

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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 8, 2018

VirnetX Holding Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-33852
(Commission File Number)

77-0390628
(IRS Employer Identification No.)

308 Dorla Court, Suite 206
Zephyr Cove, Nevada 89448
(Address of principal executive offices, including zip code)

(775) 548-1785
(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 (see General Instruction A.2):

- 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 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

On March 8, 2018, VirnetX Holding Corporation (the “Company”) entered into an Amendment No. 1 (the “Amendment”) to its Sales Agreement, dated August 20, 2015 (the “Agreement” and as amended by the Amendment, the “Amended Agreement”), with Cowen and Company, LLC, as sales agent (“Cowen”), pursuant to which the Company increased the maximum aggregate offering price of the Company’s common stock, par value \$0.0001 per share, (the “Common Stock”) that the Company may offer and sell, from time to time, through Cowen, from \$35,000,000 to \$50,000,000 (such additional \$15,000,000 shares of Common Stock, the “Shares”). The Shares will be issued pursuant to the Company’s previously filed and effective Registration Statement on Form S-3 (File No. 333-206497), the base prospectus, dated August 20, 2015 (the “Registration Statement”), filed as part of such Registration Statement, and the prospectus supplement, dated March 9, 2018, filed concurrently with this Current Report on Form 8-K. The Company is not obligated to make any sales of the Shares under the amended Agreement. Subject to the terms and conditions of the amended Agreement, Cowen will act as sales agent and use commercially reasonable efforts to sell on the Company’s behalf all of the shares of common stock requested to be sold by the Company, consistent with its normal trading and sales practices, on mutually agreed upon terms between Cowen and the Company. The Company intends to use the proceeds of this offering for Gabriel product development and marketing, and general corporate purposes, which may include working capital, capital expenditures, other corporate expenses and acquisitions of complementary products, technologies or businesses.

Under the Amended Sales Agreement, Cowen may sell the Shares by methods deemed to be an “at-the-market” offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the “Securities Act”), including sales made directly on the NYSE American, LLC (formerly the NYSE MKT LLC), on any other existing trading market for the Shares or to or through a market maker. In addition, under the Amended Agreement, Cowen may sell the Shares by any other method permitted by law, including in privately negotiated transactions.

The offering of Shares pursuant to the Amended Agreement will terminate upon the earlier of (a) the sale of all of the Shares subject to the Amended Agreement or (b) the termination of the Amended Agreement by Cowen or the Company.

The Company will pay Cowen a commission of 3.0% of the gross sales price per share sold and has agreed to provide Cowen with customary indemnification and contribution rights.

The descriptions of the Agreement and the Amendment do not purport to be complete and are qualified in their entirety by reference to the Agreement and the Amendment filed as exhibits herewith. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Shares in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The Agreement and the Amendment are incorporated by reference as Exhibit 10.1 and Exhibit 10.2 to this Current Report on Form 8-K.

ITEM 9.01. EXHIBITS.

(d)

Exhibit No.	Description
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
10.1	Sales Agreement, dated August 20, 2015 by and between VirnetX Holding Corporation and Cowen and Company, LLC.*
10.2	Amendment No. 1 to Sales Agreement, dated March 8, 2018, by and between VirnetX Holding Corporation and Cowen and Company, LLC.
23.1	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1).
23.2	Consent of Farber Hass Hurley LLP, independent registered accounting firm.

* Incorporated herein by reference from Exhibit 1.2 of the Company’s Registration Statement on Form S-3, dated August 20, 2015, File No. 333-206497.

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.

VirnetX Holding Corporation

By: /s/ Kendall Larsen

Kendall Larsen
Chief Executive Officer

Dated: March 9, 2018

650 Page Mill Road
Palo Alto, CA 94304-1050PHONE 650.493.9300
FAX 650.493.6811
www.wsgr.com

March 9, 2018

VirnetX Holding Corporation
308 Dorla Court, Suite 206
Zephyr Cove, NV 89448**Re: Registration Statement on Form S-3**

Ladies and Gentlemen:

We have acted as counsel to VirnetX Holding Corporation, a Delaware corporation (the "**Company**"), in connection with preparation and filing of a Registration Statement on Form S-3 (File No. 333-206497) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**") pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), and the Prospectus Supplement filed pursuant to Rule 424(b) under the Securities Act, dated March 9, 2018 (the "**Prospectus Supplement**"), relating to the sale by the Company of shares of its common stock, par value \$0.0001 per share (the "**Common Stock**") having an aggregate offering price of up to \$15,000,000 (the "**Shares**").

The offering and sale of the Shares are being made pursuant to that certain Sales Agreement, dated as of August 20, 2015, as amended by Amendment No. 1, dated as of March 8, 2018 (as amended, the "**Sales Agreement**"), by and between the Company and Cowen and Company, LLC ("**Cowen**").

We have examined copies of the Sales Agreement, the Registration Statement and the Prospectus Supplement. We have also examined instruments, documents and records which we deem relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed (i) the authenticity of original documents and the genuineness of all signatures, (ii) the conformity to the originals of all documents submitted to us as copies, and (iii) the truth, accuracy, and completeness of the information, representations and warranties contained in the records, documents, instruments and certificates we have reviewed.

Based on and subject to the foregoing, we are of the opinion that the Shares have been duly authorized by the Company, and when issued and delivered by the Company against payment therefor in accordance with the terms of the Sales Agreement, will be validly issued, fully paid and nonassessable.

We express no opinion as to the laws of any other jurisdiction other than the federal laws of the United States of America and the General Corporation Law of the State of Delaware.

AUSTIN BRUSSELS GEORGETOWN, DE HONG KONG NEW YORK PALO ALTO SAN DIEGO SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, DC

VirnetX Holding Corporation
March 9, 2018
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We hereby consent to the use of this opinion as an exhibit to the Company's Current Report on Form 8-K, filed on or about March 9, 2018, for incorporation by reference into the Registration Statement. In giving our consent, we do not believe that we are "experts" within the meaning of such term as used in the Securities Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit.

Sincerely,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

VIRNETX HOLDING CORPORATION

AMENDMENT NO. 1 TO
SALES AGREEMENT

March 8, 2018

Cowen and Company, LLC
599 Lexington Avenue
New York, NY 10022

Ladies and Gentlemen:

Reference is made to the Sales Agreement, dated as of August 20, 2015 (the "**Sales Agreement**"), between Cowen and Company, LLC ("**Cowen**") and VirnetX Holding Corporation, a Delaware corporation (the "**Company**"), pursuant to which the Company agreed to sell through Cowen, acting as agent and/or principal, shares of common stock, par value \$0.0001 per share, of the Company. All capitalized terms used in this Amendment No. 1 to Sales Agreement between Cowen and the Company (this "**Amendment**") and not otherwise defined herein shall have the respective meanings assigned to such terms in the Sales Agreement. Cowen and the Company agree as follows:

A. Amendments to Sales Agreement. The Sales Agreement is amended as follows:

1. The heading on page 1 of the Sales Agreement shall be amended such that the reference to "\$35,000,000" shall be "\$50,000,000".
 2. The first sentence of the first paragraph of Section 1 of the Sales Agreement shall be amended such that the reference to "\$35,000,000" shall be "\$50,000,000".
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3. The second paragraph of Section 1 of the Sales Agreement shall be replaced as follows:

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the “**Securities Act**”), with the Commission a registration statement on Form S-3 (File No. 333-206497), including a base prospectus, relating to certain securities, including the Common Stock, to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the “**Exchange Act**”). The Company has prepared and filed a prospectus supplement specifically relating to the Placement Shares having an aggregate offering price of up to \$35,000,000 (the “**Prospectus Supplement**”) to the base prospectus included as part of such registration statement. The Company has furnished to Cowen, for use by Cowen, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to such Placement Shares. In addition, the Company has filed or will file, in accordance with the provisions of the Securities Act, with the Commission an additional sales agreement prospectus specifically relating to the Placement Shares having an aggregate offering price of up to \$15,000,000 (the “**Sales Prospectus**”). The Company will make available to Cowen, for use by Cowen, copies of the Sales Prospectus included as part of the Registration Statement (as defined below). Except where the context otherwise requires, the registration statement, as amended when it became effective, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B or 462(b) of the Securities Act, are herein called the “**Registration Statement**.” The base prospectus, including all documents incorporated therein by reference, and the Sales Prospectus, including all documents incorporated therein by reference, each of which is included in the Registration Statement, as it or they may be supplemented by the Prospectus Supplement or by any additional prospectus supplement, in the form in which such prospectus and/or Prospectus Supplement and/or Sales Prospectus have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any “issuer free writing prospectus,” as defined in Rule 433 of the Securities Act regulations (“**Rule 433**”), relating to the Placement Shares that (i) is required to be filed with the Commission by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i), in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g), is herein called the “**Prospectus**.” Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to either the Electronic Data Gathering Analysis and Retrieval System or Interactive Data Electronic Applications (collectively “**IDEA**”).

4. The first sentence of Section 3(a) of the Sales Agreement shall be amended such that the reference to “NYSE MKT LLC” shall be “NYSE American, LLC”.

5. The first sentence of the Officer Certificate pursuant to Section 7(m) of the Sales Agreement shall be replaced as follows:

The undersigned, the duly qualified and elected _____, of VirnetX Holding Corporation (“**Company**”), a Delaware corporation, does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(m) of the Sales Agreement dated August 20, 2015, as amended on March [•], 2018 (as amended, the “**Sales Agreement**”) between the Company and Cowen and Company, LLC, that to the best of the knowledge of the undersigned.

B. Company Filings. The Company shall file a sales agreement prospectus covering the offering, issuance and sale by the Company of Placement Shares having a maximum aggregate offering price of \$15,000,000, reflecting this Amendment within two Business Days of the date hereof.

C. No Other Amendments. Except as set forth in Part A above, all the terms and provisions of the Sales Agreement shall continue in full force and effect.

D. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile or other electronic transmission.

E. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws.

[Remainder of page intentionally left blank.]

If the foregoing correctly sets forth the understanding between us, please so indicate in the space provided below for that purpose.

Very truly yours,

VIRNETX HOLDING CORPORATION

By: /s/ Kendall Larsen
Name: Kendall Larsen
Title: Chief Executive Officer

ACCEPTED as of the date first above written:

COWEN AND COMPANY, LLC

By: /s/ Robert Sine
Name: Robert Sine
Title: Managing Director

[Signature Page – Amendment No. 1 to Sales Agreement]

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the reference to our firm under the caption "Experts" in the Registration Statement No. 333-206497 of VirnetX Holding Corporation (the "Company") for the registration of the Company's common stock, preferred stock, depository shares, warrants, debt securities and/or units and to the incorporation by reference therein of our reports dated March 16, 2017, relating to the consolidated financial statements of the Company, and the effectiveness of the Company's internal control over financial reporting, appearing in its Annual Report (Form 10-K) for the year ended December 31, 2016, filed with the Securities and Exchange Commission.

/s/ Farber Hass Hurley LLP

Chatsworth, California
March 9, 2018
