

# DATAWATCH CORP

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 05/03/17

Address	4 CROSBY DRIVE BEDFORD, MA 01730
Telephone	978-441-2200
CIK	0000792130
Symbol	DWCH
SIC Code	7372 - Prepackaged Software
Industry	Software
Sector	Technology
Fiscal Year	09/30

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933

**DATAWATCH CORPORATION**  
(Exact name of registrant as specified in its charter)

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

**02-0405716**  
(I.R.S. Employer Identification No.)

**4 Crosby Drive**  
**Bedford, Massachusetts 01730**  
**(978) 441-2200**  
(Address of Principal Executive Offices) (Zip Code)

**Third Amended and Restated 2011 Equity Compensation and Incentive Plan**  
(Full title of the plan)

**Michael A. Morrison**  
**President, Chief Executive Officer and Director**  
**DATAWATCH CORPORATION**  
**4 Crosby Drive**  
**Bedford, Massachusetts 01730**

(Name and address of agent for service)

**(978) 441-2200**  
(Telephone number, including area code, of agent for service)

*Copy to:*

**Robert V. Jahrling, Esq.**  
**CHOATE, HALL & STEWART LLP**  
**Two International Place**  
**Boston, MA 02110**  
**(617) 248-5000**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

- |                         |  |                           |                                     |
|-------------------------|--|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/>   | Accelerated filer         | <input type="checkbox"/>            |
| Non-accelerated filer   | <input type="checkbox"/> (Do not check if a smaller reporting company) | Smaller reporting company | <input checked="" type="checkbox"/> |
| Emerging growth company | <input type="checkbox"/>   |                           |                                     |

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 7(a)(2)(B) of the Securities Act.

### CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Offering Price	Amount of Registration Fee(2)
Third Amended and Restated 2011 Equity Compensation and Incentive Plan, Common Stock, \$.01 par value	1,000,000 shares	\$ 8.90(1)	\$ 8,900,000.00	\$ 1,031.51

(1) The price of \$8.90 per share, which is the average of the high and low sale prices per share of Common Stock on the NASDAQ Capital Market on April 27, 2017 is set forth solely for the purpose of calculating the registration fee in accordance with Rule 457(c) under the Securities Act of 1933, as amended (the "Securities Act") and has been used only for those shares without a fixed exercise price.

(2) Calculated pursuant to Section 6(b) of the Securities Act of 1933, as amended.

**REGISTRATION OF ADDITIONAL SECURITIES  
AND  
INCORPORATION OF EARLIER REGISTRATION STATEMENT BY REFERENCE**

This Registration Statement registers additional securities of Datawatch Corporation (“Datawatch” or the “Company”) of the same class as other securities for which the Registration Statement on Form S-8 (File No. 333-180934), as filed with the Securities and Exchange Commission on April 25, 2012, is effective. Pursuant to General Instruction E of Form S-8, this Registration Statement is being filed to register an additional 1,000,000 shares authorized under Datawatch’s Third Amended and Restated 2011 Equity Compensation and Incentive Plan (the “2011 Plan”). An amendment to the 2011 Plan to increase the reserved and authorized number of shares under the 2011 Plan by 1,000,000 was authorized by the Company’s Board of Directors on January 24, 2017 and approved by the Company’s stockholders on April 18, 2017. The contents of the prior Registration Statements on Form S-8, File Nos. 333-180934 and 333-195839, filed by the Registrant on April 25, 2012 and May 9, 2014, respectively, are incorporated herein by reference, except as amended hereby.

**PART I  
INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

The document(s) containing the information specified in this Part I will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. In accordance with the rules and regulations of the Securities and Exchange Commission (the “SEC”) and the instructions to Form S-8, such documents are not being filed with the SEC either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in the registration statement pursuant to Item 3 of Part II of this Form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.**

The following documents filed by Datawatch Corporation (“Datawatch” or the “Company”) with the SEC are incorporated in this Registration Statement by reference as of their respective dates:

- (a) Datawatch’s Annual Report on Form 10-K for the fiscal year ended September 30, 2016 (File No. 000-19960);
- (b) Datawatch’s Quarterly Reports on Form 10-Q for the fiscal quarters ended December 31, 2016 and March 31, 2017 (File No. 000-019960);
- (c) Datawatch’s Current Reports on Form 8-K filed on December 2, 2016, January 27, 2017, February 2, 2017, February 24, 2017 and April 21, 2017 (except, with respect to each of the foregoing, for portions of such reports which were deemed to be furnished and not filed) (File No. 000-19960); and
- (d) The section entitled “Description of Registrant’s Securities to be Registered” contained in Datawatch’s Registration Statement on Form S-1, as amended, which was incorporated by reference in Datawatch’s Registration Statement on Form 8-A filed pursuant to Section 12(g) of the Exchange Act (File No. 33-46290).

All documents subsequently filed with the SEC by Datawatch pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered herein have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated by reference herein modifies or supersedes such statement.

You may obtain copies of these documents, other than exhibits, free of charge on the Company’s website, [www.datawatch.com](http://www.datawatch.com), as soon as reasonably practicable after they have been filed with the SEC and through the SEC’s website, [www.sec.gov](http://www.sec.gov).

**ITEM 4. DESCRIPTION OF SECURITIES.**

Not applicable.

**ITEM 5. INTEREST OF NAMED EXPERTS AND COUNSEL.**

Not applicable.

**ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.**

The Delaware General Corporation Law and our Certificate of Incorporation provide for indemnification of our directors and officers for liabilities and expenses that they may incur in those capacities. In general, directors and officers are indemnified with respect to actions taken in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of Datawatch, and with respect to any criminal action or proceeding, actions that the indemnitee had no reasonable cause to believe were unlawful. We refer you to our Restated Certificate of Incorporation filed as Exhibit 3.2 to our Registration Statement on Form S-1 filed with the SEC on March 17, 1992 (File No. 33-46290) and the Certificate of Amendment thereto filed as Exhibit 3.2 to our Annual Report on Form 10-K for the fiscal year ended September 30, 2001 filed with the SEC on December 28, 2001 (File No. 000-19960).

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We maintain directors' and officers' liability insurance to insure our directors and certain officers against certain liabilities and expenses which arise out of or in connection with their capacities as directors and officers.

We have entered into a separate Indemnification Agreement (the "Indemnification Agreement") with each of our directors. Under the Indemnification Agreement, each director is entitled to be indemnified against all expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of such director in connection with any claims, proceedings or other actions brought against such director as a result of the director's service to us, provided that the director (i) acted in good faith; (ii) reasonably believed the action was in our best interest; and (iii) in criminal proceedings, reasonably believed the conduct was not unlawful. Additionally, the Indemnification Agreement entitles each director to contribution of expenses from us in any proceeding in which we are jointly liable with such director, but for which indemnification is not otherwise available.

The Indemnification Agreement also entitles each director to advancement of expenses incurred by such director in connection with any claim, proceeding or other action in advance of the final adjudication of any such claim, proceeding or other action, provided the director agrees to reimburse us for all such advances if it shall ultimately be determined that the director is not entitled to indemnification.

#### **ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.**

Not applicable.

#### **ITEM 8. EXHIBITS**

<b><u>Exhibit No.</u></b>	<b><u>Description of Exhibit</u></b>
Exhibit 4.1	Specimen certificate representing the Common Stock of Datawatch (filed as Exhibit 4.4 to our Registration Statement on Form S-1 previously filed with the SEC (File No. 33-46290) and incorporated herein by reference).
Exhibit 4.2	Restated Certificate of Incorporation of Datawatch (filed as Exhibit 3.2 to our Registration Statement on Form S-1 previously filed with the SEC (File No. 33-46290) and incorporated herein by reference).
Exhibit 4.3	Certificate of Amendment to the Restated Certificate of Incorporation of Datawatch (filed as Exhibit 3.2 to the our Annual Report on Form 10-K for the fiscal year ended September 30, 2001 previously filed with the SEC (File No. 000-19960) and incorporated herein by reference).
Exhibit 4.4	Amended and Restated By-laws of the registrant (previously filed as an exhibit to registrant's Current Report on Form 8-K filed August 28, 2013 and incorporated herein by reference).
Exhibit 4.5	Third Amended and Restated 2011 Equity Compensation and Incentive Plan of Datawatch (filed as Appendix A to our Definitive Proxy Statement on Schedule 14A filed with the SEC on January 27, 2017 and amended on March 3, 2017 (File No. 000-19960) and incorporated herein by reference).
Exhibit 5.1	Opinion of Choate, Hall & Stewart LLP.
Exhibit 23.1	Consent of RSM US LLP.
Exhibit 23.2	Consent of Choate, Hall & Stewart LLP (included in Exhibit 5.1).
Exhibit 24.1	Power of Attorney (included as part of the signature page to this Registration Statement).

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## ITEM 9. UNDERTAKINGS.

(a) Datawatch hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any Prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the Prospectus any facts or events arising after the effective date of this Registration Statement which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of Prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by Datawatch pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) Datawatch hereby undertakes that, for purposes of determining any liability under the Securities Act to any purchaser, each filing of Datawatch's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of Datawatch pursuant to the provisions described in Item 6, or otherwise, Datawatch has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by Datawatch of expenses incurred or paid by a director, officer or controlling person of Datawatch in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, Datawatch will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing a Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Town of Bedford, Commonwealth of Massachusetts on May 3, 2017.

### DATAWATCH CORPORATION

By: /s/ Michael A. Morrison  
Michael A. Morrison  
President, Chief Executive Officer and Director

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below hereby constitutes and appoints Michael A. Morrison and James Eliason, jointly and severally, his or her true and lawful attorneys-in-fact and agents with full powers of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all supplements amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below on the dates indicated by the following persons in the capacities indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Michael A. Morrison</u> Michael A. Morrison	President, Chief Executive Officer and Director (Principal Executive Officer)	May 3, 2017
<u>/s/ James Eliason</u> James Eliason	Chief Financial Officer, Treasurer, Vice President of Finance and Secretary (Principal Financial and Accounting Officer)	May 3, 2017
<u>/s/ Richard de J. Osborne</u> Richard de J. Osborne	Chairman of the Board	May 3, 2017
<u>/s/ Thomas H. Kelly</u> Thomas H. Kelly	Director	May 3, 2017
<u>/s/ David C. Mahoney</u> David C. Mahoney	Director	May 3, 2017
<u>/s/ Christopher T. Cox</u> Christopher T. Cox	Director	May 3, 2017
<u>/s/ Joan McArdle</u> Joan McArdle	Director	May 3, 2017
<u>/s/ Randy Seidl</u> Randy Seidl	Director	May 3, 2017
<u>/s/ Donald Friedman</u> Donald Friedman	Director	May 3, 2017

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## INDEX TO EXHIBITS

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May 3, 2017

Datawatch Corporation  
4 Crosby Drive  
Bedford, Massachusetts 01730

Re: Registration Statement on Form S-8 (“Registration Statement”)  
Relating to the Third Amended and Restated 2011 Equity  
Compensation and Incentive Plan (the “Plan”) of Datawatch  
Corporation (the “Company”)

Dear Sir or Madam:

Reference is made to the above-captioned Registration Statement on Form S-8 (the “Registration Statement”) filed by the Company on the date hereof with the Securities and Exchange Commission under the Securities Act of 1933, as amended. You have requested our opinion concerning the status under Massachusetts law of the 1,000,000 shares (the “Shares”) of the Company’s common stock, par value \$0.01 per share (“Common Stock”), which are being registered under the Registration Statement for issuance by the Company pursuant to the terms of the Plan.

We have examined, and are familiar with, and have relied as to factual matters solely upon, a copy of the Plan, the Company’s amended and restated certificate of incorporation, as amended, the amended and restated by-laws of the Company, the minute books and stock records of the Company and originals of such other documents, certificates and proceedings as we have deemed necessary for the purpose of rendering this opinion.

In our examination we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such copies. We have also assumed that: (i) all of the Shares will be issued for the consideration permitted under the Plan as currently in effect, and none of such Shares will be issued for less than \$0.01; (ii) all actions required to be taken under the Plan by the Board of Directors of the Company and any committee thereof will be taken by the Board of Directors of the Company and any committee thereof, respectively; and (iii) at the time of the exercise of the options under the Plan, the Company shall continue to have sufficient authorized and unissued shares of Common Stock reserved for issuance thereunder.

Based on the foregoing, we are of the opinion that, upon the issuance of the Shares under the Plan as provided therein, each such Share will be duly authorized, legally issued, fully paid and non-assessable.

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We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement.

Very truly yours,

/s/ Choate Hall & Stewart LLP

CHOATE, HALL & STEWART LLP

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INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Datawatch Corporation on Form S-8 of our report dated November 10, 2016, relating to our audit of the consolidated financial statements of Datawatch Corporation appearing in the Annual Report on Form 10-K of Datawatch Corporation for the year ended September 30, 2016.

/s/ RSM US LLP

RSM US LLP  
Boston, Massachusetts  
May 3, 2017

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