

CDW CORP

FORM 8-K (Current report filing)

Filed 05/25/18 for the Period Ending 05/23/18

Address	200 N MILWAUKEE AVENUE VERNON HILLS, IL, 60061
Telephone	847-465-6000
CIK	0001402057
Symbol	CDW
SIC Code	5961 - Retail-Catalog and Mail-Order Houses
Industry	IT Services & Consulting
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 (Date of earliest event reported): May 23, 2018

CDW CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35985
(Commission
File Number)

26-0273989
(I.R.S. Employer
Identification No.)

75 Tri-State International
Lincolnshire, Illinois
(Address of principal executive offices)

60069
(Zip Code)

Registrant's telephone number, including area code: (847) 465-6000

None
(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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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

On May 23, 2018, the Company filed a certificate of amendment (a “Certificate of Amendment”) to its Fifth Amended and Restated Certificate of Incorporation, as amended, to provide for the annual election of directors. The Certificate of Amendment was effective upon filing with the Secretary of State of the State of Delaware. A copy of the Certificate of Amendment is attached hereto as Exhibit 3.1 and is incorporate herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

On May 23, 2018, the Company held its annual meeting of stockholders in Lincolnshire, Illinois. The final voting results for each of the matters submitted to a stockholder vote at the annual meeting are set forth below.

1. The stockholders elected four Class II Directors with terms expiring at the Company’s 2021 Annual Meeting of Stockholders, subject to the election and qualification of their successors, based on the following voting results:

	Votes For	Votes Against	Abstentions	Broker Non-Votes
Election of Directors				
Virginia C. Addicott	132,743,315	133,415	50,242	7,211,714
James A. Bell	131,920,176	974,586	32,210	7,211,714
Benjamin D. Chereskin	129,598,233	3,172,080	156,659	7,211,714
Paul J. Finnegan	132,764,252	134,753	27,967	7,211,714

2. The stockholders approved, on an advisory basis, the compensation of the Company’s named executive officers, based on the following voting results:

	Votes For	Votes Against	Abstentions	Broker Non-Votes
Advisory Vote on Executive Compensation	125,836,237	6,852,866	237,869	7,211,714

3. The stockholders approved a management proposal regarding amendment of our Fifth Amended and Restated Certificate of Incorporation, as amended, to provide for the annual election of directors:

	Votes For	Votes Against	Abstentions	Broker Non-Votes
Management Proposal Regarding Amendment of our Certificate of Incorporation for the Annual Election of Directors	132,875,360	23,927	27,685	7,211,714

4. The stockholders ratified the selection of Ernst & Young LLP as the Company’s independent registered public accounting firm for the year ending December 31, 2018, based on the following voting results:

	Votes For	Votes Against	Abstentions
Ratification of Independent Registered Public Accounting Firm	140,024,053	77,308	37,325

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment to Fifth Amended and Restated Certificate of Incorporation of the Company.

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.

Date: May 25, 2018

CDW CORPORATION

By: /s/ Frederick J. Kulevich

Frederick J. Kulevich
Senior Vice President, General Counsel and
Corporate Secretary

**CERTIFICATE OF AMENDMENT
TO THE
FIFTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CDW CORPORATION**

* * * *

*Adopted in accordance with the provisions
of §242 of the General Corporation Law
of the State of Delaware*

* * * *

The undersigned, being an authorized officer of CDW Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

FIRST: That the original Certificate of Incorporation of the Corporation was filed with the Delaware Secretary of State on May 25, 2007 under the name VH Holdings, Inc.

SECOND: That an Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on October 5, 2007. The Second Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on October 11, 2007. The Third Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on March 7, 2008. The Fourth Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on August 17, 2010. The Fifth Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on June 13, 2013 and a Certificate of Amendment to the Fifth Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on May 19, 2016 (such certificate, as so amended and restated, the "Certificate of Incorporation").

THIRD: That Sections 3, 4, 5 and 6 of Article Six of the Certificate of Incorporation are hereby amended to read in their entirety as follows:

Section 3. Classes of Directors. Until the 2021 annual meeting of stockholders, the directors of the Corporation, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be divided into three classes, hereby designated Class I, Class II and Class III. Commencing with the 2021 annual meeting of the stockholders, the classification of the directors shall terminate and all directors shall be of one class, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances.

Section 4. Election and Term of Office. A nominee for director shall be elected to the Board of Directors at a duly called meeting of the stockholders at which a quorum is present if the votes of shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote in the election of directors cast "for" such nominee's election exceed the votes of shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote in the election of directors cast "against" such nominee's election (with "abstentions" and "broker non-votes" not counted as votes cast either "for" or "against" that nominee's election); *provided, however*, that directors shall be elected by a plurality of the votes cast at any duly called meeting of the stockholders for which (i) the secretary of the Corporation receives a notice that a stockholder has nominated a person for election to the Board of Directors in compliance with the advance notice requirements for stockholder nominees for director set forth in the Bylaws of the Corporation; and (ii) such nomination has not been withdrawn by such stockholder on or prior to the tenth (10th) day preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders. If directors are elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee.

If an incumbent director is not elected by a majority of votes cast (unless, pursuant to the immediately preceding paragraph, the director election standard is a plurality), the incumbent director shall promptly tender his or her resignation to the Board of Directors for consideration. The Nominating and Corporate Governance Committee will make a recommendation to the Board of Directors on whether to accept or reject the director's resignation, or whether other action should be taken. The Board of Directors will act on the Nominating and Corporate Governance Committee's recommendation and publicly disclose its decision within ninety (90) days from the date of the certification of the election results. An incumbent director who tenders his or her resignation for consideration will not participate in the Nominating and Corporate Governance Committee's or the Board of Directors' recommendation or decision, or any deliberations related thereto.

If a director's resignation is accepted by the Board of Directors pursuant to this Section 4, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors may fill the resulting vacancy pursuant to the provisions of Section 5 of this Article Six or may decrease the size of the Board of Directors pursuant to Section 2 of this Article Six. If a director's resignation is not accepted by the Board of Directors pursuant to this Section 4, such director will continue to serve until such director's successor has been duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Each director elected prior to the 2019 annual meeting of stockholders shall hold office until the annual meeting of stockholders for the year in which such director's term expires and a successor is duly elected and qualified or until his or her earlier death, resignation or removal. The term of the Class III directors elected at the 2016 annual meeting of stockholders shall expire at the 2019 annual meeting of stockholders, the term of the Class I directors elected at the 2017 annual meeting of stockholders shall expire at the 2020 annual meeting of stockholders and the term of the Class II directors elected at the 2018 annual meeting of stockholders shall expire at the 2021 annual meeting of stockholders. Commencing at the 2019 annual meeting of stockholders, directors succeeding those whose terms are then expired shall be elected to hold office until the annual meeting of stockholders held in the year following the year of their election and a successor is duly elected and qualified or until his or her earlier death, resignation or removal. If any director who at the time of his or her most recent election or appointment to a term on the Board of Directors was an officer of the Corporation ceases to be an officer of the Corporation during such term as director, such director shall no longer be qualified to be a director and shall immediately cease to be a director without any further action unless otherwise determined by the Board of Directors. Nothing in this Certificate of Incorporation shall preclude a director from serving consecutive terms. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

Section 5. Newly-Created Directorships and Vacancies. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, disqualification, removal from office or any other cause may be filled only by resolution of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and until his or her successor is elected and qualified. A director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next annual meeting of stockholders and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 6. Removal of Directors. Subject to the rights of the holders of any series of Preferred Stock then outstanding and notwithstanding any other provision of this

Certificate of Incorporation, directors may be removed with or without cause upon the affirmative vote of stockholders representing at least a majority of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (“Voting Stock”), at a meeting of the Corporation’s stockholders called for that purpose; *provided* that at any time prior to the 2021 annual meeting of stockholders, directors may only be removed for cause and only upon the affirmative vote of stockholders representing at least sixty-six and two-thirds percent ($66 \frac{2}{3} \%$) of the voting power of the then outstanding Voting Stock, at a meeting of the Corporation’s stockholders called for that purpose. Any director may resign at any time upon written notice to the Corporation.

FOURTH : That the terms and provisions of this Certificate of Amendment to the Fifth Amended and Restated Certificate of Incorporation were duly adopted by the Board of Directors and the stockholders of the Corporation in accordance with Section 242 of the General Corporation Law of the State of Delaware.

* * * * *

IN WITNESS WHEREOF, the undersigned does hereby certify under penalties of perjury that this Certificate of Amendment to the Fifth Amended and Restated Certificate of Incorporation is the act and deed of the undersigned and the facts stated herein are true and accordingly has hereunto set his or her hand this 23 day of May, 2018.

CDW Corporation
a Delaware corporation

By: /s/ Frederick J. Kulevich

Name: Frederick J. Kulevich

Title: Senior Vice President, General Counsel
and Corporate Secretary