

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

September 15, 2020

Date of Report (Date of earliest event reported)

Opes Acquisition Corp.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction
of incorporation)

001-38417

(Commission File Number)

82-2418815

(I.R.S. Employer
Identification No.)

**4218 NE 2nd Avenue
Miami, FL**

(Address of Principal Executive Offices)

33137

(Zip Code)

Registrant's telephone number, including area code: **(305) 573-3900**

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:

- Written communications pursuant to Rule 425 under the Securities Act
- 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

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol | Name of each exchange on which registered |
|---|----------------|---|
| Units, each consisting of one share of common stock and one redeemable warrant | OPESU | The Nasdaq Stock Market LLC |
| Common stock, par value \$0.0001 per share | OPES | The Nasdaq Stock Market LLC |
| Redeemable warrants, each exercisable for one share of common stock at an exercise price of \$11.50 per share | OPESW | The Nasdaq Stock Market LLC |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

IMPORTANT NOTICES

Opes Acquisition Corp., a Delaware corporation (“OPES” or “Purchaser”), and BurgerFi International LLC, a Delaware limited liability company (“BurgerFi”) and their respective directors, executive officers, members, managers, employees and other persons may be deemed to be participants in the solicitation of proxies from the holders of Purchaser’s common stock in respect of the proposed transaction described herein. Information about OPES’s directors and executive officers and their ownership of OPES’s common stock is set forth in OPES’s Prospectus, dated March 13, 2018, Annual Report on Form 10-K, dated March 30, 2020 and the definitive proxy statement on Schedule 14A dated July 2, 2020, filed with the Securities and Exchange Commission (the “SEC”), as modified or supplemented by any Form 3 or Form 4 filed with the SEC since the date of such filing. Other information regarding the interests of the participants in the proxy solicitation will be included in the proxy statement pertaining to the proposed transaction when it becomes available. These documents can be obtained free of charge from the sources indicated above.

In connection with the transaction described herein, Purchaser will file relevant materials with the SEC, including a proxy statement on Schedule 14A. Promptly after filing its definitive proxy statement relating to the transaction with the SEC, Purchaser will mail the definitive proxy statement and a proxy card to each stockholder entitled to vote at the special meeting relating to the transaction, and other proposals. **INVESTORS AND SECURITY HOLDERS OF PURCHASER ARE URGED TO READ THESE MATERIALS (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) AND ANY OTHER RELEVANT DOCUMENTS IN CONNECTION WITH THE TRANSACTION THAT PURCHASER WILL FILE WITH THE SEC WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT OPES, BURGERFI AND THE TRANSACTION.** The definitive proxy statement, the preliminary proxy statement and other relevant materials in connection with the transaction (when they become available), and any other documents filed by Purchaser with the SEC, may be obtained free of charge at the SEC’s website (www.sec.gov) or by writing to OPES at: 4218 NE 2nd Avenue, Miami, FL 33137

This Current Report on Form 8-K contains certain “forward-looking statements” within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, both as amended by the Private Securities Litigation Reform Act of 1995. Statements that are not historical facts, including statements about the execution of definitive agreements relating to the Business Combination by and among OPES and BurgerFi and the transactions contemplated thereby, and the parties’ perspectives and expectations, are forward-looking statements. Such statements include, but are not limited to, statements regarding the proposed transaction. The words “expect,” “believe,” “estimate,” “intend,” “plan,” and similar expressions indicate forward-looking statements. These forward-looking statements are not guarantees of future performance and are subject to various risks and uncertainties, assumptions (including assumptions about general economic, market, industry and operational factors), known or unknown, which could cause the actual results to vary materially from those indicated or anticipated.

Such risks and uncertainties include, but are not limited to: (i) risks related to the timing of the completion of the Business Combination, (ii) the ability to satisfy the various conditions to the closing of the Business Combination set forth in the Membership Interest Purchase Agreement, (iii) the occurrence of any event, change or other circumstances that could give rise to the termination of the Membership Interest Purchase Agreement, (iv) the risk that there may be a material adverse effect on the business, properties, assets, liabilities, results of operations or condition (financial or otherwise), of BurgerFi or its subsidiaries or franchisees, taken as a whole; (v) risks related to disruption of management time from ongoing business operations due to the proposed Business Combination; (vi) the risk that any announcements relating to the proposed Business Combination could have adverse effects on the market price of OPES’s common stock; and (vii) other risks and uncertainties and other factors identified in OPES’s prior and future filings with the SEC, available at www.sec.gov.

A further list and description of risks and uncertainties can be found in the proxy statement on Schedule 14A that will be filed with the SEC by Purchaser in connection with the proposed transaction, and other documents that the parties may file or furnish with the SEC, which you are encouraged to read.

Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those indicated or anticipated by such forward-looking statements. Accordingly, you are cautioned not to place undue reliance on these forward-looking statements. Forward-looking statements relate only to the date they were made, and OPES and BurgerFi, and their respective subsidiaries, if any, undertake no obligation to update forward-looking statements to reflect events or circumstances after the date they were made except as required by law or applicable regulation.

Item 5.03. Amendments to Articles of Incorporation or Bylaws

The information included in Item 5.07 is incorporated by reference in this item to the extent required herein.

Item 5.07. Submissions of Matters to a Vote of Security Holders.

Opes Acquisition Corp. (the “Company”) held its Special Meeting of Stockholders (the “Special Meeting”) on September 15, 2020 at 10:00 a.m. EST via teleconference. Summarized below are the results of the matter voted on at the Special Meeting.

| Matters Voted On | For | Against | Abstain |
|--|------------|----------------|----------------|
| Proposal to amend the Company’s amended and restated certificate of incorporation to extend the date by which the Company has to complete a business combination for an additional 60 days, from September 16, 2020 to November 15, 2020 (the “ <u>Extended Termination Date</u> ”). | 4,318,344 | 36,533 | 26,410 |

The proposal described above was approved by stockholders of 4,318,334 shares of common stock, representing 54.92% of the total issued and outstanding shares of common stock of the Company. The Company’s public stockholders holding only 497 shares elected to redeem their shares for cash in advance of the Special Meeting.

Item 9.01. Financial Statements and Exhibits

(c) Exhibits:

| Exhibit No. | Description |
|--------------------|--|
| 3.1 | Amendment to the Amended and Restated Certificate of Incorporation of Opes Acquisition Corp., dated September 15, 2020 |

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.

Dated: September 15, 2020

OPES ACQUISITION CORP.

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Chairman and Chief Executive Officer

**AMENDMENT
TO THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
OPES ACQUISITION CORP.**

**Pursuant to Section 242 of the
Delaware General Corporation Law**

The undersigned, being a duly authorized officer of OPES ACQUISITION CORP, (the "Corporation"), a corporation existing under the laws of the State of Delaware, does hereby certify as follows:

1. The name of the Corporation is Opes Acquisition Corp.
2. The Corporation's Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on July 24, 2017. An Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on March 13, 2018. An amendment to the Amended and Restated Certificate of Incorporation was filed on September 16, 2019. A second amendment to the Amended and Restated Certificate of Incorporation was filed on November 15, 2019. A third amendment to the Amended and Restated Certificate of Incorporation was filed on January 15, 2020. A fourth amendment to the Amended and Restated Certificate of Incorporation was filed on March 16, 2020. A fifth amendment to the Amended and Restated Certificate of Incorporation was filed on June 18, 2020.
3. This Amendment to the Amended and Restated Certificate of Incorporation further amends the Amended and Restated Certificate of Incorporation of the Corporation.
4. This Amendment to the Amended and Restated Certificate of Incorporation was duly adopted by the affirmative vote of the holders of a majority of the issued and outstanding stock at a meeting of stockholders in accordance with ARTICLE SIXTH of the Amended and Restated Certificate of Incorporation and the provisions of Sections 242 the General Corporation Law of the State of Delaware.
5. The text of Article SIXTH, subsection A. 5 of the Amended and Restated Certificate of Incorporation is hereby amended and restated to read in full as follows:
"5. "Termination Date" means November 15, 2020.

IN WITNESS WHEREOF, I have signed this Amendment to the Amended and Restated Certificate of Incorporation this 15th day of September, 2020.

/s/ Ophir Sternberg

Name: Ophir Sternberg

Title: Chief Executive Officer