

ASURE SOFTWARE INC

FORM 8-K (Current report filing)

Filed 03/20/17 for the Period Ending 03/20/17

Address	110 WILD BASIN ROAD SUITE 100 AUSTIN, TX 78746
Telephone	5124372700
CIK	0000884144
Symbol	ASUR
SIC Code	7373 - Computer Integrated Systems Design
Industry	Software
Sector	Technology
Fiscal Year	12/31

**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: March 20, 2017
(Date of earliest event reported)

Asure Software, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

0-20008
(Commission File Number)

74-2415696
(IRS Employer
Identification Number)

110 Wild Basin Rd , Suite 100, Austin, TX
(Address of principal executive offices)

78746
(Zip Code)

512-437-2700
(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))
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Item 1.01 Entry Into a Material Definitive Agreement.

On March 20, 2017, we entered into a settlement agreement with the sellers of Mangrove Employer Services, Inc. and certain assets of Mangrove COBRASource, Inc. Under the settlement agreement, we paid off the \$6.0 million secured subordinated promissory note we entered into in March 2016 in favor of the sellers for a discounted lump sum of \$5,879,000. We further agreed to a mutual release of claims, except that the sellers have agreed to continue to indemnify us against certain future tax claims, subject to a \$100,000 deductible. We refer you to the full text of the settlement agreement filed as Exhibit 10.1 hereto.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Effective March 20, 2017, our Board amended our Bylaws to eliminate, in certain circumstances, the minimum 20-day period during which a consent solicitation of 10 or more of our stockholders must remain open. The 20-day period will no longer apply to a consent solicitation conducted by us when the matter is on behalf of the Board and uncontested. In these circumstances, the Bylaw amendment also eliminates the requirement to use an independent inspector of elections. We refer you to the full text of this Bylaw amendment filed as Exhibit 3.1 hereto.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
3.1	Text of Bylaw Amendment
10.1	Letter dated March 20, 2017 from Asure Software, Inc. to Richard S. Cangemi, as Stockholder Representative

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.

ASURE SOFTWARE, INC.

Dated: March 20, 2017

By: /s/ Brad Wolfe
Brad Wolfe, Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
3.1	Text of Bylaw Amendment
10.1	Letter dated March 20, 2017 from Asure Software, Inc. to Richard S. Cangemi, as Stockholder Representative.

Set forth below is the text of the Bylaw amendment, effective March 20, 2017:

The following subsection (4) is added to Article II, Section 12, of our Amended and Restated Bylaws:

(4) Further Exceptions. The requirements of subsection 2 regarding the delayed effectiveness of corporate actions taken by written consent and the giving or revoking of written consents for at least 20 days, and the requirements of subsection 3 regarding the engagement of an independent inspector of elections and the consent review process, shall not apply to a consent solicitation conducted by the Corporation on behalf of the Board of Directors when the Corporation has not been advised, and otherwise has no reason to believe, that stockholders of the Corporation are seeking, or intend to seek, consents in opposition or in the alternative to, or revocations of consents granted with respect to, the Corporation's consent proposal on behalf of the Board of Directors.

**Asure Software, Inc.
110 Wild Basin Road, Suite 100
Austin, Texas 78746**

March 20, 2017

VIA EMAIL richard.cangemi@peopleguru.com

Mr. Richard S. Cangemi, as Stockholder Representative
1501 South Church Avenue
Tampa, Florida 33629

Re: Settlement Relating to Stock Purchase Agreement

Dear Rich:

Pursuant to letters dated October 18, 2016 and January 14, 2017, we asserted several claims for indemnifiable Losses under Section 9.02 of our Stock Purchase Agreement dated March 18, 2016 (the “**Asserted Claims**”), which you have rejected. However, based upon our discussions, we have agreed to settle our disputes as to the Asserted Claims and any other claims that could have been asserted as of the date of this letter, and retire in full the Secured Subordinated Promissory Note dated March 18, 2016 in the face amount of \$6,000,000 for a lump-sum payment by us of \$5,879,000, to be made to you, as Stockholder Representative, within five business days after we both sign this letter. Capitalized terms not otherwise defined in this letter have the same meanings as set forth in our Stock Purchase Agreement or our Asset Purchase Agreement, as the case may be.

Here are the additional details.

1. **Mutual Release of Claims**. In consideration of the payment by us described above and the agreements of the parties in this letter, and subject to the other provisions of this letter agreement, Buyer, on the one hand, and Sellers, on the other hand, hereby release each other from any and all claims, causes of action, damages, liabilities and expenses, including attorneys’ fees, through the date hereof, arising out of or with respect to the Stock Purchase Agreement, the Asset Purchase Agreement and/or the Secured Subordinated Promissory Note, whether known or unknown, matured or unmatured, or fixed or contingent. Upon receipt of payment as provided by this letter, Sellers will promptly mark as “paid” and return the original Secured Subordinated Promissory Note to Buyer.

2. **Amendments to Stock Purchase Agreement**. Despite the release in Section 1 above, the following provisions of the Stock Purchase Agreement and Asset Purchase Agreement will remain in full force and effect:

(a) Sections 3.20 and 6.04 and Article XI of the Stock Purchase Agreement and Sections 4.13 and Article VIII of the Asset Purchase Agreement.

(b) Article VII of the Stock Purchase Agreement, as it relates to future claims for tax indemnification not previously known or knowable, except as further modified herein.

(i) Clause (a) of Section 7.03 of the Stock Purchase Agreement is amended and restated to read “(a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.20 of this Agreement or in Section 4.13 of the Asset Purchase Agreement;”

(ii) Section 7.09 of the Stock Purchase Agreement is amended and restated to read as follows:

“Section 7.09 **Payments**. Notwithstanding any other provision of this Agreement, any amounts payable to Buyer pursuant to this **Article VII** shall be satisfied by payments in accordance with Section 9.06(a). For the sake of clarity, the obligation to make any such payments is subject to the Basket but not to the Cap. For the sake of further clarity, the Basket shall be deemed to reset to \$0.00 as of the date this letter is executed by both parties.”

(c) Article IX of the Stock Purchase Agreement (excluding Section 9.03, which is deleted), except as further modified herein.

(i) Section 9.02 of the Stock Purchase Agreement is amended and restated to read as follows:

“Section 9.02 **Indemnification By the Principal Shareholders**. Subject to the other terms and conditions of this Article IX, the Principal Shareholders, jointly, shall indemnify and defend the Buyer and its Affiliates (including the Company after the Closing) and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Sellers after the Closing, pursuant to Section 6.04 of this Agreement.”

(ii) Section 9.04 of the Stock Purchase Agreement is amended and restated to read as follows:

“Section 9.04 **Certain Limitations**. The indemnification provided for in Section 9.02 shall be subject to the following limitations:

(a) the Principal Shareholders shall not be jointly liable to the Buyer Indemnitees for indemnification under Section 9.02(a) until the aggregate amount of all Losses arising after March 20, 2017 in respect of indemnification under Section 9.02(a) and Article VII together exceeds \$100,000.00 (the “**Basket**”), in which event the Principal Shareholders shall jointly be required to pay or be liable for all such Losses from the first dollar thereafter. The aggregate amount of all Losses (excluding any Losses relating to the Asserted Claims) for which the Principal Shareholders shall be liable pursuant to Section 9.02(a) shall not exceed \$1,000,000.00 (the “**Cap**”).

(b) Reserved.

(c) Reserved.

(d) For purposes of this Article IX, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Company Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.”

(iii) Section 9.06 of the Stock Purchase Agreement is amended to delete the last sentence of subsection (a) and delete and mark as reserved all of subsections (b) and (c).

3. Except as expressly set forth herein, it is the intent of the parties that the rights of either party to insist upon compliance with any provision of the Stock Purchase Agreement or the Asset Purchase Agreement are hereby terminated.

If this letter correctly summarizes our agreement, please so indicate by your signature below.

Very truly yours,

Asure Software, Inc.

Agreed to and accepted:

/s/ Richard S. Cangemi
Richard S. Cangemi, as Stockholder
Representative

By: /s/ Patrick Goepel

Its CEO