

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 6, 2022

Delwinds Insurance Acquisition Corp.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-39783
(Commission File Number)

85-1050265
(IRS Employer
Identification No.)

One City Centre
1021 Main Street, Suite 1960
Houston, TX 77002
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(713) 337-4077**

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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Units, each consisting of one share of Class A Common Stock and one-half of one Redeemable Warrant	DWIN.U	The New York Stock Exchange
Class A Common Stock, par value \$0.0001 per share	DWIN	The New York Stock Exchange
Redeemable Warrants, each whole warrant exercisable for one share of Class A Common Stock at an exercise price of \$11.50	DWIN.WS	The New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of 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. ☐

Item 1.01. Entry into a Material Definitive Agreement.

On June 6, 2022, Delwinds Insurance Acquisition Corp., a special purpose acquisition company incorporated as Delaware corporation (the “**Company**”), issued a promissory note (the “**Note**”) in the aggregate principal amount of up to \$1,159,995.69 to FOXO Technologies Inc., a Delaware corporation (“**FOXO**”), pursuant to which FOXO agreed to loan to the Company up to \$1,159,995.69 (the “**Extension Funds**”) to deposit into the Company’s trust account (the “**Trust Account**”) for each share of Class A common stock of the Company (“**Public Share**”) that was not redeemed in connection with the extension of the Company’s termination date from June 15, 2022 to September 15, 2022 (or such earlier date as determined by the Board).

The Company will deposit the Extension Funds into the Trust Account, which equates to \$0.035 per remaining Public Share, for each month past June 15, 2022 until September 15, 2022 that the Company needs to complete an initial business combination (the “**Initial Business Combination**”), and such amount will be distributed either to: (i) all of the holders of Public Shares upon the Company’s liquidation or (ii) holders of Public Shares who elect to have their shares redeemed in connection with the consummation of the Initial Business Combination.

The Note bears no interest and is repayable in full upon the earlier of (a) the date of the consummation of the Initial Business Combination, or (b) the date of the liquidation of the Company.

The issuance of the Note was made pursuant to the exemption from registration contained in Section 4(a)(2) of the Securities Act of 1933, as amended.

The foregoing description is qualified in its entirety by reference to the Note, a copy of which is attached as Exhibit 10.1 hereto and is incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation Under an Off-balance Sheet Arrangement of a Registrant.

The disclosure contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference in this Item 2.03.

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

On June 6, 2022, the Company held a special meeting of stockholders (the “**Meeting**”). At the Meeting, the Company’s stockholders approved an amendment to the Company’s Amended and Restated Certificate of Incorporation (“**Charter Amendment**”). The Charter Amendment extends the date by which the Company must consummate its Initial Business Combination from June 15, 2022 to September 15, 2022 (or such earlier date as determined by the Board). The Company filed the Charter Amendment with the Secretary of State of the State of Delaware on June 6, 2022. The terms of the Charter Amendment are set forth in the Company’s definitive proxy statement filed with the Securities and Exchange Commission on May 23, 2022.

The foregoing description is qualified in its entirety by reference to the Charter Amendment, a copy of which is attached as Exhibit 3.1 hereto and is incorporated by reference herein.

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

At the Meeting, the Company's stockholders approved the Charter Amendment extending the date by which the Company must consummate the Initial Business Combination from June 15, 2022 to September 15, 2022 (or such earlier date as determined by the Company's Board of Directors) (the "**Extension Amendment Proposal**").

The final voting results for the Extension Amendment Proposal were as follows:

For	Against	Abstain
16,928,163	232,583	0

Stockholders holding 9,077,422 Public Shares exercised their right to redeem their shares for a pro rata portion of the funds in the Trust Account. As a result, approximately \$90,792,966.89 (approximately \$10.00 per Public Share) will be removed from the Trust Account to pay such holders.

Following the redemption, the Company's remaining Public Shares outstanding were 11,047,578. The Company will request a drawdown request under the Note to fund into the Trust Account the required \$0.035 per remaining Public Share into the Trust Account for the first month past June 15, 2022 that the Company needs to complete the Initial Business Combination. After such funding, the Trust Account will contain approximately \$10.035 per remaining Public Share outstanding.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits. The following exhibits are filed with this Form 8-K:

Exhibit No.	Description of Exhibits
3.1	Amendment to Amended and Restated Certificate of Incorporation.
10.1	Promissory Note issued to FOXO Technologies Inc., dated June 6, 2022.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

Delwinds Insurance Acquisition Corp.

Dated: June 7, 2022

By: /s/ Andrew J. Poole

Name: Andrew J. Poole

Title: Chief Executive Officer

AMENDMENT
TO THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
DELWINDS INSURANCE ACQUISITION CORP.

Pursuant to Section 242 of the
Delaware General Corporation Law

DELWINDS INSURANCE ACQUISITION CORP. (the “Corporation”), a corporation organized and existing under the laws of the State of Delaware, does hereby certify as follows:

1. The name of the Corporation is Delwinds Insurance Acquisition Corp.. The Corporation’s Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on April 27, 2020 (the “Original Certificate”). An Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on December 10, 2020 (the “Amended and Restated Certificate of Incorporation”).
 2. This Amendment to the Amended and Restated Certificate of Incorporation amends the Amended and Restated Certificate of Incorporation of the Corporation.
 3. This Amendment to the Amended and Restated Certificate of Incorporation was duly adopted by the affirmative vote of the holders of 65% of the stock entitled to vote at a meeting of stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware (the “DGCL”).
 4. The text of Section 9.1(b) of Article IX is hereby amended and restated to read in full as follows:
 - (b) Immediately after the Offering, a certain amount of the net offering proceeds received by the Corporation in the Offering (including the proceeds of any exercise of the underwriters’ over-allotment option) and certain other amounts specified in the Corporation’s registration statement on Form S-1, as initially filed with the U.S. Securities and Exchange Commission (the “SEC”) on September 11, 2020, as amended (the “**Registration Statement**”), shall be deposited in a trust account (the “**Trust Account**”), established for the benefit of the Public Stockholders (as defined below) pursuant to a trust agreement described in the Registration Statement. Except for the withdrawal of interest to pay taxes (less up to \$100,000 interest to pay dissolution expenses), none of the funds held in the Trust Account (including the interest earned on the funds held in the Trust Account) will be released from the Trust Account until the earliest to occur of (i) the completion of the initial Business Combination, (ii) the redemption of the Offering Shares (as defined below) properly submitted in connection with a stockholder vote seeking to amend the Amended and Restated Certificate (a) to modify the substance or timing of the Corporation’s obligation to allow redemption in connection with the Corporation’s initial Business Combination or to redeem 100% of such shares if the Corporation has not consummated an initial Business Combination by September 15, 2022 (or, if the Office of Delaware Division of Corporation is not open for business (including filing for corporate documents) on such date the next date upon which the Office of the Delaware Division of Corporations shall be open (the “**Deadline Date**”)) or (b) with respect to any other provisions relating to stockholders’ rights or pre-initial Business Combination activity (as described in Section 9.7), and (iii) the redemption of 100% of the Offering Shares (as defined below) if the Corporation is unable to complete its initial Business Combination by the Deadline Date, as applicable. Holders of shares of Common Stock included as part of the units sold in the Offering (the “**Offering Shares**”) (whether such Offering Shares were purchased in the Offering or in the secondary market following the Offering and whether or not such holders are the Sponsor or officers or directors of the Corporation, or affiliates of any of the foregoing) are referred to herein as “**Public Stockholders**.”
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IN WITNESS WHEREOF, Delwinds Insurance Acquisition Corp. has caused this Amendment to the Amended and Restated Certificate to be duly executed in its name and on its behalf by an authorized officer as of this 6th day of June, 2022.

DELOWINDS INSURANCE ACQUISITION CORP.

By: /s/ Andrew J. Poole
Name: Andrew J. Poole
Title: Chief Executive Officer and Chairman

THIS PROMISSORY NOTE ("NOTE") HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF REGISTRATION OF THE RESALE THEREOF UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY IN FORM, SCOPE AND SUBSTANCE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

PROMISSORY NOTE

Dated as of June 6, 2022

Principal Amount: Up to \$1,159,995.69

New York, New York

Delwinds Insurance Acquisition Corp., a special purpose acquisition company incorporated as a Delaware corporation (the "**Maker**"), promises to pay to the order of FOXO Technologies Inc., a Delaware corporation, or its registered assigns or successors in interest (the "**Payee**"), or order, the principal sum of up to One Million One Hundred Fifty-Nine Thousand Nine Hundred Ninety-Five Dollars and Sixty-Nine Cents (\$1,159,995.69) in lawful money of the United States of America, on the terms and conditions described below. All payments on this Note shall be made by check or wire transfer of immediately available funds or as otherwise determined by the Maker to such account as the Payee may from time to time designate by written notice in accordance with the provisions of this Note.

1. Principal. The principal balance of this Note shall be due and payable by the Maker (such date, the "**Maturity Date**"), subject to Section 12 below, upon the consummation of the Maker's proposed initial business combination (the "**Transaction**") with the Payee. Under no circumstances shall any individual, including, but not limited to, any officer, director, employee or shareholder of the Maker, be obligated personally for any obligations or liabilities of the Maker hereunder.

2. Interest. No interest shall accrue on the unpaid principal balance of this Note.

3. Drawdown Requests. The Payee will fund up to One Million One Hundred Fifty-Nine Thousand Nine Hundred Ninety-Five Dollars and Sixty-Nine Cents (\$1,159,995.69) into the trust account of the Maker established in connection with its initial public offering (the "**Trust Account**"), such amounts to be for the benefit of the holders of the Maker's unredeemed shares of Class A common stock upon redemption or liquidation of the Maker in accordance with the Maker's amended and restated certificate of incorporation. The principal of this Note may be drawn down in three equal amounts of \$386,665.23 per withdraw, between the 15th and 22nd of each of June, July and August 2022, up until the date on which the Maker consummates its initial business combination, upon written request from the Maker to the Payee (each, a "**Drawdown Request**"). Each Drawdown Request must be made before the 15th of each applicable month, and state the amount to be drawn down. The Payee, in its sole discretion, shall fund each Drawdown Request via a wire transfer directly to the Trust Account no later than the 22nd of each applicable month; *provided, however*, that the maximum amount of drawdowns collectively under this Note shall not exceed One Million One Hundred Fifty-Nine Thousand Nine Hundred Ninety-Five Dollars and Sixty-Nine Cents (\$1,159,995.69). Once an amount is drawn down under this Note, it shall not be available for future Drawdown Requests. Except as set forth herein, no fees, payments or other amounts shall be due to the Payee in connection with, or as a result of, any Drawdown Request by the Maker.

4. Application of Payments. All payments shall be applied first to payment in full of any costs incurred in the collection of any sum due under this Note, including, without limitation, reasonable attorneys' fees, and then to the payment in full of any late charges and finally to the reduction of the unpaid principal balance of this Note.

5. Events of Default. The following shall constitute an event of default (“Event of Default”):

(a) Failure to Make Required Payments. Failure by the Maker to pay the principal amount due pursuant to this Note within one (1) business day of the Maturity Date.

(b) Voluntary Bankruptcy, Etc. The commencement by the Maker of a voluntary case under any applicable bankruptcy, insolvency, reorganization, rehabilitation or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Maker or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the failure of the Maker generally to pay its debts as such debts become due, or the taking of corporate action by the Maker in furtherance of any of the foregoing.

(c) Involuntary Bankruptcy, Etc. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Maker in an involuntary case under any applicable bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Maker or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

6. Remedies.

(a) Upon the occurrence of an Event of Default specified in Section 5(a) hereof, the Payee may, by written notice to the Maker, declare this Note to be due immediately and payable, whereupon the unpaid principal amount of this Note, and all other amounts payable hereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the documents evidencing the same to the contrary notwithstanding.

(b) Upon the occurrence of an Event of Default specified in Sections 5(b) and 5(c), the unpaid principal balance of this Note, and all other sums payable with regard to this Note, shall automatically and immediately become due and payable, in all cases without any action on the part of the Payee.

7. Waivers. The Maker and all endorsers and guarantors of, and sureties for, this Note waive presentment for payment, demand, notice of dishonor, protest, and notice of protest with regard to this Note, all errors, defects and imperfections in any proceedings instituted by the Payee under the terms of this Note, and all benefits that might accrue to the Maker by virtue of any present or future laws exempting any property, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, and the Maker agrees that any real estate that may be levied upon pursuant to a judgment obtained by virtue hereof or any writ of execution issued hereon, may be sold upon any such writ in whole or in part in any order desired by the Payee.

8. Unconditional Liability. The Maker hereby waives all notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, and agrees that its liability shall be unconditional, without regard to the liability of any other party, and shall not be affected in any manner by any indulgence, extension of time, renewal, waiver or modification granted or consented to by the Payee, and consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Payee with respect to the payment or other provisions of this Note, and agrees that additional makers, endorsers, guarantors, or sureties may become parties hereto without notice to the Maker or affecting the Maker’s liability hereunder.

9. Notices. All notices, statements or other documents which are required or contemplated by this Note shall be made in writing and delivered: (a) personally or sent by first class registered or certified mail, overnight courier service or facsimile or electronic transmission to the address designated in writing, (b) by facsimile to the number most recently provided to such party or such other address or fax number as may be designated in writing by such party or (c) by electronic mail, to the electronic mail address most recently provided to such party or such other electronic mail address as may be designated in writing by such party. Any notice or other communication so transmitted shall be deemed to have been given on the day of delivery, if delivered personally, on the business day following receipt of written confirmation, if sent by facsimile or electronic transmission, one (1) business day after delivery to an overnight courier service or five (5) days after mailing if sent by mail.

10. Construction. THIS NOTE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.

11. Severability. Any provision contained in this Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. Trust Waiver. Notwithstanding anything herein to the contrary, the Payee hereby waives any and all right, title, interest or claim of any kind (“**Claim**”) in or to any distribution of or from the trust account (the “**Trust Account**”) established in which the proceeds of the initial public offering (“the “**IPO**”) conducted by the Maker (including the deferred underwriters’ discounts and commissions) and the proceeds of the sale of the units issued in a private placement that occurred prior to the closing of the IPO were deposited, as described in greater detail in the Maker’s Registration Statement on Form S-1 (333-248753) filed with the Securities and Exchange Commission in connection with the IPO, and hereby agrees not to seek recourse, reimbursement, payment or satisfaction for any Claim against the Trust Account for any reason whatsoever. The provisions of this Section 12 shall be in addition to, and not in limitation of, any releases of Claims provided by the Payee pursuant to any other agreement between the Payee and the Maker, including, without limitation, that certain Agreement and Plan of Merger, dated as of February 24, 2022 (as amended on April 26, 2022 and as may be amended or supplemented from time to time) with, DWIN Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of the Maker, and DIAC Sponsor LLC, a Delaware limited liability company, in its capacity as Purchaser Representative, for the purposes set forth therein, solely with respect to certain sections thereof.

13. Amendment; Waiver. Any amendment hereto or waiver of any provision hereof may be made with, and only with, the written consent of the Maker and the Payee.

14. Assignment. No assignment or transfer of this Note or any rights or obligations hereunder may be made by the Maker (by operation of law or otherwise) without the prior written consent of the Payee and any attempted assignment without the required consent shall be void.

15. Termination. In the event that the Transaction is not consummated, the Maker shall not have any obligation or liability to the Payee hereunder and this Note shall be automatically be null, void and without any further legal import.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Maker, intending to be legally bound hereby, has caused this Note to be duly executed by the undersigned as of the day and year first above written.

Delwinds Insurance Acquisition Corp.

By: /s/ Andrew J. Poole
Name: Andrew J. Poole
Title: CEO

IN WITNESS WHEREOF, the Payee, intending to be legally bound hereby, has caused this Note to be duly executed by the undersigned as of the day and year first above written.

FOXO Technologies Inc.

By: /s/ Jon Sabes
Name: Jon Sabes
Title: CEO

[Signature Page – Promissory Note]