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**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): May 15, 2023

**Conformis, Inc.**

(Exact Name of Company as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-37474**  
(Commission  
File Number)

**56-2463152**  
(IRS Employer  
Identification No.)

**600 Technology Park Drive**  
**Billerica, MA 01821**  
(Address of Principal Executive Offices) (Zip Code)

Company's telephone number, including area code: **(781) 345-9001**

(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 (see General Instruction A.2. below):

- 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:

<b>Title of each class</b>	<b>Trading symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.00001 par value per share	CFMS	The Nasdaq Capital Market

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.

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

On May 15, 2023, Conformis, Inc. (the “Company”) was notified by Robert S. Howe, the Company’s Chief Financial Officer and Treasurer, that he will be resigning effective June 9, 2023 (the “Departure Date”), to accept the Chief Financial Officer role at a larger private-equity backed company not in the orthopedic industry. As further described below, on May 18, 2023, the Company and Mr. Howe entered into a consulting agreement, permitting him to provide consulting services on a limited basis following his departure as an employee.

On May 18, 2023, the Board of Directors of the Company appointed Christine Desrochers, the Company’s current Corporate Controller, as Interim Chief Financial Officer. The appointment is effective as of the Departure Date.

Ms. Desrochers has served as the Company’s Corporate Controller since July 2020, after previously serving as the Company’s Assistant Controller since October 2018. From June 2015 to October 2018, she served as Senior Accountant at AgaMatrix. Previously, she served in various senior and staff accounting roles at Kronos, Sonus Networks, GSI Group and Nera Networks. She received an MBA in Accounting from the Sawyer Business School at Suffolk University.

Ms. Desrochers is a party to existing offer letter and change in control agreements with the Company. Such agreements provide that her employment with the Company is at will and may be terminated by either party at any time for any or no reason or cause. In the event that the Company terminates her employment during a change in control period other than for cause, the Company is obligated to continue to pay her base salary for a period of 6 months and, to the extent allowed by applicable law and the terms of the applicable policies, continue to provide her and certain of her dependents with group health insurance for a period of 6 months. In the event of a change in control of the Company during her period of employment, any outstanding equity awards held by her would become fully vested and exercisable or free from forfeiture or transfer restrictions.

There is no arrangement or understanding between Ms. Desrochers or any other person pursuant to which she was selected as an officer. Ms. Desrochers does not have any family relationship with any of the Company’s officers or directors and does not have any direct or indirect interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Under the consulting agreement entered into by the Company and Mr. Howe, Mr. Howe will provide consulting, transition and similar services to the Company following his departure until September 30, 2023, unless earlier terminated or extended by the parties. In exchange for Mr. Howe’s services, the Company will pay Mr. Howe \$500 per hour, up to a maximum of \$5,000 per week, unless an increase is approved by the Company’s Chief Executive Officer. Upon the expiration or termination of the Consulting Agreement, so long as Mr. Howe has rendered services in good faith, and upon the Company’s receipt of an executed certificate providing for, among other things, return of Company property and continuing confidentiality obligations, the Company will pay Mr. Howe \$25,000.

The foregoing summary of the consulting agreement is subject to, and qualified in its entirety by, the full text of such agreement, which is filed as Exhibit 10.1 hereto.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

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Exhibit No.	Description
<a href="#">99.1*</a>	<a href="#">Consulting Agreement, dated May 18, 2023, between Conformis, Inc. and Robert S. Howe</a>

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## 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.

### CONFORMIS, INC.

Date: May 19, 2023

By: /s/ Denise Pedulla  
Denise Pedulla  
Chief Legal Officer and Corporate  
Secretary

**CONFORMIS, INC.**  
**CONSULTING AGREEMENT**

THIS CONSULTING AGREEMENT (this "**Agreement**"), dated May 18, 2023 but effective as of June 10, 2023 (the "**Effective Date**"), is by and between Conformis, Inc., a Delaware corporation (the "**Company**"), and Robert S. Howe, an individual with an address listed on the signature page hereto (the "**Consultant**").

WHEREAS, the Company desires consulting and similar services relating to the Company's business and products; and

WHEREAS, the Consultant desires to contract with the Company to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter recited, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Scope of Work.** The Consultant will perform the services set forth in Exhibit A attached hereto (the "**Services**"). Any additions to or modifications of the Services will be set forth in writing and will be signed by both parties in advance of the Consultant performing such additional or modified Services. The performance of Services and the compensation for Services necessary to the completion of such additions or modifications will be governed by this Agreement unless otherwise described in a written agreement of the parties.

2. **Term.** The Consultant will serve as a consultant to the Company for a period commencing on the Effective Date and concluding when terminated in accordance with Section 9 of this Agreement (the "Term").

3. **Consulting Fees.** The Company agrees to pay the Consultant for the Services in accordance with the payment schedule set forth in Exhibit B attached hereto.

4. **Documentation of Services and Payments.** The Consultant will include with all invoices submitted to the Company an itemization and description of all Services for which the Consultant requests compensation with reasonable specificity to allow the Company to adequately account for such Services. The Company will pay each undisputed invoice submitted hereunder within 30 days of receipt thereof.

5. **Noninterference; Noncompetition.** Consultant shall abide by Sections 11.2 – 11.5 of the Employee Confidential Information, Inventions and Non-Competition Agreement by and between the Company and the Consultant (the "**Non-Compete Agreement**"), which was attached as Exhibit A to the Consultant's February 17, 2020 Employment Agreement (the "**Employment Agreement**"), which sections are incorporated herein by reference. For clarity, the "Noncompetition Period" described in Section 11.2 of the Non-Compete Agreement shall begin running as of the first day following Consultant's last day of employment with the Company.

6. **Confidentiality.**

(a) **Definition.** For purposes of this Agreement, "**Confidential Information**" means all non-public, confidential or proprietary information disclosed on or after the Effective Date by the Company (including any parent, subsidiary or affiliate of the Company, and any person or entity directly or indirectly controlled by or controlling the Company, or in which any of the aforesaid have at least a 50% interest) or its representatives to the Consultant relating to any of the Company's or a third party's technology and/or business including, without limitation, this Agreement, Inventions (as defined below), any other inventions, trade secrets, patents, ideas, licenses, research and development, software, or other intellectual property, manufacturing plans, operations, business plans, finance plans, financial

information, marketing plans, customer information, information regarding vendors and suppliers, products, services, strategic partnerships, or other information of Company or a third party known to be confidential or proprietary, and/or other information of Company or a third party that reasonably should be known to be confidential or proprietary. Confidential Information may be in any form, including, without limitation, oral, written, and/or electronic form, and further includes, for example, notes, compilations, reports, databases, summaries and other materials prepared by or for the Consultant that contain, are based on, or derived from, in whole or in part, Confidential Information. Confidential Information does not include information that the Consultant can document (a) is (through no improper action or inaction of the Consultant) generally known by the public, (b) is rightfully in the Consultant's possession or rightfully known by the Consultant prior to receipt by the Company and was not disclosed in violation of any restrictions regarding confidentiality, (c) became available to the Consultant rightfully from a third party, and was not disclosed in violation of restrictions on confidentiality, or (d) was or is developed independently by the Consultant without reference to or use of, in whole or in part, any Confidential Information. The parties agree that during the term of this Agreement, the Company shall not provide to Consultant, and Consultant shall not accept, any Confidential Information that is not related to patient-specific, patient-matched and/or patient-engineered orthopedic implants and instruments for the knee and hip.

(b) **Nondisclosure.** The Consultant acknowledges that Confidential Information is of great value to the Company. Accordingly, the Consultant agrees to hold all Confidential Information in confidence and not disclose, use, copy, publish, summarize or, if applicable, remove from the premises of the Company any Confidential Information. Upon the expiration or termination of this Agreement, the Consultant agrees (i) to promptly deliver to the Company all papers, records, data, notes, drawings, files, documents, samples, devices, products, equipment and other materials, including copies and in whatever form, relating to the Company that the Consultant possesses or creates, whether or not confidential or proprietary, (ii) to not disclose, use, copy, publish, summarize or, if applicable, remove from the premises of the Company any Confidential Information, and (iii) to promptly execute and deliver to the Company the "Termination Certificate" attached hereto as Exhibit C.

#### 7. ***Inventions and Original Works of Authorship.***

(a) **Definition.** For purposes of this Agreement, "***Inventions***" means any and all ideas and discoveries, including, without limitation, inventions, trade secrets, original works of authorship, findings, reports, disclosures, processes, systems, methods, formulae, procedures, concepts, compositions, techniques, drawings, models, diagrams, flow charts, research, data, devices, machinery, intellectual property, instruments, materials, products, patterns, compilations, programs, techniques, sequences, designs, specifications, documentation, algorithms, software, computer programs, source code, object code and mask works, as well as improvements thereof or know-how related thereto, whether copyrightable or patentable or not, which are made by the Consultant, alone or in combination with others, (i) pursuant to, related to or resulting from the provision of Services or other tasks by the Consultant under this Agreement or any other agreement with the Company, or (ii), during the Term, that involve patient-specific, patient-matched and/or patient-engineered orthopedic implants, instruments and surgical procedures for the knee, hip, shoulder or ankle, or (iii) with the use of or as a result of access to Confidential Information, including, without limitation, any derivative work which constitutes an improvement or modification to any Confidential Information, such as any design, drawing, or product that embodies Confidential Information.

(b) **Ownership and Assignment.** All Inventions are and shall be the sole and exclusive property of the Company and/or its nominees or assigns. Consultant hereby assigns to the Company any and all right, title and interest Consultant has, may have, or may acquire in all Inventions, and also all intellectual property rights relating thereto. To the extent that ownership of, or any rights to, any such Inventions does not immediately or automatically vest in the Company, the Consultant hereby assigns and agrees to assign to the Company or its designees, without further consideration, the

Consultant's entire right, title, and interest in and to all such existing and future Inventions, including, without limitation, all rights to obtain, register, perfect, litigate, enforce and otherwise exploit inventions, patents, copyrights, trade secrets, and other intellectual property rights and protections with respect thereto (whether or not patent or copyright applications are filed thereon). The Consultant will promptly notify the Company in writing of all Inventions so conceived or made by the Consultant. The Consultant shall have no license to or rights of any kind, including, including any such contractual rights or rights by operation of law, to any Inventions, unless explicitly granted by Company in writing in a separate agreement.

(c) **Power of Attorney.** During the Term and as necessary thereafter, the Consultant will assist the Company (at the Company's expense) in performing any and all tasks and other actions reasonably necessary to obtain and enforce patents, copyrights, mask work rights, and other forms of intellectual property protection on Inventions, and to fulfill any and all related duties and obligations required by law. If the Company is unable because of the mental or physical incapacity of the Consultant or for any other reason to secure the signature of the Consultant to apply for or to pursue any application for any United States or foreign letters patent or copyright registrations covering Inventions assigned to the Company pursuant to Section 7(b), then the Consultant hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as the Consultant's agent and attorney in fact, to act for and on the Consultant's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon.

(d) **Moral Rights.** The Consultant also hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, and waives and agrees never to assert, any and all "Moral Rights" (as defined below) that the Consultant may have in or with respect to any Inventions, during and after the Term. "**Moral Rights**" mean any rights to claim authorship of any Invention, to object to or prevent the modification or destruction of any Invention, to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is called or generally referred to as a "moral right."

(e) **Patent Applications.** If the Company files an original United States patent application covering any invention of which the Consultant is a named inventor, the Consultant will receive an inventor's fee of \$100.

(f) **Further Assurances.** The Consultant will execute such documents as the Company will reasonably require to evidence and confirm the transfer of rights to the Company made under this Agreement.

8. **Publishing.** As provided in Sections 6 and 7 above, data resulting from the Consultant's provision of Service pursuant to this Agreement, or the use of or access to Confidential Information, shall be an Invention owned by the Company and subject to confidential treatment. The Consultant shall not directly or indirectly (including, without limitation, by publication) disclose any such data or other Company Inventions or Confidential Information without the prior written consent of the Company. The Company shall have full editorial control with respect to any proposed publication by the Consultant that includes or makes reference to such data or other Company Inventions or Confidential Information (with the prior written consent of the Company), including without the limitation the rights to (a) not publish or make public such data or other Company Inventions or Confidential Information, (b) remove any such data or other Company Inventions or Confidential Information contained therein, and (c) protect its rights to any patentable Inventions set forth therein. As provided in Section 7 above, any such publication shall be an Invention owned by the Company.

9. **Termination.** This Agreement will automatically terminate as stated in Exhibit A. In the event of any termination of this Agreement, the Company will make payments to the Consultant for all work performed in accordance with the terms and conditions of this Agreement up to the date of termination, and the Consultant will immediately return to the Company, without limitation, all documents, drawings and any other items of whatever nature supplied to the Consultant by the Company or owned by the Company pursuant to this Agreement.

10. **Survival.** Each and all of the terms, provisions and/or covenants of each of Sections 5 through 22 of this Agreement will, for any and all purposes whatsoever, survive the termination of this Agreement.

11. **Independent Contractor/Taxes.** Consultant is not an agent or employee of the Company and has no authority to act on behalf of the Company or to otherwise obligate or bind the Company by contract or otherwise. Except as required by a final determination by the Internal Revenue Service or state taxing authority and upon due notice to the other party, the Consultant and the Company agree to treat the Consultant as an independent contractor for tax purposes and to file all tax and information returns and pay all applicable taxes on that basis.

12. **Third Party Contracts.** The Consultant represents that, other than with the new employer you have identified to us and/or its affiliates, and except as disclosed in writing to the Company, (a) there are no other contracts to assign Inventions that are now in existence between any other party and the Consultant, and (b) the Consultant has no employments, consultancies or undertakings which would restrict or impair the Consultant's performance of this Agreement. The Consultant will not improperly use or disclose any proprietary information or trade secrets of any former or current employer or other third party. The Consultant will not bring onto the premises of the Company any unpublished documents or any property belonging to any former or current employer or other third party unless consented to in writing by such employer or such other third party. If, in the course of the Consultant's performance of this Agreement, the Consultant incorporates a prior Consultant-owned invention into a Company product, process or machine, the Company is hereby granted and will have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such prior invention.

13. **Assignment.** The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective successors, assigns, heirs, executors and administrators, as the case may be; provided, however, that as the Company has specifically contracted for the Services to be provided by the Consultant hereunder, the Consultant may not assign or delegate the Consultant's obligations under this Agreement either in whole or in part without the prior written consent of the Company.

14. **Governing Law; Consent to Jurisdiction.** This Agreement will be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, excluding those laws that direct the application of the laws of another jurisdiction. The Consultant hereby submits to the sole jurisdiction and venue of the courts of the Commonwealth of Massachusetts for purposes of any action or proceeding relating to this Agreement.

15. **Injunctive Relief.** The Consultant acknowledges and agrees that damages will not be an adequate remedy in the event of a breach of any of the Consultant's obligations under this Agreement. The Consultant therefore agrees that the Company will be entitled (without limitation of any other rights or remedies otherwise available to the Company and without the necessity of posting a bond or other security) to obtain an injunction from any court of competent jurisdiction prohibiting the continuance or recurrence of any breach of this Agreement.

16. **Headings.** The headings in this Agreement are intended principally for convenience and will not, by themselves, determine the rights and obligations of the parties to this Agreement.



17. **Attorneys' Fees.** The prevailing party in any suit brought to enforce its rights under this Agreement will be entitled to reasonable attorneys' fees and costs.

18. **Notices.** All notices, requests, demands, and other communications required by, or made in connection with, this Agreement or the transactions contemplated by this Agreement, will be in writing and will be deemed to have been duly given on the date of delivery, if delivered in person or by overnight mail carrier, or three business days after mailing if mailed by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

If to the Company:	Conformis, Inc. 600 Technology Park Drive Billerica, MA 01821 Attention: Chief Legal Officer
If to the Consultant:	The email address listed on the signature page hereto.

Such addresses may be changed, from time to time, by means of a notice given in the manner provided in this Section 17.

19. **Severability.** If any provision of this Agreement is held to be unenforceable for any reason, such provision will be adjusted rather than voided, if possible, in order to achieve the intent of the parties to the maximum extent possible. In any event, all other provisions of this Agreement will be deemed valid and enforceable to the full extent possible.

20. **Waiver.** The waiver of any term or condition contained in this Agreement by any party to this Agreement will not be construed as a waiver of a subsequent breach or failure of the same term or condition or a waiver of any other term or condition contained in this Agreement.

21. **Counterpart and Facsimile Signatures.** This Agreement 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. This Agreement may be executed by facsimile signature (including signatures in Adobe PDF or similar format).

22. **Entire Agreement; Modifications.** Except as otherwise provided herein or in the exhibits hereto, this Agreement represents the entire understanding among the parties with respect to the subject matter of this Agreement, and this Agreement supersedes any and all prior and contemporaneous understandings, agreements, plans, and negotiations, whether written or oral, with respect to the subject matter hereof, including, without limitation, any understandings, agreements, or obligations respecting any past or future compensation, bonuses, reimbursements, or other payments to the Consultant from the Company. All modifications to the Agreement must be in writing and signed by each of the parties hereto.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Consulting Agreement as of the Effective Date.

**Company:** **Conformis, Inc.**

By: /s/ Mark A. Augusti

Mark A. Augusti

Chief Executive Officer

**Consultant:** /s/ Robert S. Howe

Robert S. Howe

Address:

Telephone:

Email:

## EXHIBIT A

### SCOPE OF SERVICES

Upon written request by the Company during the Term, the Consultant "**Services**" to the Company will include:

1. General consulting services as may be requested by the Company's Chief Executive Officer or his designee, including, without limitation:
  1. Assisting the Company's Finance team to complete finance work on matters open as of the Effective Date; and
  2. Providing transition services to the Company's Finance team, and to any interim or successor Chief Financial Officer engaged by the Company, as the case may be.

The Consultant will report to the Company's Chief Executive Officer or his designee. The Consultant will provide Services at such places and times as the Company and the Consultant may mutually determine.

The Company will not control in any way the methods used by the Consultant in performing the Services.

This Agreement will automatically terminate on September 30, 2023. The parties hereto may extend the term of this Agreement by means of a written instrument executed by each of them, including in counterparts.

## EXHIBIT B

### CONSULTING FEES

The Company will pay the Consultant for Services rendered:

1. The rate of five hundred dollars (\$500.00) per hour; provided, however, that compensation shall not exceed five thousand dollars (\$5,000.00) (equivalent to ten (10) hours) per calendar week in which actual Services are provided, unless approved in writing and in advance by the Company's Chief Executive Officer.
2. Upon the expiration or termination of this Agreement on September 30, 2023, so long as the Consultant has rendered Services in good faith, and upon the Company's receipt of the executed Termination Certificate (Exhibit C), the total sum of twenty-five thousand dollars (\$25,000.00).

Other than as set forth above, the Company will pay the Consultant no other compensation, whether in cash or non-cash form, for the Services.

**EXHIBIT C**

**TERMINATION CERTIFICATE**

This is to certify that I do not have in my possession, nor have I failed to return, any papers, records, data, notes, drawings, files, documents, samples, devices, products, equipment, designs, computer programs or other materials, including copies and reproductions of any of the aforementioned items, in whatever form, relating to Conformis, Inc. (the "**Company**"), whether or not confidential or proprietary.

I further certify that I have complied with all the terms of the Consulting Agreement by and between the Company and the undersigned dated as of the Effective Date of \_\_\_\_\_ (the "**Consulting Agreement**").

Moreover, I acknowledge and agree that, in compliance with the Consulting Agreement, I will hold in confidence and will not disclose, use, copy, publish, summarize or, if applicable, remove from the premises of the Company any "Confidential Information" (as defined in the Consulting Agreement).

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_