

COMMVAULT SYSTEMS INC
Form 8-K
April 02, 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): March 31, 2019

COMMVAULT SYSTEMS, INC.
(Exact Name of Registrant as Specified in Charter)

Delaware	1-33026	22-3447504
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1
Commvault
Way
Tinton
Falls, New
Jersey
07724
(Address of
Principal
Executive
Offices)
(Zip Code)

(732) 870-4000
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K 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

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- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

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 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers;
5.02 Compensatory Arrangements of Certain Officers

(b) On March 31, 2019, Ron Müller, Senior Vice President of Worldwide Sales of Commvault Systems, Inc. (the “Company”), resigned his position effective immediately.

On March 31, 2019, Gary Merrill, Vice President Finance, Chief Accounting Officer of the Company, resigned his position effective immediately. Effective April 1, 2019, Mr. Merrill became Vice President Business Operations, Analytics, Technology & Simplicity. In this new role, Mr. Merrill will be responsible for leading the Company’s operational and simplification initiatives, including through the implementation of best-in-class technology tools.

(c) On April 1, 2019, James (Jay) Whalen, age 38, was appointed as Vice President, Finance, Chief Accounting Officer of the Company. Mr. Whalen served as our Controller from February 2015 to March 31, 2019. He also held the position of Assistant Controller from May 2013. Mr. Whalen began his career with Deloitte & Touche LLP in its audit practice. Mr. Whalen obtained his bachelor’s degree in accounting from Rutgers University and his master’s degree in professional accounting from Seton Hall University.

In connection with his appointment, Mr. Whalen has entered into our standard change in control agreement, which has previously been described in our proxy statement for our 2018 annual meeting of stockholders.

In connection with his promotion, Mr. Whalen will also receive an additional equity grant.

(e) On April 1, 2019, Commvault Systems, Inc. (the “Company”) entered into an Executive Retention and Severance Agreement (the “Agreement”) with Jay Whalen. The Agreement provides that upon a Qualifying Termination, (a) all stock options and stock appreciation rights held by Mr. Whalen shall become immediately vested and exercisable to the extent such grants would have become vested and exercisable had Mr. Whalen remained employed with the Company through the end of the Severance Period, and shall expire at the same time such grants would have expired had Mr. Whalen remained employed through the end of the Severance Period; and (b) all other equity or equity-based awards granted to Mr. Whalen shall immediately become vested and non-forfeitable to the extent such awards would have become vested and non-forfeitable had Mr. Whalen remained employed with the Company through the end of the Severance Period.

The Agreement also provides that upon a Qualifying Termination, Mr. Whalen shall be entitled to receive his Severance Compensation payable in accordance with the Company’s normal payroll practices during the Severance Period.

The Agreement provides that, during his term of employment with the Company and for a period of one year following any termination of employment with us, Mr. Whalen may not participate, directly or indirectly, will not directly or indirectly without the prior written consent of the Board: (a) engage in, or have any interest in, or manage or operate any person, firm, corporation, partnership or business that engages in any business which then competes with any business of the Company or any subsidiary anywhere in the world (other than beneficial ownership of up to 5% of the outstanding voting stock of a publicly traded company); (b) induce any employee of the Company or its subsidiaries to terminate such employment or to become employed by any competitor; or (c) contact, induce or attempt to induce any customer or potential customer (of which Mr. Whalen had actual knowledge) to purchase products or services from any entity other than the Company, or to cease being a customer of the Company.

For purposes of the Agreement:

“For Cause” means a termination by the Company effected by a written notice of termination For Cause as a result of Mr. Whalen’s: (i) willful misconduct with regard to the Company or its business, assets or employees; (ii) refusal to

follow the proper written direction of the Board or a more senior officer of the Company, with certain exceptions; (iii) conviction of (or pleading of nolo contendere to) a felony (other than a traffic violation); (iv) breach of any fiduciary

duty owed to the Company or any affiliate; or (v) dishonesty, misappropriation or fraud with regard to the Company (other than good faith expense account disputes).

“Qualifying Termination” shall mean termination of Mr. Whalen’s employment with the Company by the Company other than where such termination is For Cause.

“Severance Compensation” shall mean an amount equal to 9 times the gross amount of Mr. Whalen’s monthly base salary as in effect immediately prior to Mr. Whalen’s Qualifying Termination.

“Severance Period” shall mean the 9-month period beginning on the date of Mr. Whalen’s termination of employment with the Company.

The above summary of the Executive Retention and Severance Agreement is qualified in its entirety by reference to such agreement, which is attached as Exhibit 10.1 hereto and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
<u>10.1</u>	Executive Retention and Severance Agreement, dated April 1, 2019, between Commvault Systems, Inc. and Jay Whalen

SIGNATURE

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.

Dated: April 2, 2019
COMMVAULT SYSTEMS, INC.

By: /s/ Warren H. Mondschein
Name: Warren H. Mondschein
Title: VP, General Counsel and Secretary