

# ACI WORLDWIDE, INC.

## **FORM 8-K** (Current report filing)

Filed 08/17/17 for the Period Ending 08/11/17

Address	3520 KRAFT ROAD, SUITE 300 NAPLES, FL 34105
Telephone	239-403-4600
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Sector	Technology
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**  
Pursuant to Section 13 OR 15(d) of  
the Securities Exchange Act of 1934

**Date of Report (Date of earliest event reported): August 17, 2017 (August 11, 2017)**

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**ACI WORLDWIDE, INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**0-25346**  
(Commission  
File Number)

**47-0772104**  
(I.R.S. Employer  
Identification No.)

**3520 Kraft Rd, Suite 300**  
**Naples, FL 34105**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (239) 403-4600**

(Former Name or Former Address, if Changed Since Last Report)

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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. below):

- 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 under 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.

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

On August 11, 2017, ACI Worldwide, Inc. (the “Company”) filed a Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, which had the effect of restating the information regarding the Company’s registered office and registered agent in Article II of the Company’s 2014 Amended and Restated Certificate of Incorporation. The Restated Certificate of Incorporation only restated and integrated, but did not further amend, the provisions of the 2014 Amended and Restated Certificate of Incorporation. The foregoing description of the Restated Certificate of Incorporation is qualified in its entirety by reference to the full text of the Restated Certificate of Incorporation, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

3.1 Restated Certificate of Incorporation of ACI Worldwide, Inc.

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**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.

ACI WORLDWIDE, INC.

Dated: August 17, 2017

By: /s/ Dennis P. Byrnes  
Dennis P. Byrnes  
Executive Vice President

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**INDEX TO EXHIBITS**

<u>Exhibit No.</u>	<u>Description</u>
3.1	Restated Certificate of Incorporation of ACI Worldwide, Inc.

**ACI WORLDWIDE, INC.**  
**RESTATED CERTIFICATE OF INCORPORATION**

ACI Worldwide, Inc., a Delaware corporation, hereby certifies as follows:

The name of the corporation is ACI Worldwide, Inc. The corporation was originally incorporated as ACI Holding, Inc. The date of filing of the corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 2, 1993. The corporation's Certificate of Incorporation was restated by an Amended and Restated Certification of Incorporation filed with the Secretary of State of the State of Delaware on June 18, 2014 (the "2014 Amended and Restated Certificate of Incorporation"). The 2014 Amended and Restated Certificate of Incorporation was amended by a Certificate of Change of Registered Agent and/or Registered Office filed with the Secretary of State of the State of Delaware on September 10, 2014.

Pursuant to Section 245(a) of the Delaware General Corporation Law, the Restated Certificate of Incorporation attached hereto as Exhibit 1 (the "2017 Restated Certificate of Incorporation") integrates into a single instrument all of the provisions of the 2014 Amended and Restated Certificate of Incorporation which are in effect and operative as a result of having been filed with the Secretary of State of the State of Delaware as certificates of amendment to the 2014 Amended and Restated Certificate of Incorporation.

Pursuant to Section 245(c) of the Delaware General Corporation Law, the 2017 Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the 2014 Amended and Restated Certificate of Incorporation as theretofore amended or supplemented and there is no discrepancy between those provisions and the provisions of the 2017 Restated Certificate of Incorporation.

The terms and provisions of the 2017 Restated Certificate of Incorporation have been duly adopted pursuant to the provisions of Section 245 of the Delaware General Corporation Law.

In Witness Whereof, said corporation has caused the 2017 Restated Certificate of Incorporation to be signed by its duly authorized officer and the foregoing facts stated herein are true and correct.

Dated: August 11, 2017.

ACI Worldwide, Inc.

By: /s/ Dennis P. Byrnes  
Dennis P. Byrnes,  
Executive Vice President

**EXHIBIT 1**  
**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**ACI WORLDWIDE, INC.**

**ARTICLE I**

The name of the corporation (which is hereinafter called the “*Corporation*”) is:

ACI WORLDWIDE, INC.

**ARTICLE II**

The address of the registered office in Delaware is 251 Little Falls Drive, Wilmington, Delaware, 19808, New Castle County, and the name of the registered agent is Corporation Service Company.

**ARTICLE III**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended (the “DGCL”).

**ARTICLE IV**

Section 1. Authorized Capital Stock. The Corporation is authorized to issue two classes of capital stock, designated Common Stock and Preferred Stock. The total number of shares of capital stock that the Corporation is authorized to issue is 285,000,000 shares, consisting of 280,000,000 shares of Common Stock, par value \$0.005 per share, and 5,000,000 shares of Preferred Stock, par value \$0.01 per share.

Preferred Stock. The Preferred Stock may be issued in one or more series. The Board of Directors of the Corporation (the “Board”) is hereby authorized to issue the shares of Preferred Stock in such series and to fix from time to time before issuance the number of shares to be included in any such series and the designation, relative powers, preferences, rights and qualifications, limitations or restrictions of such series. The authority of the Board with respect to each such series will include, without limiting the generality of the foregoing, the determination of any or all of the following:

- (a) the number of shares of any series and the designation to distinguish the shares of such series from the shares of all other series;
- (b) the voting powers, if any, and whether such voting powers are full or limited in such series;
- (c) the redemption provisions, if any, applicable to such series, including the redemption price or prices to be paid;

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- (d) whether dividends, if any, will be cumulative or noncumulative, the dividend rate of such series, and the dates and preferences of dividends on such series;
  - (e) the rights of such series upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Corporation;
  - (f) the provisions, if any, pursuant to which the shares of such series are convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock, or any other security, of the Corporation or any other corporation or other entity and the rates or other determinants of conversion or exchange applicable thereto;
  - (g) the right, if any, to subscribe for or to purchase any securities of the Corporation or any other corporation or other entity;
  - (h) the provisions, if any, of a sinking fund applicable to such series; and
  - (i) any other relative, participating, optional or other special powers, preferences or rights and qualifications, limitations or restrictions thereof;

all as may be determined from time to time by the Board and stated or expressed in the resolution or resolutions providing for the issuance of such Preferred Stock (collectively, a “Preferred Stock Designation”).

Section 2. Common Stock. Subject to the rights of the holders of any series of Preferred Stock, the holders of Common Stock will be entitled to one vote on each matter submitted to a vote at a meeting of stockholders for each share of Common Stock held of record by such holder as of the record date for such meeting.

#### **ARTICLE V**

The Corporation is to have perpetual existence.

#### **ARTICLE VI**

The Board may make, amend, and repeal the Bylaws of the Corporation. Any Bylaw made by the Board under the powers conferred hereby may be amended or repealed by the Board (except as specified in any such Bylaw so made or amended) or by the stockholders in the manner provided in the Bylaws of the Corporation. The Corporation may in its Bylaws confer powers upon the Board in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board by applicable law.

#### **ARTICLE VII**

At any annual meeting or special meeting of stockholders of the Corporation, only such business will be conducted or considered as has been brought before such meeting in the manner provided in the Bylaws of the Corporation. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least a majority of all classes of Voting Stock issued and outstanding, voting as a single class, will be required to amend or repeal, or adopt any provision inconsistent with, this ARTICLE VII. For the purposes of this Certificate of Incorporation, “Voting Stock” means stock of the Corporation of all classes or series entitled to vote generally in the election of Directors.



## ARTICLE VIII

Section 1. Election of Directors. Election of Directors of the Corporation need not be by written ballot unless requested by the Chairman or by the holders of a majority of the Voting Stock present in person or represented by proxy at a meeting of the stockholders at which Directors are to be elected. If authorized by the Board, such requirement of written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Section 2. Nomination of Director Candidates. Advance notice of stockholder nominations for the election of Directors must be given in the manner provided in the Bylaws of the Corporation.

Section 3. Newly Created Directorships and Vacancies. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, disqualification, removal, or other cause will be filled solely by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board, or by a sole remaining Director. Any Director elected in accordance with the preceding sentence will hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor has been elected and qualified. No decrease in the number of Directors constituting the Board may shorten the term of any incumbent Director.

Section 4. Amendment, Repeal, Etc. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least a majority of all classes of Voting Stock issued and outstanding, voting as a single class, is required to amend or repeal, or adopt any provision inconsistent with, this ARTICLE VIII. The vote on amendment or repeal of, or on the adoption of any provision inconsistent with, this ARTICLE VIII must be by written ballot.

## ARTICLE IX

To the full extent permitted by the DGCL or any other applicable law currently or hereafter in effect, no Director of the Corporation will be personally liable to the Corporation or its stockholders for or with respect to any acts or omissions in the performance of his or her duties as a Director of the Corporation. Any repeal or modification of this ARTICLE IX will not adversely affect any right or protection of a Director of the Corporation existing prior to such repeal or modification.

## ARTICLE X

Section 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another company or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an

“Indemnitee”), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted or required by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this ARTICLE X with respect to Proceedings to enforce rights to indemnification, the Corporation shall indemnify any such Indemnitee in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2. Right to Advancement of Expenses. The right to indemnification conferred in Section 1 of this ARTICLE X shall include the right to be paid by the Corporation the expenses (including, without limitation, attorneys’ fees and expenses) incurred in defending any such Proceeding in advance of its final disposition (an “Advancement of Expenses”); provided, however, that, if the DGCL so requires, an Advancement of Expenses incurred by an Indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (an “Undertaking”), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a “Final Adjudication”) that such Indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise. The rights to indemnification and to the Advancement of Expenses conferred in Sections 1 and 2 of this ARTICLE X shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the Indemnitee’s heirs, executors and administrators.

Section 3. Right of Indemnitee to Bring Suit. If a claim under Section 1 or 2 of this ARTICLE X is not paid in full by the Corporation within 60 calendar days after a written claim has been received by the Corporation, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be 20 calendar days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an Advancement of Expenses) it shall be a defense that, and (ii) any suit brought by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Corporation shall be entitled to recover such expenses upon a Final Adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an Advancement of Expenses hereunder, or brought by

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the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such Advancement of Expenses, under this ARTICLE X or otherwise shall be on the Corporation.

Section 4. Non-Exclusivity of Rights. The rights to indemnification and to the Advancement of Expenses conferred in this ARTICLE X shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation or Bylaws, any agreement, any vote of stockholders or disinterested directors or otherwise.

Section 5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the Advancement of Expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this ARTICLE X with respect to the indemnification and Advancement of Expenses of directors and officers of the Corporation.