

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 Earliest Event Reported): November 8, 2022

FOXO TECHNOLOGIES INC.
(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.)

729 N. Washington Ave., Suite 600
Minneapolis, MN
(Address of Principal Executive Offices)

55401
(Zip Code)

(612) 562-9447
(Registrant's telephone number, including area code)

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
Class A Common Stock, par value \$0.0001	FOXO	NYSE American
Warrants, each warrant exercisable for one share of Class A Common Stock for \$11.50 per share	FOXO 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 November 10, 2022, FOXO Technologies Inc. (the “Company”) and Meteora Special Opportunity Fund Fund I, LP, Meteora Select Trading Opportunities Master, LP, and Meteora Capital Partners, LP (collectively, “Meteora”) amended that certain Forward Share Purchase Agreement, dated as of September 13, 2022 (the “Forward Purchase Agreement”), by and between the Company and Meteora (the “Amendment”). Pursuant to the Amendment, Section 1(b) of the Forward Purchase Agreement was replaced to state that on the Put Date (as defined in the Forward Purchase Agreement), Meteora would be entitled to retain 500,000 shares of the Company’s Class A common stock. To the extent Meteora owns less than 500,000 shares of Class A common stock, the Company agreed to transfer to Meteora the difference between such amount and the amount of shares then owned in the form of fully-registered, freely tradable shares.

The foregoing description of the Forward Purchase Agreement is not complete and is qualified in its entirety by reference to the full text of the Forward Purchase Agreement, a copy of which is filed as Exhibit 10.14 to the Company’s Current Report on Form 8-K filed with the SEC on September 21, 2022. The foregoing description of the Amendment does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the Amendment, which is included as Exhibit 10.1 to this current report on Form 8-K.

Item 1.02 Termination of a Material Definitive Agreement.

On November 8, 2022, the Company and CF Principal Investments LLC (the “Cantor Investor”) mutually terminated that certain Common Stock Purchase Agreement, dated as of February 24, 2022 (the “Purchase Agreement”), by and between the Company and the Cantor Investor. Upon the termination of the Purchase Agreement, the related Registration Rights Agreement, dated as of February 24, 2022 (the “Registration Rights Agreement”), by and between the Company and the Cantor Investor was automatically terminated in accordance with its terms. Pursuant to the terms of the Purchase Agreement, the Company issued 190,476 shares of Class A Common Stock to the Cantor Investor on September 16, 2022 as consideration for its irrevocable commitment to purchase the shares of Class A Common Stock upon the terms and subject to the satisfaction of the conditions set forth in the Purchase Agreement.

On November 11, 2022, the Company and Meteora mutually terminated the Forward Share Purchase Agreement, as amended by the Amendment. Upon termination, the Put Date (as defined in the Forward Purchase Agreement) was accelerated, entitling Meteora to retain 500,000 shares of Class A common stock. Upon the termination of the Forward Purchase Agreement, the related escrow agreement was terminated.

The foregoing descriptions of the Purchase Agreement and the Registration Rights Agreement are not complete and are qualified in their entirety by reference to the full text of the Purchase Agreement and the Registration Rights Agreement, copies of which are filed as Exhibit 10.4 and 10.5, respectively, to the Company’s Current Report on Form 8-K filed with the SEC on March 2, 2022. The foregoing description of the Forward Purchase Agreement is not complete and is qualified in its entirety by reference to the full text of the Forward Purchase Agreement, a copy of which is filed as Exhibit 10.14 to the Company’s Current Report on Form 8-K filed with the SEC on September 21, 2022.

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

On November 15, 2022, the Company announced that Jon Sabes and Steven Sabes have been terminated as the Company's Chief Executive Officer and Chairman and Chief Operating Officer, respectively, effective as of November 14, 2022. Jon Sabes and Steven Sabes have served as the Company's Chief Executive Officer and the Company's Chief Operating Officer, respectively, since the consummation of the Company's business combination with FOXO Technologies Operating Company, formerly FOXO Technologies Inc. and now a wholly owned subsidiary of the Company ("FOXO OpCo"), on September 15, 2022 (the "Business Combination"). Jon Sabes remains a director on the Company's board of directors (the "Board"). The Board appointed Bret Barnes, a current director of the Company, to serve as the new Chairman of the Board, effectively immediately. The Company has initiated a search process to identify its next Chief Executive Officer.

The Board also named Tyler Danielson, who serves as the Company's Chief Technology Officer, Interim Chief Executive Officer and principal executive officer, effectively immediately. Mr. Danielson will also continue in his role as Chief Technology Officer.

Mr. Danielson, age 37, has served as the Company's Chief Technology Officer since the consummation of the Business Combination and as FOXO OpCo's Chief Technology Officer since 2020. From 2019 to 2020, Mr. Danielson served as Platform Product Owner of Cargill, a Global Food Distributor. Before that, from 2015 to 2019, Mr. Danielson served as User Interface Software Architect at brightpeak financial, a division of Thrivent Financial. Mr. Danielson holds a Master's Degree in Computer Science from the University of Minnesota.

Messrs. Barnes and Danielson previously entered into the Company's standard form of indemnification agreement, the form of which is filed as Exhibit 10.17 to the Company's Current Report on Form 8-K filed with the SEC on September 21, 2022.

Mr. Barnes will be entitled to receive compensation for his services as Chairman of the Board based on an annual compensation program for the Company's non-employee directors. The material terms of this program are not yet known and will depend on the judgment of the members of the Board based on advice and counsel of its advisors.

There are no arrangements or understandings between Mr. Barnes and any other person pursuant to which he was selected as the Chairman of the Board. There are no family relationships between Mr. Barnes and any director or executive officer of the Company. Mr. Barnes does not have any direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

The Company will disclose Mr. Danielson's compensation as Interim Chief Executive Officer, once determined, in a Current Report on Form 8-K.

There are no arrangements or understandings between Mr. Danielson and any other person pursuant to which he was selected as the Interim Chief Executive Officer. There are no family relationships between Mr. Danielson and any director or executive officer of the Company. Mr. Danielson does not have any direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Chief Executive Officer Severance Terms

In connection with his termination and under Jon Sabes' employment agreement with FOXO OpCo, the Company may be obligated to pay Jon Sabes cash severance equal to thirty-six (36) months of his base salary. In addition to the cash severance, all the equity awards outstanding for Jon Sabes, as of November 14, under the Company's Management Contingent Share Plan (the "MCSP"), will be vested immediately, to the extent that the performance-based conditions under the MCSP are met. The Company is currently reviewing its obligations to Jon Sabes pursuant to such employment agreement.

The foregoing description of the MCSP is not complete and is qualified in its entirety by reference to the full text of the MCSP, a copy of which is filed as Exhibit 10.6 to the Company's Current Report on Form 8-K filed with the SEC on September 21, 2022.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

10.1	<u>Amendment to Forward Purchase Agreement, dated November 10, 2022, by and between (i) FOXO Technologies Inc. (f/k/a Delwinds Insurance Acquisition Corp.), (ii) Meteora Special Opportunity Fund I, LP, a Delaware limited partnership ("MSOF"), (iii) Meteora Select Trading Opportunities Master, LP, a Cayman Islands limited partnership ("MSTO") and (iv) Meteora Capital Partners, LP, a Delaware limited partnership.</u>
10.2*	<u>Form of Indemnification Agreement (incorporated by reference to Exhibit 10.17 to the Company's Current Report on Form 8-K, filed with the SEC on September 21, 2022).</u>
104	Cover page formatted in Inline XBRL.

* Indicates management contract or compensatory plan or arrangement.

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.

FOXO Technologies Inc.

By: /s/ Tyler Danielson

Name: Tyler Danielson

Title: Interim Chief Executive Officer

Date: November 15, 2022

AMENDMENT TO FORWARD SHARE PURCHASE AGREEMENT

This Amendment to the Forward Share Purchase Agreement (this “Amendment”), dated as of November 10, 2022, amends the Forward Share Purchase Agreement dated as of September 13, 2022 (the “Agreement”), by and among (i) FOXO Technologies Inc. (f/k/a Delwinds Insurance Acquisition Corp.), a Delaware corporation (“DWIN”), (ii) Meteora Special Opportunity Fund I, LP, a Delaware limited partnership (“MSOF”), (iii) Meteora Select Trading Opportunities Master, LP, a Cayman Islands limited partnership (“MSTO”) and (iv) Meteora Capital Partners, LP, a Delaware limited partnership (“MCP” and together with MSOF and MSTO, each individually an “Investor” and collectively, the “Investors”). Each of DWIN, MSOF, MSTO, and MCP is individually referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Delwinds Insurance Acquisition Corp. was a special purpose acquisition company, also known as a blank check company, formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses;

WHEREAS, DWIN entered into a Business Combination Agreement, dated as of February 24, 2022 (the “Business Combination Agreement”), by and among DWIN, a Delaware corporation, DWIN Merger Sub Inc., a Delaware corporation and a wholly-owned subsidiary of DWIN, DIAC Sponsor LLC, a Delaware limited liability company and FOXO Technologies Inc., a Delaware corporation (“FOXO”), pursuant to which a wholly owned subsidiary of DWIN acquired FOXO by merger of FOXO with and into such subsidiary (such merger and the other transactions contemplated by the Business Combination Agreement, collectively, the “Business Combination”), and DWIN was re-named “FOXO Technologies Inc.” upon the consummation of the Business Combination (FOXO Technologies Inc., as the post- combination company shall be referred to herein as the “Company”), and DWIN filed a Registration Statement on Form S-4 (the “Registration Statement”) with the U.S. Securities and Exchange Commission (the “Commission”), and the Registration Statement included a proxy statement/prospectus and certain other related documents;

WHEREAS, the Parties are each a party to the Agreement, pursuant to which the Company agreed to purchase from the Investors, and the Investors may sell and transfer to the Company, in each case, subject to the conditions set forth herein, certain shares of Common Stock (as defined herein) of DWIN, which the Investors have purchased prior to the date hereof and do not redeem prior to the closing of the Business Combination (the “BC Closing”) or which the Investors purchase from redeeming stockholders of DWIN prior to the BC Closing (the “Shares”) on the terms set forth herein; and WHEREAS, the Parties desire to enter into this Amendment to amend the Original Agreement to change the Maturity Consideration that may be due to the Investors on the Put Date.

NOW, THEREFORE, in consideration of the premises, representations, warranties and the mutual covenants contained in this Amendment, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Amendments. The Parties agree to amend the Agreement to include the following in the Amendment: Section 1(b) of the Agreement shall be deleted in its entirety and replaced with the following:

b) Shares Closing. If a Shares Sale Notice is timely delivered by any Investor to the Company and Escrow Agent, the closing of the sale of the Shares contemplated in each such timely delivered Share Sales Notice (the "Shares Closing") shall occur no later than the Put Date. On the Put Date, each selling Investor shall deliver, or cause to be delivered, the Shares (net of the Maturity Consideration as defined below, if applicable) subject to the applicable Shares Sale Notice free and clear of all liens and encumbrances to Escrow Agent and, in exchange therefor, the Escrow Agent shall deliver to each such selling Investor(s) an amount equal to (i) the Shares Purchase Price multiplied by (ii) the number of Shares being sold (for the avoidance of doubt, without netting the Maturity Consideration as defined below, if applicable) by such selling Investor to the Company (with respect to any particular selling Investor, the "Investor Shares Purchase Price"), which shall be paid by wire transfer of immediately available funds from the Escrow Account. The Escrow Agent shall, (i) without delay, release from the Escrow Account to each selling Investor on the Put Date, for such selling Investor's use without restriction, an amount equal to the applicable Investor Shares Purchase Price, and (ii) promptly deliver such sold Shares (net of the Maturity Consideration as defined below, if applicable) to the Company. Upon termination of the agreement governing the terms of the Escrow Account to be established in connection herewith, all interest accrued on the escrowed property shall be promptly released to the Investors. The Put Date may be accelerated by the Investor if (i) the Shares are delisted from a Qualified Exchange, (ii) the Agreement is terminated for any reason after the closing of the Business Combination, or (iii) during any 30 consecutive trading day period following the closing of the Business Combination, the VWAP Price (as defined below) for 20 trading days during such period shall be less than \$2.50 per Share. For purposes of this Agreement, the "VWAP Price" per Share shall be determined for any trading day or any specified trading period using the Rule 10b-18 volume weighted average price per share of Common Stock as reported via a Bloomberg Terminal by searching "FOXO <Equity> AQR SEC" (or any successor thereto). On the Put Date the Investor(s) shall be entitled to retain 500,000 Company shares (the "Maturity Consideration"). Such Maturity Consideration shall be subtracted from any Shares to be delivered to the Company by the Investors on the Put Date to the extent the number of Shares then owned by the Investors is equal to or greater than the Maturity Consideration. To the extent the Investors own less Shares than the Maturity Consideration on the Put Date, the Company shall transfer to the Investors the difference between the Maturity Consideration and Shares in the form of fully-registered, freely tradeable shares.

2. No Other Amendments. All other terms and conditions of the Agreement shall remain in full force and effect and the Agreement shall be read and construed as if the terms of this Amendment were included therein by way of addition or substitution, as the case may be.

3. Counterparts. This Amendment may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Signatures sent by facsimile transmission or in PDF format shall be deemed to be originals for all purposes of this Amendment.

4. Ratification. The terms and provisions set forth in this Amendment modify and supersede all inconsistent terms and provisions set forth in the Amendment and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Agreement are ratified and confirmed and continue in full force and effect. All parties hereby agree that the Agreement, as amended by this Amendment, shall continue to be legal, valid, binding and enforceable in accordance with their terms.

5. Governing Law; Jurisdiction. This Amendment, the entire relationship of the Parties, and any litigation among the Parties (whether grounded in contract, tort, statute, law or equity) shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Delaware, without giving effect to its choice of laws or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any dispute arising from or relating to the relative rights of the parties hereto and all other questions concerning the construction, validity and interpretation of this Amendment, shall be brought exclusively in the Court of Chancery of the State of Delaware (the "Court of Chancery") or, to the extent the Court of Chancery does not have subject matter jurisdiction, the United States District Court for the District of Delaware and the appellate courts having jurisdiction of appeals in such courts (the "Delaware Federal Court") or, to the extent neither the Court of Chancery nor the Delaware Federal Court has subject matter jurisdiction, the Superior Court of the State of Delaware (the "Chosen Courts"), and, solely with respect to any such action (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action in the Chosen Courts, and (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto.

[Signature page follows]

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment to be effective as of the date first set forth above.

MSOF:

**METEORA SPECIAL OPPORTUNITY
FUND I, LP**

By: /s/ Vik Mittal
Name: Vik Mittal
Title: CIO/Managing Member

Address for Notices:
1200 N Federal Hwy, Suite 200
Boca Raton, FL 33432
Email: team@meteoracapital.com

MSTO:

**METEORA SELECT TRADING OPPORTUNITIES MASTER,
LP**

By: /s/ Vik Mittal
Name: Vik Mittal
Title: CIO/Managing Member

Address for Notices:
1200 N Federal Hwy, Suite 200
Boca Raton, FL 33432
Email: team@meteoracapital.com

MCP:

METEORA CAPITAL PARTNERS, LP

By: /s/ Vik Mittal
Name: Vik Mittal
Title: CIO/Managing Member

Address for Notices:
1200 N Federal Hwy, Suite 200
Boca Raton, FL 33432
Email: team@meteoracapital.com

[Signature Page to Amendment to Forward Share Purchase Agreement]

DWIN:

**FOXO TECHNOLOGIES INC. (F/K/A DELWINDS
INSURANCE ACQUISITION CORP.)**

By: /s/ Jon Sabes

Name: Jon Sabes

Title: Chief Executive Officer

Address for Notices:

729 N Washington Ave., Suite 600

Minneapolis, MN 55401

Email: jsabes@foxotechnologies.com

[Signature Page to Amendment to Forward Share Purchase Agreement]