

FIRST DATA CORP
Form 425
February 07, 2019

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): February 5, 2019

Fiserv, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Wisconsin
(State or Other Jurisdiction

of Incorporation)

0-14948
(Commission

File Number)

255 Fiserv Drive, Brookfield, Wisconsin 53045

39-1506125
(IRS Employer

Identification No.)

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(Address of Principal Executive Offices, including Zip Code)

(262) 879-5000

(Registrant's Telephone Number, Including Area Code)

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:

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))

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 1.01. Entry into a Material Definitive Agreement.

Amendment to Existing Revolving Credit Agreement

On February 6, 2019, Fiserv, Inc. (*Fiserv*) and its existing lender group entered into a first amendment to Fiserv's existing revolving credit facility, dated as of September 19, 2018 (the *Revolving Credit Agreement*), among Fiserv, the lenders party thereto from time to time, and JPMorgan Chase Bank, N.A., as administrative agent. The purpose of the amendment was to:

- (i) amend the maximum leverage ratio covenant contained in the *Revolving Credit Agreement* to permit Fiserv to elect to increase the permitted maximum leverage ratio from 3.5:1.0 to either 4.0:1.0 or 4.5:1.0 for a specified period following certain acquisitions involving consideration in excess of certain thresholds, subject to certain mandatory step-downs; and
- (ii) permit Fiserv to make drawings under the *Revolving Credit Agreement* on the closing date of the proposed merger of Fiserv and First Data Corporation (*First Data*) previously described in Fiserv's Current Report on Form 8-K filed on January 18, 2019, subject only to certain limited conditions.

The foregoing description of the first amendment to the *Revolving Credit Agreement* is summary in nature and is qualified in its entirety by reference to the first amendment, a copy of which is filed hereto as Exhibit 4.1 and incorporated herein by reference. The first amendment should be read in conjunction with, and is qualified in its entirety by reference to, the *Revolving Credit Agreement*. A copy of the *Revolving Credit Agreement* is included as Exhibit 4.1 to Fiserv's Current Report on Form 8-K filed on September 20, 2018.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth under the heading *Amendment to Existing Revolving Credit Agreement* in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference in this Item 2.03.

Item 8.01. Other Events

On February 5, 2019, Fiserv executed and delivered a joinder agreement (the *Commitment Letter Joinder*) to the bridge facility commitment letter, dated January 16, 2019 (the *Commitment Letter*), previously described in Fiserv's Current Report on Form 8-K filed on January 18, 2019, which *Commitment Letter Joinder* amended the *Commitment Letter* to, among other things, add additional commitment parties and reallocate the commitments in respect of the capital markets tranche of the bridge facility thereunder. Certain of the additional commitment parties are lenders under the *Revolving Credit Agreement*. In addition, Fiserv expects to complete in the near future the syndication of (i) a new \$5,000 million unsecured term loan facility to replace the loan tranche of the bridge facility and (ii) an increase of \$1,500 million in the aggregate commitments available under the *Revolving Credit Agreement*.

Additional Information and Where to Find It

This communication does not constitute an offer to sell or the solicitation of an offer to buy or sell any securities or a solicitation of a proxy or of any vote or approval. This communication may be deemed to be solicitation material in respect of the proposed transaction contemplated by an *Agreement and Plan of Merger*, dated January 16, 2019 (the *Merger Agreement*), by and among Fiserv, 300 Holdings, Inc. and First Data. In connection with the proposed transaction contemplated by the *Merger Agreement*, Fiserv intends to file a registration statement on Form S-4 with the Securities and Exchange Commission (the *SEC*) that will include a joint proxy/consent solicitation statement of Fiserv and First Data that will also constitute a prospectus of Fiserv. This communication is not a substitute for the registration statement, the joint proxy/consent solicitation statement/prospectus or any other documents that will be made available to the shareholders of Fiserv and First Data, or any other documents that any party to the *Merger Agreement*, including Fiserv, First Data, or any of their respective affiliates, may file with the SEC or make available to their respective security holders. **SHAREHOLDERS OF FISERV AND FIRST DATA AND THEIR RESPECTIVE AFFILIATES ARE URGED TO READ ALL RELEVANT DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY, INCLUDING THE JOINT PROXY/CONSENT SOLICITATION STATEMENT/PROSPECTUS (WHEN AVAILABLE) BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED COMBINATION.**

When available, shareholders will be able to obtain copies of the registration statement, including the joint proxy/consent solicitation statement/prospectus and any other documents that may be filed with the SEC (when available) free of charge from the SEC's website at www.sec.gov. Copies of documents filed with the SEC by Fiserv also can be obtained free of charge from Fiserv's website at www.fiserv.com. Copies of documents filed with the SEC by First Data also can be obtained free of charge from First Data's website at www.firstdata.com.

Participants in the Solicitation

Fiserv, First Data, and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction under the rules of the SEC. Information about the directors and executive officers of Fiserv is set forth in the proxy statement relating to Fiserv's 2018 annual meeting of shareholders filed with the SEC on April 10, 2018. Information about the directors and executive officers of First Data is set forth in the proxy statement relating to First Data's 2018 annual meeting of stockholders filed with the SEC on March 29, 2018. Additional information regarding the interests of these participants will be included in the joint proxy/consent solicitation statement/prospectus regarding the proposed transaction and other relevant materials to be

filed with the SEC when they become available. Shareholders should read the joint proxy/consent solicitation statement/prospectus carefully if and when it becomes available before making any voting or investment decisions. Shareholders may obtain free copies of these documents as described in the preceding paragraph.

Forward-Looking Statements

The information disclosed in this communication contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including statements regarding the ability of Fiserv to complete the proposed acquisition and related transactions. Statements can generally be identified as forward-looking because they include words such as believes, anticipates, expects, could, should or words of similar meaning. Statements that describe Fiserv's future plans, objectives or goals are also forward-looking statements. Forward-looking statements are subject to assumptions, risks and uncertainties that may cause actual results to differ materially from those contemplated by such forward-looking statements.

The factors that could cause Fiserv's actual results to differ materially include, among others: the possibility that the parties may be unable to achieve expected synergies and operating efficiencies in the transaction within the expected time frames or at all and to successfully integrate the operations of First Data into those of Fiserv; such integration may be more

difficult, time-consuming or costly than expected; revenues following the transaction may be lower than expected, including for possible reasons such as unexpected costs, charges or expenses resulting from the transaction; operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers) may be greater than expected following the transaction; the retention of certain key employees; the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement; the outcome of any legal proceedings that may be instituted against Fiserv, First Data and others related to the merger agreement; unforeseen risks relating to liabilities of Fiserv or First Data may exist; shareholder approval or other conditions to the completion of the transaction may not be satisfied, or the regulatory approvals required for the transaction may not be obtained on the terms expected or on the anticipated schedule; the amount of the costs, fees, expenses and charges related to the transaction, including the costs, fees, expenses and charges related to any financing arrangements entered into in connection with the transaction; the parties ability to meet expectations regarding the timing, completion and accounting and tax treatments of the transaction. Fiserv and First Data are subject to, among other matters, changes in customer demand for their products and services; pricing and other actions by competitors; general changes in local, regional, national and international economic conditions and the impact they may have on Fiserv and First Data and their customers and Fiserv's and First Data's assessment of that impact; rapid technological developments and changes, and the ability of Fiserv's and First Data's technology to keep pace with a rapidly evolving marketplace; the impact of a security breach or operational failure on Fiserv's and First Data's business; the effect of proposed and enacted legislative and regulatory actions in the United States and internationally affecting the financial services industry as a whole and/or Fiserv and First Data and their subsidiaries individually or collectively; regulatory supervision and oversight, and Fiserv and First Data's ability to comply with government regulations; the impact of Fiserv's and First Data's strategic initiatives; Fiserv's and First Data's ability to continue to introduce competitive new products and services on a timely, cost-effective basis; the ability to contain costs and expenses; the protection and validity of intellectual property rights; the outcome of pending and future litigation and governmental proceedings; acts of war and terrorism; and other factors included in Risk Factors in Fiserv's and First Data's respective filings with the SEC, including their respective Annual Reports on Form 10-K for the year ended December 31, 2017, and in other documents that the companies file with the SEC, which are available at <http://www.sec.gov>. You should consider these factors carefully in evaluating forward-looking statements and are cautioned not to place undue reliance on such statements. Fiserv assumes no obligation to update any forward-looking statements, which speak only as of the date of this communication.

* * *

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit No. | Description |
|-------------|---|
| 4.1 | <u>Amendment No. 1 to Revolving Credit Agreement, dated as of February 6, 2019.</u> |

SIGNATURE

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

FISERV, INC.

Date: February 6, 2019

By: /s/ Robert W. Hau

Name: Robert W. Hau

Title: Chief Financial Officer and Treasurer

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