

FACEBOOK INC

FORM 8-K (Current report filing)

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**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 19, 2014

Facebook, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware

001-35551

20-1665019

**(State or Other Jurisdiction
of Incorporation)**

**(Commission
File Number)**

**(IRS Employer
Identification No.)**

**1601 Willow Road
Menlo Park, California**

94025

(Address of Principal Executive Offices)

(Zip Code)

(650) 543-4800

(Registrant's Telephone Number, Including Area Code)

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 (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))
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Item 1.01. Entry into a Material Definitive Agreement.

On February 19, 2014, Facebook, Inc. (“**Parent**”) entered into an Agreement and Plan of Merger and Reorganization (the “**Merger Agreement**”) with Rhodium Acquisition Sub II, Inc., a Delaware corporation and wholly owned (in part directly and in part indirectly) subsidiary of Parent (“**Acquirer**”), Rhodium Merger Sub, Inc., a Delaware corporation, a direct wholly owned subsidiary of Acquirer (“**Merger Sub**”), WhatsApp Inc., a Delaware corporation (“**WhatsApp**”), and Fortis Advisors LLC, as the stockholders’ agent.

Pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into WhatsApp (the “**First Merger**”), and upon consummation of the First Merger, Merger Sub will cease to exist and WhatsApp will become a wholly owned subsidiary of Acquirer. The surviving corporation of the First Merger will then merge with and into Acquirer, which will continue to exist as a wholly owned (in part directly and in part indirectly) subsidiary of Parent. Upon consummation (the “**Closing**”) of the transactions contemplated by the Merger Agreement (the “**Merger**”), all outstanding shares of WhatsApp capital stock and options to purchase WhatsApp capital stock will be cancelled in exchange for an aggregate of 183,865,778 shares of Parent’s Class A common stock (valued at \$12 billion based on the average closing price of the six trading days preceding February 18, 2014 of \$65.2650 per share (“**Specified Price**”)) and \$4 billion in cash to existing WhatsApp securityholders, subject to certain adjustments such that the cash paid will comprise at least 25% of the aggregate transaction consideration. In addition, upon Closing, Parent will grant 45,966,444 restricted stock units to WhatsApp employees (valued at \$3 billion based on the Specified Price).

The Merger Agreement contains customary representations, warranties and covenants by Parent and WhatsApp. A portion of the aggregate consideration will be held in escrow to secure the indemnification obligations of the WhatsApp securityholders. The Closing of the Merger is subject to customary closing conditions, including regulatory approvals. The Merger is anticipated to close later in 2014. Upon Closing, Jan Koum, WhatsApp’s co-founder and CEO, will become a member of Parent’s board of directors. In addition, Parent has agreed to file a Registration Statement on Form S-3 covering the resale of the shares of the Company’s Class A common stock to be issued to the stockholders of WhatsApp.

Either Acquirer or WhatsApp may terminate the Merger Agreement if the Closing has not occurred on or before August 19, 2014 (or August 19, 2015 if, as of August 19, 2014, all closing conditions have been completed except for the receipt of certain regulatory approvals). In the event of termination of the Merger Agreement, under certain circumstances principally related to a failure to obtain required regulatory approvals, the Merger Agreement provides for Acquirer to pay or cause to be paid to WhatsApp a fee of \$1.0 billion in cash and to issue to WhatsApp a number of shares of Parent’s Class A common stock equal to \$1.0 billion (based on the average closing price of the ten trading days preceding such termination date).

Parent intends to issue the shares of Class A common stock described herein in reliance upon the exemptions from registration afforded by Section 4(2) and Rule 506 promulgated under the Securities Act of 1933, as amended.

The foregoing summary of the Merger Agreement and the transactions contemplated thereby do not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, which will be filed as an exhibit to Parent’s Quarterly Report on Form 10-Q for the quarter ending March 31, 2014.

This Current Report on Form 8-K may be deemed to contain forward-looking statements, which are subject to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, including the expected completion of the transactions contemplated by the Merger Agreement and the time frame in which this will occur. Statements regarding future events are based on the parties’ current expectations and are necessarily subject to associated risks related to, among other things, regulatory approval of the acquisition of WhatsApp or that other conditions to the Closing may not be satisfied, the potential impact on the business of WhatsApp due to the announcement of the acquisition, the occurrence of any event, change or other

circumstances that could give rise to the termination of the Merger Agreement, and general economic conditions. Therefore, actual results may differ materially and adversely from those expressed in any forward-looking statements. For information regarding other related risks, see the “Risk Factors” section of Parent’s Annual Report on Form 10-K for 2013. The forward-looking statements included herein are made only as of the date hereof, and Parent undertakes no obligation to revise or update any forward-looking statements for any reason.

Item 3.02. Unregistered Sales of Equity Securities.

See the disclosure under Item 1.01 of this Current Report on Form 8-K.

Item 8.01. Other Events.

On February 19, 2014, Parent issued a press release announcing that Parent had entered into the Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Title or Description
99.1	Press release dated February 19, 2014.

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.

FACEBOOK, INC.

Date: February 19, 2014

By: /s/ David Ebersman

Name: David Ebersman

Title: Chief Financial Officer

Exhibit Index

Exhibit Number	Exhibit Title or Description
99.1	Press release dated February 19, 2014.

Facebook to Acquire WhatsApp

- *Acquisition accelerates Facebook's ability to bring connectivity and utility to the world*
- *Leading mobile messaging app company continue to operate independently and retain its brand*
- *WhatsApp co-founder and CEO Jan Koum to join Facebook Board of Directors*

MENLO PARK, CALIF. – February 19, 2014 – Facebook today announced that it has reached a definitive agreement to acquire WhatsApp, a rapidly growing cross-platform mobile messaging company, for a total of approximately \$16 billion, including \$4 billion in cash and approximately \$12 billion worth of Facebook shares. The agreement also provides for an additional \$3 billion in restricted stock units to be granted to WhatsApp's founders and employees that will vest over four years subsequent to closing.

WhatsApp has built a leading and rapidly growing real-time mobile messaging service, with:

- Over 450 million people using the service each month;
- 70% of those people active on a given day;
- Messaging volume approaching the entire global telecom SMS volume; and
- Continued strong growth, currently adding more than 1 million new registered users per day.

The acquisition supports Facebook and WhatsApp's shared mission to bring more connectivity and utility to the world by delivering core internet services efficiently and affordably. The combination will help accelerate growth and user engagement across both companies.

"WhatsApp is on a path to connect 1 billion people. The services that reach that milestone are all incredibly valuable," said Mark Zuckerberg, Facebook founder and CEO. "I've known Jan for a long time and I'm excited to partner with him and his team to make the world more open and connected."

Jan Koum, WhatsApp co-founder and CEO, said, "WhatsApp's extremely high user engagement and rapid growth are driven by the simple, powerful and instantaneous messaging capabilities we provide. We're excited and honored to partner with Mark and Facebook as we continue to bring our product to more people around the world."

Facebook fosters an environment where independent-minded entrepreneurs can build companies, set their own direction and focus on growth while also benefiting from Facebook's expertise, resources and scale. This approach is working well with Instagram, and WhatsApp will operate in this manner. WhatsApp's brand will be maintained; its headquarters will remain in Mountain View, CA; Jan Koum will join Facebook's Board of Directors; and WhatsApp's core messaging product and Facebook's existing Messenger app will continue to operate as standalone applications.

Upon closing of the deal, all outstanding shares of WhatsApp capital stock and options to purchase WhatsApp capital stock will be cancelled in exchange for \$4 billion in cash and 183,865,778 shares of Facebook Class A common stock (worth \$12 billion based on the average

closing price of the six trading days preceding February 18, 2014 of \$65.2650 per share). In addition, upon closing, Facebook will grant 45,966,444 restricted stock units to WhatsApp employees (worth \$3 billion based on the average closing price of the six trading days preceding February 18, 2014 of \$65.2650 per share). As of February 17, 2014, Facebook had 2,551,654,996 Class A and B shares outstanding plus approximately 139 million dilutive securities primarily consisting of unvested RSUs. The Class A common stock and RSUs issued to WhatsApp shareholders and employees upon closing will represent 7.9% of Facebook shares based on current shares and RSUs outstanding.

In the event of termination of the Merger Agreement under certain circumstances principally related to a failure to obtain required regulatory approvals, the Merger Agreement provides for Facebook to pay WhatsApp a fee of \$1 billion in cash and to issue to WhatsApp a number of shares of Facebook's Class A common stock equal to \$1 billion based on the average closing price of the ten trading days preceding such termination date.

Facebook was advised by Allen & Company LLC and Weil, Gotshal & Manges LLP; and WhatsApp was advised by Morgan Stanley and Fenwick & West, LLP.

Webcast and Conference Call Information

Facebook will host a 30-minute conference call to discuss the acquisition at 3:00 PT / 6:00 ET today. The dial-in number for the call is (866) 751-3284 (toll free) and (973) 935-8772 (international), conference ID: 2907041. The live webcast of the call can be accessed at the Facebook Investor Relations website at investor.fb.com. Facebook uses the website <http://investor.fb.com> as a means of disclosing material non-public information and for complying with its disclosure obligations under Regulation FD.

Following the call, a replay will be available at the same website. A telephonic replay will be available for one week following the conference call at (855) 859-2056 or (404) 537-3406, conference ID 2907041.

About Facebook

Facebook's mission is to give people the power to share and make the world more open and connected. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them.

About WhatsApp

WhatsApp is a personal real-time messaging network allowing millions of people around the world to stay connected with their friends and family.

Facebook Contacts

Investors:

Deborah Crawford
investor@fb.com / investor.fb.com

Press:

Tucker Bounds
press@fb.com / newsroom.fb.com

WhatsApp Contact:

press@whatsapp.com

Forward Looking Statements

This press release may be deemed to contain forward-looking statements, which are subject to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, including the expected completion of the acquisition, the time frame in which this will occur, the expected benefits to Facebook and WhatsApp from completing the acquisition, and the expected financial performance of Facebook following completion of the acquisition. Statements regarding future events are based on the parties' current expectations and are necessarily subject to associated risks related to, among other things, regulatory approval of the proposed acquisition or that other conditions to the closing of the deal may not be satisfied, the potential impact on the business of WhatsApp due to the announcement of the acquisition, the occurrence of any event, change or other circumstances that could give rise to the termination of the definitive agreement, and general economic conditions. Therefore, actual results may differ materially and adversely from those expressed in any forward-looking statements. For information regarding other related risks, see the "Risk Factors" section of Facebook's Annual Report on Form 10-K for 2013. The forward-looking statements included herein are made only as of the date hereof, and neither party undertakes an obligation to revise or update any forward-looking statements for any reason.