

**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): June 27, 2012

FALCONSTOR SOFTWARE, INC.

(Exact Name of Registrant as Specified in its Charter)

<u>Delaware</u> (State or Other Jurisdiction of Incorporation)	<u>000-23970</u> (Commission File Number)	<u>77-0216135</u> (IRS Employer Identification No.)
<u>2 Huntington Quadrangle, Melville, New York</u> (Address of Principal Executive Offices)		<u>11747</u> (Zip Code)

Registrant's telephone number, including area code 631-777-5188

N/A

(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 1.01. Entry into a Material Definitive Agreement

On June 27, 2012, as part of a settlement of an investigation into improper payments made to a customer, FalconStor Software, Inc. (the “Company”), entered into a Deferred Prosecution Agreement (the “DPA”) with the United States Attorney’s Office for the Eastern District of New York (“USAO”).

Under the DPA, the USAO agrees that it will defer prosecution of the Company in connection with the matter, and ultimately not prosecute the Company if the Company satisfies its obligations during the 18 month term of the DPA. Under the DPA, the Company will forfeit \$2.9 million to the United States. The Company must pay \$1.16 million to the United States no later than July 27, 2012, and an additional \$1.74 million to the United States no later than December 27, 2013.

The Company simultaneously entered into a settlement with the Securities and Exchange Commission (“SEC”). The Company agreed with the SEC to the entry of a Consent Judgment (CJ) to settle a civil action filed by the SEC. Pursuant to the CJ, the Company agreed not to violate the anti-fraud and registration provisions of Sections 17(a)(2), 5(a) and 5(c) of the Securities Act of 1933, and the books and records provisions of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934, as amended. The Company further agreed to pay a civil penalty of \$2.9 million to the SEC payable within ten days of entry of the CJ.

Item 8.01. Other Information

On June 27, 2012, the Company issues a press release announcing the settlements described in Item 1.01. These parallel settlements resolve the government’s investigations into improper payments made to a FalconStor customer. The agreed-upon payments to settle these investigations total \$5.8 million, for which the Company has previously reserved within its consolidated financial statements.

The DPA acknowledges the remedial actions taken by the Company in response to its discovery of the improper payments and does not require the Company to make any additional control or compliance changes. Under the DPA, the Company will forfeit \$2.9 million over eighteen months, of the \$5.8 million combined settlement payments.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press release of the Company dated June 27, 2012.

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.

Date: June 27, 2012

FALCONSTOR SOFTWARE, INC.

By: /s/ Louis J. Petrucelly
Name: Louis J. Petrucelly
Title: Acting Chief Financial Officer,
Vice President of Finance and
Treasurer

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press release of the Company dated June 27, 2012.



Contact: Joanne Ferrara, Investor Relations
631-773-5813
joanne.ferrara@falconstor.com

FalconStor Announces Resolution of Government Investigations

MELVILLE, N.Y., June 27, 2012—FalconStor Software, Inc. (NASDAQ: FALC), a leader in disk-based data protection solutions, announced today that it has reached settlements with the United States Attorney's Office for the Eastern District of New York (USAO) and the Securities and Exchange Commission (SEC). These parallel settlements resolve the government's investigations into improper payments made to a FalconStor customer. The agreed-upon payments to settle these investigations total \$5.8 million, for which the Company has previously reserved within its consolidated financial statements.

The Company entered into a Deferred Prosecution Agreement (DPA) with the USAO. Under the DPA, the USAO agrees that it will defer prosecution of the Company in connection with the matter, and ultimately not prosecute the Company if the Company satisfies its obligations during the 18 month term of the DPA. The DPA acknowledges the remedial actions taken by the Company in response to its discovery of the improper payments and does not require the Company to make any additional control or compliance changes. Under the DPA, the Company will forfeit \$2.9 million over eighteen months, of the \$5.8 million combined settlement payments.

The Company agreed with the SEC to the entry of a Consent Judgment (CJ) to settle a civil action filed by the SEC. Pursuant to the CJ, the Company agreed not to violate the anti-fraud and registration provisions of Sections 17(a)(2), 5(a) and 5(c) of the Securities Act of 1933, and the books and records provisions of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934. The Company further agreed to pay a civil penalty of \$2.9 million to the SEC, of the \$5.8 million combined settlement payments.

Jim McNeil, president and CEO of FalconStor said, "We are pleased to resolve these investigations. Since the commencement of these investigations in 2010, we have cooperated fully with the SEC and the United States Attorney's Office and we also conducted our own rigorous, independent investigation. The acts which resulted in these settlements are contrary to our core values, our policies and our expectations for ethical behavior. We have further strengthened the compliance culture within the company by making improvements and enhancements to our compliance program."

About FalconStor

FalconStor Software, Inc. (NASDAQ: FALC) is a market leader in disk-based data protection. The company's mission is to transform traditional backup and disaster recovery (DR) into next-generation service-oriented data protection. Built upon an award-winning platform, FalconStor

solutions deliver [disk-based backup](#), [continuous data protection](#), [WAN-optimized replication](#) and [DR automation](#). FalconStor solutions are available through a worldwide network of partners, including solution providers, top-tier strategic partners and major OEMs. Thousands of customers worldwide, from small businesses to Fortune 100 enterprises, entrust their data to FalconStor solutions. FalconStor maintains headquarters in Melville, N.Y., and offices throughout Europe and the Asia Pacific region. For more information, visit www.falconstor.com or call 1-866-NOW-FALC (866-669-3252).

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This press release includes forward-looking statements that involve risk and uncertainties that could cause actual results to differ materially from the forward-looking statements. These risks and uncertainties include: delays in product development; market acceptance of FalconStor's products and services; technological change in the data protection industry; competition in the data protection market; results and costs associated with governmental investigations; intellectual property issues; and other risk factors discussed in FalconStor's reports on Forms 10-K, 10-Q and other reports filed with the Securities and Exchange Commission.

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