

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

SONIC FOUNDRY INC

Form: 8-K

Date Filed: 2019-08-09

Corporate Issuer CIK: 1029744

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 8-K

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

August 9, 2019 (August 5, 2019)
Date of Report (Date of earliest event reported)

Sonic Foundry, Inc.
(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction
of incorporation)

000-30407
(Commission
File Number)

39-1783372
(IRS Employer
Identification No.)

222 W. Washington Ave
Madison, WI 53703
(Address of principal executive offices)

(608) 443-1600
(Registrant's telephone number)

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))

Item 1.01 Entry into a Material Definitive Agreement.

On August 5, 2019, the Company and Kenneth Minor entered into the following: (i) a Retirement and Transition Agreement, and (ii) an Engagement Letter. Pursuant to the Retirement and Transition Agreement, effective October 1, 2019 (the "Effective Date"). Mr. Minor will retire from his position as (i) Chief Financial Officer of Sonic Foundry, (ii) a member of the Board of Directors of Sonic Foundry Media Systems Inc., Mediasite K.K., and Sonic Foundry International B.V., and (iii) an officer of Sonic Foundry Media Systems, Inc. and Sonic Foundry International B.V. Pursuant to the terms of the retirement and transition agreement, until September 30, 2020, Mr. Minor has agreed to provide transitional services to the Company and to not accept any other employment, consultancy or position that would interfere with Mr. Minor's duties and responsibilities to the Company. Pursuant to the terms of the retirement and transition agreement, Mr. Minor will receive a salary of \$185,000 per year, along with health insurance coverage. In addition, all of Mr. Minor's existing stock options will fully vest on the effective date. The foregoing description of the Retirement and Transition Agreement does not purport to be complete and is subject to, and qualified in its entirety by the full text of the Retirement and Transition Agreement which is incorporated by reference into this Item 1.01 by reference to Exhibit 10.1 to this report.

Pursuant to the terms of the Engagement Letter, effective October 1, 2019, and continuing until terminated by either party upon 60 days prior notice, or as otherwise set forth in the Engagement Letter, Mr. Minor will act as interim Chief Financial Officer ("CFO"). As interim CFO, Mr. Minor will report to the Chief Executive Officer and Board of Directors of the Company, and will receive a monthly payment of \$7,500. The foregoing description of Mr. Minor's Engagement Letter is qualified in all respects by

reference to the full text of the Engagement Letter, which is incorporated by reference into this Item 1.01 by reference to Exhibit 10.2 to this report.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On August 9, 2019, the Company issued a press release announcing the retirement of Kenneth Minor as Chief Financial Officer and his transition to a consultant to the Company. The terms of Mr. Minor's retirement compensation are set forth in Item 1.01 of this report, which is qualified in all respects by (i) the full text of the Retirement and Transition Agreement, which is incorporated by reference into this Item 5.02 by reference to Exhibit 10.1 to this report, and (ii) the full text of the Engagement Letter, which is incorporated by reference into this Item 5.02 by reference to Exhibit 10.2 to this report.

Item 8.01 Other Events.

The full text of the press release announcing the retirement of Mr. Minor is attached herewith as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

- 10.1 Retirement and Transition Agreement as of August 5, 2019 by and between Sonic Foundry, Inc. and Kenneth Minor
 - 10.2 Engagement Letter as of August 5, 2019 by and between Sonic Foundry, Inc. and Kenneth Minor
 - 99.1 Text of press release dated August 9, 2019
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EXHIBIT LIST

NUMBER DESCRIPTION

10.1	<u>Retirement and Transition Agreement as of August 5, 2019 by and between Sonic Foundry, Inc. and Kenneth Minor</u>
10.2	<u>Engagement Letter as of August 5, 2019 by and between Sonic Foundry, Inc. and Kenneth Minor</u>
99.1	<u>Text of press release dated August 9, 2019</u>

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 thereunto duly authorized.

Sonic Foundry, Inc.
(Registrant)

August 9, 2019

By:	<u>/s/ Kenneth A. Minor</u>
By:	Kenneth A. Minor
Title:	Chief Financial Officer

RETIREMENT AND TRANSITION AGREEMENT

THIS RETIREMENT AND TRANSITION AGREEMENT (the "Agreement") made as of August 5, 2019 is by and between SONIC FOUNDRY, INC., a Maryland corporation having its principal offices at 222 West Washington Avenue, Suite 100, Madison, Wisconsin 53703 (hereinafter referred to as "Sonic Foundry" or the "Company"), and KENNETH MINOR (hereinafter referred to as "Minor").

WITNESSETH:

WHEREAS, Sonic Foundry has employed Minor, and Minor has been employed by Sonic Foundry as Chief Financial Officer since June 1997, and since March 31, 2014, pursuant to the terms of a certain amended and restated employment agreement, dated of even date therewith (the "Employment Agreement"); and

WHEREAS, Sonic Foundry and Minor have mutually agreed that effective October 1, 2019 (the "Effective Date"), Minor shall retire from his capacity (i) as Chief Financial Officer of Sonic Foundry, (ii) as a member of the Board of Directors of Sonic Foundry Media Systems, Inc., Mediasite K.K., and Sonic Foundry International B.V., and (iii) as an officer of Sonic Foundry Media Systems, Inc. and Sonic Foundry International B.V., but shall serve in the capacity of Senior Financial Advisor through September 30, 2020; and

WHEREAS, this Agreement is intended to set forth the mutual understanding and agreement of the Company and Minor regarding the transition of Minor from Chief Financial Officer of the Company to Senior Financial Advisor.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

First: Resignation.

Minor hereby resigns as (i) Chief Financial Officer of the Company, (ii) a member of the Board of Directors of Sonic Foundry Media Systems, Inc., Mediasite K.K., and Sonic Foundry International B.V., and (iii) an officer of Sonic Foundry Media Systems, Inc. and Sonic Foundry International B.V., effective as of the Effective Date. Minor agrees to serve as Senior Financial Advisor to the Company from the Effective Date through September 30, 2020, (the "End Date", and such period, the "Consultancy Period"). Except as provided herein, following the Effective Date, the Company will have no further obligations to Minor, and Minor shall have no further obligations to the Company, including under the Employment Agreement. Capitalized terms used in this Agreement that are not defined in this Agreement have the meanings used or defined in the Employment Agreement.

Second: Continuing Duties.

(a) During the term of this agreement, Minor agrees to provide transitional services to the Company. Transitional assistance will relate to the transition of Minor's existing employment responsibilities to his successor. During the term of this Agreement, Minor agrees to make himself reasonably available to provide transitional assistance reasonably requested by the Company, and Minor will not accept any other employment, consultancy or position that would interfere in any way with Minor's duties and responsibilities hereunder. In the event Company requests Minor perform services of a nature similar to any portion of his duties previously performed that is in excess of assistance in transitioning duties to a successor, a separate agreement will be negotiated to document such services. During the term of this agreement, Minor will report to the Chief Executive Officer of the Company.

(b) During the term of this agreement, and in the event Minor elects that Company provide health insurance coverage to him, Minor will receive \$185,000 per year, payable bi-weekly at a rate of 7,115.38, but, except as set in paragraphs (c) and (d) below, will not be eligible for any other compensation or benefits, including those set forth in the Employment Agreement. In the event Minor does not elect that Company provide health insurance coverage to him, Minor will receive \$200,000 per year, payable bi-weekly at a rate

of \$7,692.31. In addition, all of Minor's existing options shall fully vest on the Effective Date and shall not expire by virtue of Minor's termination of active employment hereunder. (For purposes of the expiration of such options, Minor's employment shall be considered terminated at the End Date). In the event of the death of Minor during the Consultancy Period, the remaining unpaid amount under this paragraph (b) shall be paid in one lump sum to Minor's estate. In the event of the disability of Minor during the Consultancy Period such that Minor is unable to perform his duties hereunder, the remaining unpaid amount under this paragraph (b) shall be paid to Minor .

(c) Minor shall be entitled to reimbursement for all reasonable business expenses incurred in connection with the performance of his responsibilities pursuant to this Agreement, including mileage reimbursement and hotel and other expenses incurred in Madison or in other locations where travel is requested.

(d) During the Consultancy Period, Minor shall be entitled to elect to receive, at the Company's expense, medical insurance in the amounts and with coverage as previously provided to him. In the event Minor does not so elect, compensation will be adjusted pursuant to paragraph (b) above.

Third: Restrictive Covenants.

Notwithstanding anything to the contrary in this Agreement or the Employment Agreement, all of Articles Sixth and Tenth of the Employment Agreement (including but not limited to the restrictions on competition set forth in Article Tenth thereof, and Minor's obligation to protect the Company's confidential information set forth in Article Sixth thereof) will continue to apply to Minor (a) with respect to Minor's obligation to protect the Company's confidential information set forth in Article Sixth, indefinitely, and (b) with respect to the restrictions on competition set forth in Article Tenth, during the Transition Period and the Relevant Period. For the avoidance of doubt, the "Relevant Period" is the longer of the period from the End Date through the first anniversary thereof or such longer period as may be set forth or understood from the Employment Agreement.

Fourth: Cancellation of Note

The Company hereby agrees to cancel and to not enforce any rights it may have with respect to a certain promissory note made by Minor, on January 3, 2000, in the original principal amount of \$25,000 plus any accrued interest (the proceeds of which Note were used to purchase common stock of the Company on a no-recourse basis). The parties agree that the value of the 1,000 shares purchased pursuant to the no recourse note is the closing price of Company stock on the Effective Date and Company will accordingly report the forgiveness of such Note on a form 1099 or W2, equal to the value of the stock that supports the Note on the Effective Date.

Fifth: Indemnification.

Nothing in this Agreement will affect the Company's rights to indemnification from Minor in the event Minor breaches Article Third hereof.

Sixth: Arbitration; Governing Law

Any controversy or claim arising out of, or relating to this Agreement or the breach thereof, shall be settled by binding arbitration in the City of Madison pursuant to the laws of the State of Wisconsin in accordance with the rules then obtaining of the America Arbitration Association, and judgments upon the award rendered may be entered in any court having jurisdiction thereof. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Wisconsin. The arbitrators shall have the power in their discretion to award attorneys' fees and other legal costs and expenses to the prevailing party in connection with any arbitration.

Seventh: Notices

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and sent by certified mail to Kenneth Minor, at S8749 Waters Edge Way, Prairie du Sac, WI 53578, or to Sonic Foundry, at its principal office.

Eight: Waiver of Breach

The waiver by Sonic Foundry of a breach of any provision of this Agreement by Minor shall not operate or be construed as a waiver of any subsequent breach by Minor.

Ninth: Assignment

The rights and obligations of Sonic Foundry under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Sonic Foundry.

Tenth: Entire Agreement; Written Amendment

This instrument contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may only be amended, modified, extended or discharged and the provisions of this Agreement may only be waived by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. Without limiting the generality of the foregoing, except as set forth herein, all terms and provisions set forth in the Employment Agreement shall be of no further force or effect.

Eleventh: Equitable Relief; Partial Enforcement

Sonic Foundry and Minor have agreed that violation or breach of Article Third will result in irreparable injury to the Company and shall entitle the Company to equitable relief in addition to any other remedies provided at law. Sonic Foundry and Minor have further agreed in the event that only a portion of Articles Third shall be deemed enforceable or valid that portion of such Article as shall be enforceable or valid shall be enforced. Sonic Foundry and Minor have further agreed that the court making a determination of the validity or enforceability of such Article shall have the power and authority to rewrite the restrictions contained in such Article to include the maximum portion of the restrictions included within such Article as are enforceable, valid and consistent with the intent of the parties as expressed in such Article. In the event that any court rather than arbitration proceeding is initiated by Sonic Foundry in order to obtain equitable relief per this Article Eleventh, absent assertion of a frivolous claim or defense, each party shall bear its or his own legal expenses in connection with such proceeding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SONIC FOUNDRY, INC.

By: /s/ Michael Norregaard

Its: Chief Executive Officer

/s/ Kenneth Minor
Kenneth Minor

Mr. Michael Norregaard
Chief Executive Officer
Sonic Foundry, Inc.
222 W. Washington Ave., Suite 100
Madison, WI 53703

Dear Mr. Norregaard:

This letter agreement (the "Engagement Letter") confirms and sets forth the terms and conditions of the engagement between Kenneth A. Minor ("Minor") and Sonic Foundry, Inc. (the "Company") including the scope of the services to be provided and the basis of compensation for those services. This Engagement Letter is made effective as of October 1, 2019 (the "Effective Date").

1. Scope of Work

- a. Minor shall act as interim Chief Financial Officer ("CFO") of the Company and, as such interim CFO, will provide interim CFO services to the Company, which shall include the following to the extent requested by the Company:
 - i. Supervision of accounting, financial and operations staff.
 - ii. Participation in a reasonable level of review and control procedures required to support presentation of materially accurate and complete financial statements.
 - iii. Review and approval of actual financial results, notes and other disclosures required in periodic presentations to management, the board and filings with the Securities and Exchange Commission ("SEC").
 - iv. Execution of filings with the SEC.
 - v. Coordination and review of short and long-term cash and financial analysis and forecasts as needed.
 - vi. Review and consultation regarding legal agreements being evaluated for consideration by the Company.
 - vii. Negotiation and support related to evaluation of a lease on a new facility for the corporate office.
 - viii. Assistance and participation as needed with the Board and the Special Committee of the Board regarding presentations or potential transactions.
 - ix. Other activities as reasonably requested or determined necessary by the CEO in order to execute the role of interim CFO.
- b. Reporting – Minor will report to the CEO and Board.
- c. Projections; Reliance; Limitation of Duties. You understand that the CFO services to be rendered by Minor will include the preparation of projections and other forward-looking statements, and that numerous factors can affect the actual results of the Company's operations, which may materially and adversely differ from those projections and other forward-looking statements. In providing the CFO services, Minor will be relying on information provided by the Company including but not limited to its management representatives or Board members in the preparation of those projections and other forward-looking statements.

Minor and CEO will agree on the days and times appropriate for Minor to perform his duties and estimate that execution of such duties will take approximately 8-10 hours per week. Any significant increase in scope or work beyond such efforts will require mutual agreement to alter the scope of work and compensation.

2. Payment

Minor will bill the Company for services on a monthly basis at a rate of \$7,500 which is due upon the Company's receipt of Minor's invoice.

3. Expenses

Minor shall be reimbursed by the Company for reasonable out-of-pocket expenses. All fees and expenses due to Minor shall be billed on a monthly basis and agreed to in advance.

4. Employment

The parties intend that an independent contractor relationship will be created by this Agreement. Nothing in this Agreement shall be construed to be inconsistent with that relationship or status. No agent, employee, or representative of the Company shall be deemed to be the employee, agent, or representative of Minor. The Company shall be solely responsible for the payment of all wages and federal, state and local payroll, social security, unemployment, insurance and similar taxes for all of its agents, employees, and representatives. The Company shall not withhold for Minor any federal or state taxes from the amounts to be paid to Minor hereunder, and Minor agrees that he will pay all taxes due on such amounts. Except as provided herein, Minor and his agents, employees, and representatives shall not be entitled to receive any compensation or benefits from the Company by virtue of any services performed under this Agreement; provided, however, that nothing in this Agreement affects any agreements between the Company and Minor, including those provided for in that certain Retirement and Transition Agreement dated July 29, 2019.

5. Term

The engagement shall commence as of the Effective Date hereof and continue until terminated. This Agreement may be terminated by either party without cause by giving 60 days written notice to the other party; provided, however, that if the Company terminates this Agreement for Cause (as defined below), or if Minor terminates this Agreement for Good Reason (as defined below), then any such termination shall be effective immediately upon receipt of a written notice to that effect given by the terminating party to the other party. Upon termination, any fees and expenses due and owing to Minor shall be remitted promptly (including fees and expenses that accrued prior to but were invoiced subsequent to such termination).

For purposes of this Agreement:

“Cause” shall mean if (i) Minor is convicted of, admits guilt in a written document filed with a court of competent jurisdiction to, or enters a plea of nolo contendere to, an allegation of fraud, embezzlement, misappropriation or any felony; or (ii) Minor willfully disobeys a lawful direction of the CEO or Board, which violation shall not have been fully cured (as determined by the Board of Directors acting in good faith) by Minor within 20 days after receipt of written notice of the same from the CFO or Board of Directors; and

“Good Reason” shall mean the direction by the CEO or Board to perform or not perform some act the performance or non-performance of which would result in the violation of applicable law, the Company’s ethics policy or the direction to file or release any information or document with the SEC that in the opinion of Minor is not considered materially accurate or complete.

6. No Third-Party Beneficiary.

The Company acknowledges that all advice (written or oral) given by Minor is intended solely for the benefit and use of the Company. The Company agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than relating to: (a) performing and completing the tasks set forth pursuant to this Agreement; (b) advising the Board and the CEO, (c) implementing and accomplishing any operational and/or financial improvement of the Company and (d) as otherwise required by applicable law or by any contract or agreement to which the Company is a party including loan, lease and similar agreements.

7. Conflicts.

Minor is not currently aware of any relationship that would create a conflict of interest with the Company.

8. Confidentiality / Non-Solicitation.

Minor shall keep as confidential all non-public information received from the Company in conjunction with this engagement, except (i) as requested by the Company or its legal counsel or (ii) as required by legal proceedings; provided, however, that if such non-public information is required to be disclosed in a legal proceeding, Minor shall give the Company at least five business days’ notice prior to such disclosure. All obligations as to non-disclosure shall cease as to any part of such information to the extent that such information is or becomes public other than as a result

of a breach of this provision. Minor acknowledges and represents to the Company that he recognizes his obligations under applicable state and federal securities laws, including his obligation not to disclose material, nonpublic information to any person or other party not subject to a written confidentiality agreement with the Company.

9. Indemnification.

The Company agrees to indemnify, defend, and hold Minor and his agents, employees, representatives, insurers, and all persons acting by, through, or in concert with any of them harmless from any and all charges, claims, complaints, demands, judgments, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, that may arise out of the Company providing false or misleading information to Minor in connection with the efforts required of Minor under this Agreement, or by the Company failing to provide Minor with relevant information in connection with the efforts required of Minor under this Agreement. The Company shall ensure that Minor shall be covered in a manner equivalent to an officer of the Company under the Company's existing director and officer liability insurance policy. The Company shall also, to the extent reasonably available to the Company, maintain any such insurance coverage for a period of not less than two years following the date of the termination of Minor's services under this Agreement. If no such director and officer liability insurance is reasonably available to the Company, the Company will use its best efforts to aid Minor in acquiring such a policy and will reimburse Minor for all costs associated with the policy throughout the term of this Engagement and for two years following the date of termination of Minor's services under this Agreement. The provisions of this Section Nine shall survive the termination of this Agreement.

10. Notices.

Any notices shall be documented and delivered in writing, by mail, courier delivery, facsimile transmission or e-mail addressed to these addresses:

if to Minor:

Kenneth A. Minor
S8749 Waters Edge Way
Prairie du Sac, WI 53578

if to Company:

Chief Executive Officer
222 W. Washington Ave., Suite 100
Madison, WI 53703

if the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms.

Very truly yours,

Kenneth A. Minor

By: /s/ Kenneth Minor

Date: August 5, 2019

Accepted and Agreed:

Sonic Foundry, Inc.

By: /s/ Michael Norregaard
President and Chief Executive Officer

Date: August 5, 2019

Sonic Foundry CFO Ken Minor Announces Retirement

Minor to step down effective Oct. 1, will remain as a consultant for the Company

MADISON, Wis. - August 09, 2019 - Sonic Foundry today announced Chief Financial Officer Ken Minor will retire effective Oct. 1 after 22 years with the company. Minor will continue to serve as a consultant for Sonic Foundry as Interim Chief Financial Officer until a transition of his duties are complete and will continue as a Senior Financial Advisor through Sept. 30, 2020.

Minor joined Sonic Foundry in 1997 and prior to that was Vice President and Treasurer for Fruehauf Trailer Corporation. He also served in various senior accounting and financial positions at public and private corporations including Deloitte Haskins and Sells.

Sonic Foundry has no current plans to directly replace Minor. His responsibilities will be absorbed in-house by the Company's accounting and finance teams, allowing for the reduction of operating expenses.

"It is an honor to have served as CFO of Sonic Foundry for more than two decades. I am thrilled with my time spent at the company and am happy to be able to turn my work over to a talented group of people when our financial outlook is improving. I know it is the right time for me to step away to spend more time with family and pursue other interests. I look forward to helping guide the company moving forward in my new role as a consultant."

"Ken has been a tremendous resource and leader for the company for more than 20 years, and it's been a privilege to have worked alongside him in my time with the company," said Michael Norregaard, CEO, Sonic Foundry. "Our entire leadership team will work closely together for a smooth transition in the finance department, ensuring continuity with the services we provide. We are grateful to still be able to benefit from Ken's business savvy as he steps into a consultant role for us, and I look forward to our continued working relationship. We thank Ken for his service and wish him all the best in his future."

"Ken's commitment to Sonic Foundry over these 22 years has been invaluable," said Mark Burish, Chairman of the Board. "He has guided the Company with his wise counsel through transformational business periods over the years and has been a steadfast and highly respected member of Sonic Foundry's leadership team. On behalf of Sonic Foundry's board, I would like to thank Ken for his service and wish him a wonderful, well-deserved retirement."

About Sonic Foundry®, Inc.

Sonic Foundry (OTC: SOFO) is the global leader for video capture, management and streaming solutions. Trusted by more than 4,900 educational institutions, corporations, health organizations and government entities in over 65 countries, its [Mediasite Video Platform](#) quickly and cost-effectively automates the capture, management, delivery and search of live and on-demand streaming videos. Learn more at www.mediasite.com and @mediasite.

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