Dealertrack Technologies, Inc
Form 8-K
June 15, 2015

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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FORM 8-K

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CURRENT REPORT

Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): June 11, 2015

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DEALERTRACK TECHNOLOGIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

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Delaware **(State or Other Jurisdiction of Incorporation)**	**000-51653** **(Commission File Number)**	**52-2336218** **(IRS Employer Identification No.)**

1111 Marcus Ave., Suite M04, Lake Success, NY 11042
(Address of Principal Executive Offices) (Zip Code)

(516) 734-3600

(Registrant's Telephone Number, Including Area Code)

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))

Item 1.01. Entry into a Material Definitive Agreement.

Agreement and Plan of Merger

On June 12, 2015, Dealertrack Technologies, Inc., a Delaware corporation (the "Company"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with Cox Automotive, Inc., a Delaware corporation ("Parent"), and Runway Acquisition Co., a Delaware corporation and a wholly owned subsidiary of Parent ("Acquisition Sub"), pursuant to which Acquisition Sub will, on the terms and subject to the conditions set forth therein, conduct a tender offer for all of the Company's common stock, par value $0.01 per share (the "Company Common Stock"), and then merge with and into the Company.

Pursuant to the Merger Agreement, upon the terms and subject to the conditions set forth therein, Acquisition Sub will commence a tender offer (the "Offer") no later than 10 business days after the date of the Merger Agreement to acquire all outstanding shares of Company Common Stock at a purchase price of $63.25 per share (the "Offer Price"), net to the seller in cash, without interest, less any required withholding taxes. The Merger Agreement further provides that upon the terms and subject to the conditions set forth therein, following completion of the Offer, Acquisition Sub will merge with and into the Company, with the Company continuing as the surviving corporation and as a wholly owned subsidiary of Parent (the "Merger"). The Merger will be governed by Section 251(h) of the General Corporation Law of the State of Delaware and there will be no stockholder vote required to consummate the Merger. In the Merger, each outstanding share of Company Common Stock, other than shares of Company Common Stock held by the Company, Parent or Acquisition Sub or held by stockholders who are entitled to demand, and who properly demand, appraisal rights under Delaware law, will be converted into the right to receive cash in an amount equal to the Offer Price, subject to any required withholding of taxes and without interest.

The Offer is subject to customary conditions, including, among other things, (i) that the Merger Agreement has not been terminated in accordance with its terms, (ii) that the number of shares of Company Common Stock validly tendered in accordance with the terms of the Offer and not validly withdrawn, together with any shares of Company Common Stock then owned by Parent or its subsidiaries, shall equal at least a majority of the outstanding shares of Company Common Stock, (iii) that any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder shall have expired or otherwise been terminated and (iv) that no governmental authority shall have enacted any law or order which makes the Offer or the Merger illegal or otherwise prohibits the consummation of the Offer or the Merger. The Offer also is subject to other customary conditions for a transaction of this nature.

The Merger is subject to the following closing conditions: (i) Acquisition Sub having accepted for payment all shares of Company Common Stock validly tendered and not withdrawn in the Offer and (ii) no governmental authority having enacted any law or order which makes the Merger illegal or otherwise prohibits the consummation of the Merger.

The board of directors of the Company (the "Company Board") has unanimously (i) determined that the Merger Agreement and the transactions contemplated by the Merger Agreement, including the Offer and the Merger, are fair to and in the best interests of the Company's stockholders, (ii) approved and declared advisable the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, in accordance with the requirements of Delaware law, and (iii) resolved to recommend that the stockholders of the Company accept the Offer and tender their shares of Company Common Stock to Acquisition Sub in the Offer. The respective boards of directors of Parent and Acquisition Sub have also approved the Offer and the Merger.

The Merger Agreement contains representations, warranties and covenants of the parties customary for a transaction of this type, including, among other things, a covenant of the Company not to solicit alternative transactions or to provide information or enter into discussions in connection with alternative transactions, subject to certain exceptions to allow the Company's board of directors to act in accordance with its fiduciary duties.

The Merger Agreement may be terminated under certain circumstances, including in specified circumstances in connection with superior proposals. Upon the termination of the Merger Agreement, under specified circumstances, the Company will be required to pay Parent a termination fee of $118,000,000. The Merger Agreement also provides that Parent will be required to pay the Company a reverse termination fee of $118,000,000 under specified circumstances set forth in the Merger Agreement.

The foregoing summary of the Merger Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, a copy of which is attached as Exhibit 2.1 to this report and is incorporated herein by reference.

The Merger Agreement and the above description have been included to provide investors and security holders with information regarding the terms of the Merger Agreement. They are not intended to provide any other factual information about the Company, Parent, Acquisition Sub or their respective subsidiaries or affiliates or stockholders. The representations, warranties and covenants contained in the Merger Agreement were made only for purposes of the Merger Agreement and as of specific dates; were solely for the benefit of the parties to the Merger Agreement; and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each contracting party to the other for the purposes of allocating contractual risk between them that differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any description thereof as characterizations of the actual state of facts or condition of the Company, Parent, Acquisition Sub or any of their respective subsidiaries, affiliates, businesses or stockholders. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in public disclosures by the Company or Parent. Accordingly, investors should read the representations and warranties in the Merger Agreement not in isolation but only in conjunction with the other information about the Company or Parent and their respective subsidiaries that the respective companies include in reports, statements and other filings they make with the Securities and Exchange Commission (the "SEC").

Indemnification Agreements

On June 11, 2015, the Company entered into indemnification agreements with certain of its officer and directors, in substantially the same form as the indemnification agreement entered into between the Company and its officer and directors since the Company's 2005 initial public offering. The indemnification agreements require the Company, among other things, to indemnify the directors and executive officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by such director or executive officer in any action or proceeding arising out of his or her service as one of the Company's directors or executive officers, or any of the Company's subsidiaries or any other company or enterprise to which the person provides services at the Company's request, and require the Company to obtain directors' and officers' insurance if available on reasonable terms.

The foregoing summary of the indemnification agreements does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the form of indemnification agreement, a copy of which is attached as Exhibit 2.2 to this report and is incorporated herein by reference.

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

On June 11, 2015, the Company Board determined that it was in the best interests of the Company and its stockholders to amend the Amended and Restated By-laws of the Company (the "Bylaws") and by resolution, the Company Board authorized, approved and adopted an amendment to the Bylaws (the "Bylaw Amendment"). The Bylaw Amendment became effective on June 11, 2015.

The Bylaw Amendment provides that unless the Company consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, other employee or stockholder of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware or the Company's Amended and Restated Certificate of Incorporation or Bylaws (as either may be amended from time to time) or as to which the General Corporation Law of the State of Delaware confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, any state court located within the State of Delaware, or the federal district court for the District of Delaware). A copy of the Bylaw Amendment is attached as Exhibit 3.1 to this report and is incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On June 15, 2015, Parent and the Company issued a joint press release, which the Company posted on its web site, announcing the execution of the Merger Agreement described above. A copy of the press release is attached as Exhibit 99.1 to this report and is incorporated herein by reference.

Important Information

The tender offer for the outstanding Company Common Stock referred to in this document has not yet commenced. This document is not an offer to purchase or a solicitation of an offer to sell shares of Company Common Stock, nor is it a substitute for the tender offer materials that Parent and Acquisition Sub will file with the SEC. The solicitation and the offer to purchase shares of Company Common Stock will only be made pursuant to an offer to purchase and related materials that Parent and Acquisition Sub intend to file with the SEC. At the time the tender offer is commenced, Parent and Acquisition Sub will file a Tender Offer Statement on Schedule TO with the SEC, and soon thereafter the Company will file a Solicitation / Recommendation Statement on Schedule 14D-9 with respect to the tender offer. STOCKHOLDERS OF THE COMPANY ARE ADVISED TO READ THE SCHEDULE TO (INCLUDING AN OFFER TO PURCHASE, A RELATED LETTER OF TRANSMITTAL AND OTHER OFFER DOCUMENTS) AND THE SCHEDULE 14D-9, AS EACH MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE, BEFORE MAKING ANY DECISION WITH RESPECT TO THE TENDER OFFER BECAUSE THESE DOCUMENTS WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES THERETO. HOLDERS OF COMPANY COMMON STOCK ARE URGED TO READ THESE DOCUMENTS CAREFULLY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION THAT HOLDERS OF COMPANY COMMON SHARES SHOULD CONSIDER BEFORE MAKING ANY DECISION REGARDING TENDERING THEIR SHARES. These materials will be made available to all holders of Company Common Stock at no expense to them. The tender offer materials and the Solicitation/Recommendation Statement will be made available for free at the SEC's website at www.sec.gov. Additional copies of the tender offer materials may be obtained for free by contacting Cox Automotive at 6205 Peachtree Dunwoody Road, Atlanta, Georgia, 30328, Attention: Julie Shipp, (404) 568-7914.

Forward Looking Statements

This communication may contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 regarding the proposed transaction with Parent and other matters. Words such as "anticipates," "estimates," "expects," "projects," "forecasts," "intends," "plans," "will," "believes" and words and terms of similar substance connection with any discussion of the proposed transaction identify forward-looking statements. These forward-looking statements are based on management's current expectations and beliefs about future events. As with any projection or forecast, they are inherently susceptible to uncertainty and changes in circumstances. Except as required by law, we are under no obligation to, and expressly disclaim any obligation to, update or alter any forward-looking statements whether as a result of such changes, new information, subsequent events or otherwise. Various factors could adversely affect our operations, business or financial results in the future and cause our actual results to differ materially from those contained in the forward-looking statements, including those factors discussed in detail in the "Risk Factors" sections contained in our Annual Report on Form 10-K for the year ended December 31, 2014 filed with the SEC, as well as, among other things: 1) the general economic conditions and conditions affecting the industries in which Parent and the Company operate, 2) the ability to obtain requisite regulatory approvals required to complete the proposed transaction with Parent, 3) the satisfaction of the conditions to the consummation of the proposed transaction, 4) the timing of the completion of the proposed transaction and 5) the potential impact of the announcement or consummation of the proposed transaction on our relationships, including with employees, suppliers

and customers.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	**Description**
2.1	Agreement and Plan of Merger, dated as of June 12, 2015, by and among Parent, Acquisition Sub and the Company (Pursuant to Item 601(b)(2) of Regulation S-K, the Company hereby agrees to supplementally furnish to the SEC upon request any omitted schedule or exhibit to the Agreement and Plan of Merger.)
2.2	Form of Indemnification Agreement
3.1	Amendment to the Company's Amended and Restated By-laws dated June 11, 2015
99.1	Press Release dated June 15, 2015

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 thereunto duly authorized.

DEALERTRACK TECHNOLOGIES, INC.

Date: June 15, 2015 By: /s/ Eric D. Jacobs
Name: Eric D. Jacobs
Title: Executive Vice President, Chief Financial and Administrative Officer

EXHIBIT INDEX

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