

FIRST DATA CORP
Form 425
April 08, 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): April 4, 2019

Fiserv, Inc.

(Exact Name of Registrant as Specified in Its Charter)

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

**0-14948
(Commission File Number)**

**39-1506125
(IRS Employer Identification No.)**

255 Fiserv Drive, Brookfield, Wisconsin 53045

(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 8.01. Other Events.

On April 4, 2019, Fiserv, Inc. (*Fiserv*) and First Data Corporation (*First Data*) each received a request for additional information and documentary materials (the *Second Request*) from the U.S. Department of Justice (the *DOJ*) in connection with the DOJ's review of the proposed merger contemplated by the Agreement and Plan of Merger, dated January 16, 2019, by and among Fiserv, 300 Holdings, Inc. and First Data (the *Merger Agreement*). These requests were issued under the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the *Act*), and the effect of the Second Request is to extend the waiting period imposed under the Act. The parties have been working cooperatively with the DOJ to bring its review of the proposed merger to a close and will continue to do so. The parties continue to expect to complete the proposed merger in the second half of 2019, subject to the satisfaction or waiver of the closing conditions specified in the Merger 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 the Agreement and Plan of Merger, dated as of January 16, 2019 (the *Merger Agreement*), by and among Fiserv, Inc. (*Fiserv*), 300 Holdings, Inc. (*Merger Sub*) and First Data Corporation (*First Data*). In connection with the proposed transaction contemplated by the Merger Agreement, Fiserv has filed a registration statement on Form S-4 (Registration No. 333-229689) with the Securities and Exchange Commission (the *SEC*) that includes a joint proxy and consent solicitation statement of Fiserv and First Data that also constitutes a prospectus of Fiserv. The registration statement, as amended, was declared effective by the SEC on March 14, 2019. This communication is not a substitute for the registration statement, the joint proxy and consent solicitation statement, the prospectus of Fiserv 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 AND CONSENT SOLICITATION STATEMENT/PROSPECTUS BECAUSE THEY CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED COMBINATION.**

Shareholders are able to obtain copies of the registration statement, including the joint proxy and 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. Copies of the joint proxy and consent solicitation statement/prospectus can also be obtained, free of charge, by directing a request to Fiserv Investor Relations at Investor Relations, Fiserv, 255 Fiserv Drive, Brookfield, WI 53045, by calling 800-425-3478 or by sending an e-mail to investor.relations@fiserv.com or to First Data Investor Relations at Investor Relations, First Data, 5565 Glenridge Connector NE, Suite 2000, Atlanta, GA 30342, by calling 212-266-3565, or by sending an e-mail to peter.poillon@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 2019 annual meeting of

stockholders filed with the SEC on March 28, 2019. Additional information regarding the interests of these participants is included in the joint proxy and consent solicitation statement/prospectus regarding the proposed transaction and will be included in other relevant materials to be filed with the SEC when they become available. Shareholders should read the joint proxy and consent solicitation statement/prospectus carefully 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 and to achieve the synergies described herein. Statements can generally be identified as forward-looking because they include words such as believes, anticipates, expects, could, should 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 have been or 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, 2018, in other documents that the companies file with the SEC, and under the captions Cautionary Statement Regarding Forward-Looking Statements and Risk Factors in First Data's and Fiserv's joint proxy and consent solicitation statement/prospectus that forms part of the registration statement on Form S-4 filed by Fiserv in connection with the transaction, all of 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.

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: April 8, 2019

By: /s/ Jeffery W. Yabuki
Name: Jeffery W. Yabuki
Title: President and Chief Executive Officer

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