment to Section 7.7(a)(i) of the Merger Agreement. Section 7.7(a)(i) of the Merger Agreement is hereby amended and restated in its entirety as follows:

(i) Parent shall deposit with the Escrow Agent for a period of 18 months (the "**Escrow Release Date**") (or, with respect to the matters and amounts specified in Section 7.2(e) and Section 7.2(h) of the Company Disclosure Schedule, for the time periods specified therein), shares of Parent Preferred Stock with an aggregate initial liquidation preference equal to \$11,050,000, subject to reduction as provided in Section 7.7(a)(i) of the Company Disclosure Schedule (the "**Indemnity Escrow Amount**" and, together with any distributions or earnings thereon, the "**Indemnity Escrow Fund**"), which escrow shall be invested, held and disbursed by the Escrow Agent in accordance with the terms of this Agreement and the Escrow Agreement and shall serve as security to Parent for the Company's representations, warranties, covenants and agreements set forth in this Agreement;

2. Amendment to Section 7.2(h) of the Company Disclosure Schedules. Section 7.2(h) of the Company Disclosure Schedules is hereby amended and restated as set forth on Annex A hereto.

3. Reference to and Effect in the Merger Agreement.

(a) Upon the effectiveness of this Amendment, each reference in the Merger Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring to the Merger Agreement shall mean and be a reference to the Merger Agreement as amended hereby.

(b) Except as specifically amended herein, the Merger Agreement shall continue to be in full force and effect and is hereby in all respects ratified and confirmed, and the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any party under the Merger Agreement.

4. Counterparts. This Amendment may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by electronic communication, facsimile or otherwise).

5. Governing Law. This Amendment shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the law of the State of Delaware without regard to the conflicts of law principles thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to Agreement and Plan of Merger to be executed as of the date first above written.

FORM HOLDINGS CORP.

By: /s/ Andrew Perlman
Name: Andrew Perlman
Title: Chief Executive Officer

FHXMS, LLC

By: /s/ Andrew Perlman
Name: Andrew Perlman on behalf of
FORM Holdings Corp, its sole member

XPRESSPA HOLDINGS, LLC

By: /s/ Andrew R. Heyer
Name: Andrew R. Heyer
Title: Authorized Signatory

MISTRAL XH REPRESENTATIVE, LLC, as Unitholders' Representative

By: /s/ Andrew R. Heyer
Name: Andrew R. Heyer
Title: Chairman
