

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): **August 10, 2020**

FORUM MERGER II CORPORATION
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-38615

(Commission
File Number)

82-5457906

(IRS Employer
Identification No.)

1615 South Congress Avenue, Suite 103
Delray Beach, FL 33445
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(212) 739-7860**

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 redeemable warrant	FMCIU	The Nasdaq Stock Market LLC
Class A common stock, par value \$0.0001 per share	FMCI	The Nasdaq Stock Market LLC
Warrants, each exercisable for one share of Class A common stock	FMCIW	The Nasdaq Stock Market LLC

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.

First Amendment to the Agreement and Plan of Merger

On August 10, 2020, Forum Merger II Corporation, a Delaware corporation (“Forum” or the “Company”), entered into an amendment (the “Amendment”) to that certain Agreement and Plan of Merger entered into on June 11, 2020 (the “Merger Agreement”) with Sprout Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Forum (“Merger Sub”), Myjojo, Inc., a Delaware corporation (“Itella Parent”) and Salvatore Galletti, in his capacity as the holder representative. Pursuant to the transactions contemplated by the terms of the Merger Agreement, and subject to the satisfaction or waiver of certain conditions set forth therein, Merger Sub will merge with and into Itella Parent (the “Merger”), with Itella Parent surviving the merger in accordance with the Delaware General Corporation Law as a wholly owned subsidiary of Forum (the transactions contemplated by the Merger Agreement and the related ancillary agreements, the “Business Combination”).

Pursuant to the Amendment, the Merger Agreement was revised to (i) identify an updated delivery deadline for the PCAOB Audited Financial Statements (as defined in the Merger Agreement) by Itella Parent to the Company as August 14, 2020, (ii) address a scrivener’s error in the form of Registration Rights Agreement and add Project Lily, LLC as a party thereto, (iii) reflect White & Case LLP as primary counsel to Forum following the signing of the Merger Agreement, (iv) change the Termination Date in the Merger Agreement to November 15, 2020 and (v) carve out any Indebtedness (as defined in the Merger Agreement) of Forum or its subsidiaries paid off at the closing of the Business Combination (the “Closing”) through the funds flow from the definition of “Additional Available Cash Consideration” in Annex I of the Merger Agreement. The Closing is expected to take place in early October, as soon as practicable after the special meeting, subject to the satisfaction or waiver of the closing conditions in the Merger Agreement.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by the terms and conditions of the Amendment, a copy of which is attached as Exhibit 2.1 hereto and is incorporated by reference herein.

Item 7.01 Regulation FD Disclosure

The Company expects the closing of the Business Combination to occur in early October, as soon as practicable after the stockholder meeting held to approve the Business Combination, subject to the satisfaction or waiver of the closing conditions in the Merger Agreement. As a result of the need for additional time for the Securities and Exchange Commission to complete its review of the Company’s proxy statement related to the Business Combination, the Company expects to seek stockholder approval of an extension of the deadline by which the Company must complete the Business Combination under its amended and restated certificate of incorporation from September 30, 2020 to October 30, 2020.

Important Information About the Business Combination and Where to Find It

In connection with the Business Combination, Forum has filed a preliminary proxy statement and intends to file a definitive proxy statement, when available, with the Securities and Exchange Commission (the “SEC”). Forum will mail a definitive proxy statement and other relevant documents to its stockholders. Forum intends to file a preliminary proxy statement in connection with any extension to the deadline to consummate the Business Combination. **Forum’s stockholders and other interested persons are advised to read the preliminary proxy statement and, when available, any amendments thereto and the definitive proxy statement and documents incorporated by reference therein filed in connection with the Business Combination and any extension, as these materials will contain important information about Forum, Itella Parent and the Business Combination.** When available, the definitive proxy statement and other relevant materials for the Business Combination will be mailed to stockholders of Forum as of a record date to be established for voting on the Business Combination. Stockholders will also be able to obtain copies of the preliminary proxy statement, the definitive proxy statement and other documents filed with the SEC that will be incorporated by reference therein, without charge, once available, at the SEC’s web site at www.sec.gov, or by directing a request to: Forum Merger II Corporation, 1615 South Congress Avenue, Suite 103, Delray Beach, FL 33445, Attention: Secretary, telephone: (212) 739-7860.

Participants in the Solicitation

Forum and its directors and executive officers may be deemed participants in the solicitation of proxies from Forum’s stockholders with respect to the Business Combination and any extension of the deadline to consummate the Business Combination. A list of the names of those directors and executive officers and a description of their interests in Forum is contained in the preliminary proxy statement and, when available, the definitive proxy statement relating to the Business Combination, which are filed with the SEC and are available free of charge at the SEC’s web site at www.sec.gov, or by directing a request to Forum Merger II Corporation, 1615 South Congress Avenue, Suite 103, Delray Beach, FL 33445, Attention: Secretary, telephone: (212) 739-7860. Additional information regarding the interests of such participants will be contained in the proxy statement for the Business Combination when available.

Ittella Parent and its directors and executive officers may also be deemed to be participants in the solicitation of proxies from the stockholders of Forum in connection with the Business Combination. A list of the names of such directors and executive officers and information regarding their interests in the Business Combination will be included in the proxy statement for the Business Combination.

Forward-Looking Statements

This Current Report on Form 8-K includes “forward-looking statements” within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. Forum and Ittella Parent’s actual results may differ from their expectations, estimates and projections and consequently, you should not rely on these forward looking statements as predictions of future events. Words such as “expect,” “estimate,” “project,” “budget,” “forecast,” “anticipate,” “intend,” “plan,” “may,” “will,” “could,” “should,” “believes,” “predicts,” “potential,” “continue,” and similar expressions are intended to identify such forward-looking statements. These forward-looking statements include, without limitation, Forum’s and Ittella Parent’s expectations with respect to future performance and anticipated financial impacts of the Business Combination, the satisfaction of the closing conditions to the Business Combination and the timing of the completion of the Business Combination. These forward-looking statements involve significant risks and uncertainties that could cause the actual results to differ materially from the expected results. Most of these factors are outside Forum’s and Ittella Parent’s control and are difficult to predict. Factors that may cause such differences include, but are not limited to: (1) the occurrence of any event, change or other circumstances that could give rise to the termination of the Merger Agreement or could otherwise cause the Business Combination to fail to close; (2) the outcome of any legal proceedings that may be instituted against Forum or Ittella Parent following the announcement of the Merger Agreement and the Business Combination; (3) the inability to complete the Business Combination, including due to failure to obtain approval of the stockholders of Forum or other conditions to closing in the Merger Agreement; (4) the receipt of an unsolicited offer from another party for an alternative business transaction that could interfere with the Business Combination; (5) the inability to obtain the listing of the ordinary shares of the post-acquisition company on the Nasdaq Stock Market or any alternative national securities exchange following the Business Combination; (6) the risk that the announcement and consummation of the Business Combination disrupts current plans and operations; (7) the ability to recognize the anticipated benefits of the Business Combination, which may be affected by, among other things, competition, the ability of the combined company to grow and manage growth profitably and retain its key employees; (8) costs related to the Business Combination; (9) changes in applicable laws or regulations; (10) the possibility that Ittella Parent may be adversely affected by other economic, business, and/or competitive factors; (11) the impact of COVID-19 on the combined company’s business; and (12) other risks and uncertainties indicated from time to time in the proxy statement to be filed relating to the Business Combination, including those under “Risk Factors” therein, and in Forum’s other filings with the SEC. Some of these risks and uncertainties may in the future be amplified by the COVID-19 outbreak and there may be additional risks that Forum considers immaterial or which are unknown. Forum cautions that the foregoing list of factors is not exclusive. Forum cautions readers not to place undue reliance upon any forward-looking statements, which speak only as of the date made. Forum does not undertake or accept any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based.

No Offer or Solicitation

This Current Report on Form 8-K shall not constitute a solicitation of a proxy, consent or authorization with respect to any securities or in respect of the Business Combination. This Current Report on Form 8-K shall also not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any states or jurisdictions in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of section 10 of the Securities Act, or an exemption therefrom.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1	<u>First Amendment to the Agreement and Plan of Merger, dated as of August 10, 2020, by and among Forum Merger II Corporation, Sprout Merger Sub, Inc., Myjojo, Inc., and Salvatore Galletti.</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 hereunto duly authorized.

FORUM MERGER II CORPORATION

Dated: August 11, 2020

By: /s/ David Boris

Name: David Boris

Title: Co-Chief Executive Officer and Chief Financial Officer

FIRST AMENDMENT TO THE AGREEMENT AND PLAN OF MERGER

This FIRST AMENDMENT TO THE AGREEMENT AND PLAN OF MERGER, dated as of August 10, 2020, (this "Amendment") is made and entered into by and among (i) Forum Merger II Corporation, a Delaware corporation ("Parent"), (ii) Sprout Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), (iii) Myjojo, Inc., a Delaware corporation (the "Company"), and (iv) Salvatore Galletti, in the capacity as the initial Holder Representative hereunder. All capitalized terms used but not defined herein shall have the meanings specified in the Merger Agreement (as defined below).

RECITALS

WHEREAS, Parent, Merger Sub, Company and Holder Representative entered into that certain Agreement and Plan of Merger, dated as of June 11, 2020 (the "Merger Agreement"); and

WHEREAS, the parties hereto desire to amend the Merger Agreement as set forth herein pursuant to Section 10.10 of the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendment to whereas clause. The sixth whereas clause of the Merger Agreement shall be replaced in its entirety with the following:

"**WHEREAS**, prior to the Effective Time, the Contributions will be consummated and as a result, Ittella will become a wholly-owned direct subsidiary of the Company and Ittella Italy will become a wholly-owned indirect subsidiary of the Company;"

2. Amendment to the location of Closing. The first sentence of Section 2.3 of the Merger Agreement shall be replaced in its entirety with the following:

"Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place either at the offices of White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020, or at any other location as mutually agreed by the Parties, at 10:00 a.m. (Eastern time) on the date that is three (3) Business Days after the date on which all conditions set forth in Article VII shall have been satisfied or waived in writing (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) or such other time and place as Parent and the Company may mutually agree."

3. Amendment to Termination Date. Section 8.1(b)(ii) of the Merger Agreement shall be replaced in its entirety with the following:

"the Closing has not occurred on or before November 15, 2020 (subject to Sections 8.1(b)(i) and 10.13), the "Termination Date", unless any Parent Party's failure to comply with its obligations hereunder has resulted in the Closing not occurring on or before such date;"

4. Amendment to the delivery deadline of the PCAOB Audited Financial Statements. Section 8.1(b)(iv) of the Merger Agreement shall be replaced in its entirety with the following:

"the Company has not delivered to Parent the PCAOB Audited Financial Statements and Reviewed Interim Financial Statements on or before August 14, 2020;"

5. Amendment to form of Registration Rights Agreement. Section 2.12(a)(ii) of the Registration Rights Agreement attached as Exhibit H to the Merger Agreement shall be replaced in its entirety with the following:

"(ii) 3,750,000 Founder shares until the date that is the earlier of (1) the twelve month anniversary of the Closing, (2) the last sale price of the Common Stock equals or exceeds \$12.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the Merger and (3) the date on which the Company completes a liquidation, merger, capital stock exchange, reorganization or other similar transaction that results in all of the Company's stockholders having the right to exchange their shares of Common Stock for cash, securities or other property."

6. Additional Investor to Registration Rights Agreement. Project Lily, LLC shall be an additional party to the Registration Rights Agreement and shall execute the Registration Rights Agreement at the Closing.

7. Amendment to Notices. All references to Winston & Strawn in Section 10.1 of the Merger Agreement shall be replaced in their entirety with the following:

“White & Case LLP
1221 Avenue of the Americas
New York NY 10020
Attention: Joel Rubinstein
Gary Silverman
E-mail: joel.rubinstein@whitecase.com
gary.silverman@whitecase.com”

8. Amendment to Privilege. Section 10.16(b) of the Merger Agreement shall be replaced in its entirety with the following:

“Each Pre-Closing Holder, the Holder Representative, the Company and each of its Subsidiaries and each Parent Party agrees that, as to all communications between or among any of Winston & Strawn LLP (“WS”), White & Case LLP (“WC”) and any Parent Party that relate in any way to the transactions contemplated by this Agreement, from and after the Closing, the attorney/client privilege and the expectation of the client confidence belongs, unless otherwise consented to by the Monitoring Committee, exclusively to the Monitoring Committee and may be controlled by the Monitoring Committee and, unless otherwise consented to by the Monitoring Committee, shall not pass to or be claimed by any party or Person. Notwithstanding the foregoing, if a dispute arises between or among Parent, the Surviving Subsidiary or their respective Subsidiaries and a Person other than the Surviving Subsidiary after the Closing, the Parent Parties may assert the attorney/client privilege to prevent disclosure of confidential communications by WS or WC to such Person.”

9. Amendment to Additional Available Cash Consideration. The definition of “Additional Available Cash Consideration” in Annex I of the Merger Agreement shall be replaced in its entirety with the following:

“means the amount Cash of Parent, the Company and its Subsidiaries available for payment to the Pre-Closing Holders from Parent, the Company and its Subsidiaries from any source (including the Trust Account and any Supplemental Financing) after first giving effect to (i) the payments required to be made under this Agreement at Closing by Parent, the Company and its Subsidiaries, including for the avoidance of doubt Payment of Company Transaction Expenses and Parent Transaction Expenses, (ii) the Common Stockholder Redemption, (iii) any Indebtedness of the Company or its Subsidiaries paid off at Closing through the funds flow and (iv) the requirement that, immediately following payment of the Cash Consideration to the Pre-Closing Holders pursuant to the terms of this Agreement, Parent, the Company and its Subsidiaries retain Cash in an aggregate amount that is at least \$25,000,000; provided, that the Additional Available Cash Consideration shall not exceed \$25,000,000. For the purposes of this definition, “Indebtedness” shall be deemed to include the items described in clause (v) of the definition of “Indebtedness Exclusions” (except for any amounts payable under the revolving line of credit under the Marquette Loan Agreement as defined on Schedule 4.4 of the Merger Agreement), and the impact of any such Indebtedness paid off at Closing through the funds flow pursuant to this definition will not impact the calculation of Aggregate Consideration Value.”

10. Effectiveness of Amendment. Upon the execution and delivery hereof, the Merger Agreement shall be deemed to be amended and/or restated as hereinabove set forth as fully and with the same effect as if the amendments and/or restatements made hereby were originally set forth in the Merger Agreement, and this Amendment and the Merger Agreement shall henceforth respectively be read, taken and construed as one and the same instrument, but such amendments and/or restatements shall not operate so as to render invalid or improper any action heretofore taken under the Merger Agreement.

11. General Provisions.

(a) Miscellaneous. The terms of Article X of the Merger Agreement shall apply to this Amendment *mutatis mutandis*, as applicable.

(b) Merger Agreement in Effect. Except as specifically provided for in this Amendment, the Merger Agreement shall remain unmodified and in full force and effect.

* * *

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be executed as of the date first written above written.

FORUM MERGER II CORPORATION

By: /s/ Marshall Kiev

Name: Marshall Kiev

Title: Co-CEO and President

SPROUT MERGER SUB, INC.

By: /s/ David Boris

Name: David Boris

Title: President and Treasurer

MYJOJO, INC.

By: /s/ Salvatore Galleti

Name: Salvatore Galleti

Title: President

Salvatore Galleti, solely in his capacity as the initial Holder
Representative hereunder

By: /s/ Salvatore Galleti

Name: Salvatore Galleti

Title: Holder Representative

[Signature Page to the Amendment to the Agreement and Plan of Merger]
