

AIRTRAN HOLDINGS INC  
Form 425  
September 27, 2010

**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): September 26, 2010**

**SOUTHWEST AIRLINES CO.**

(Exact name of registrant as specified in its charter)

**Texas**  
(State or other Jurisdiction)

**1-7259**  
(Commission)

**74-1563240**  
(IRS Employer)

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of Incorporation)

File Number)

Identification No.)

**P.O. Box 36611, Dallas, Texas**  
(Address of Principal Executive Offices)

**75235-1611**  
(Zip Code)

**Registrant's telephone number, including area code: (214) 792-4000**

**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.**

On September 26, 2010, Southwest Airlines Co., a Texas corporation ( Southwest ), AirTran Holdings, Inc., a Nevada corporation ( AirTran ), and Guadalupe Holdings Corp., a Nevada corporation and wholly owned subsidiary of Southwest ( Merger Sub ), entered into an Agreement and Plan of Merger (the Merger Agreement ), providing for the acquisition of AirTran by Southwest. The Merger Agreement provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will be merged with and into AirTran, with AirTran continuing as the surviving corporation and as a wholly owned subsidiary of Southwest (the Merger ).

Subject to the terms and conditions of the Merger Agreement, which has been approved by the boards of directors of the respective parties, if the Merger is completed, each outstanding share of AirTran common stock (including previously unvested restricted shares of AirTran common stock) will be converted into the right to receive a fraction of a share of Southwest common stock equal to the Exchange Ratio (as defined below) (the Base Per Share Stock Consideration ) and, as the same may be adjusted as discussed below, the Per Share Stock Consideration ) and \$3.75 in cash, without interest (the Base Per Share Cash Consideration ) and, as the same may be adjusted as discussed below, the Per Share Cash Consideration ). The Per Share Stock Consideration and the Per Share Cash Consideration are collectively referred to herein as the Merger Consideration.

The Exchange Ratio will be determined as follows:

- (i) In the event that the average of the last reported sales prices for a single share of Southwest common stock on the New York Stock Exchange (the NYSE ) for the 20 consecutive full trading days ending on (and including) the third trading day prior to the closing date of the Merger (the Southwest Average Share Price ) is less than \$10.90, the Exchange Ratio will equal (A) \$3.50 divided by (B) the Southwest Average Share Price, rounded to the nearest thousandth.
- (ii) In the event that the Southwest Average Share Price is equal to or greater than \$10.90 but less than or equal to \$12.46, the Exchange Ratio will be 0.321.
- (iii) In the event that the Southwest Average Share Price is greater than \$12.46, the Exchange Ratio will equal (A) \$4.00 divided by (B) the Southwest Average Share Price, rounded to the nearest thousandth.

In addition, in the event that the Southwest Average Share Price is less than \$10.90, Southwest may elect to deliver, as Merger Consideration, an additional amount of cash, an additional number (or fraction) of shares of Southwest common stock, or a combination of additional cash and additional number (or fraction) of shares of Southwest common stock (which shares will be valued based on the Southwest Average Share Price) such that, after giving effect to such election, the aggregate value of the Merger Consideration (valuing Southwest common stock based on the Southwest Average Share Price) is equal to \$7.25.

Based on the closing price of Southwest common stock on the NYSE on September 24, 2010, the last trading day before public announcement of the merger, the Merger Consideration represented approximately \$7.69 in value for each share of AirTran common stock.

Each outstanding option to acquire shares of AirTran common stock will generally be converted into the right to receive the excess, if any, of the value of the Base Per Share Stock Consideration (valued based on the Southwest Average Share Price) plus the Base Per Share Cash Consideration (the Per Share Cash Equivalent Amount, provided that in the event the Southwest Average Share Price is greater than \$12.46, then the Per Share Cash Equivalent Amount will be \$7.75 and in the event the Southwest Average Share Price is less than \$7.25, then the Per Share Cash Equivalent Amount will be \$10.90) over the exercise price per share of such option multiplied by the number of shares of AirTran common stock underlying the option. Each outstanding share of AirTran common stock awarded under the AirTran Fifth Amended and Restated Long Term Incentive Plan based on a total shareholder return formula (each, a Performance Share ) will, immediately prior to the effective time of the Merger, vest as to the pro-rated target number of shares of AirTran common stock subject to such Performance Share, and will entitle the holder thereof to receive the Per Share Cash Equivalent Amount for each such vested Performance Share, without interest.

Southwest and AirTran have made customary representations, warranties and covenants in the Merger Agreement. Subject to certain exceptions, each of Southwest and AirTran is required, among other things, to conduct its business in the ordinary course in all material respects during the interim period between the execution of the Merger Agreement and the consummation of the Merger. In addition, AirTran may not solicit alternative business combination transactions and, subject to certain exceptions, may not engage in discussions or negotiations regarding any alternative business combination transaction. The Merger Agreement also contains covenants that require AirTran to call and hold a special stockholders meeting and, subject to certain exceptions, require the AirTran board of directors to recommend to its stockholders the adoption of the Merger Agreement.

Completion of the Merger is subject to certain conditions, including, among others: (i) adoption of the Merger Agreement by AirTran's stockholders, (ii) the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (iii) receipt of other material governmental consents and approvals required to consummate the Merger, (iv) the absence of any governmental order, law, or legal restraint prohibiting the consummation of the Merger, (v) the registration statement on Form S-4 used to register the Southwest common stock to be issued as consideration for the Merger having been declared effective by the Securities and Exchange Commission (the "SEC"), and (vi) the listing of the Southwest common stock to be issued to AirTran stockholders in the Merger on the NYSE having been authorized. The obligation of each party to consummate the Merger is also conditioned upon the accuracy of the other party's representations and warranties and the other party having performed in all material respects its obligations under the Merger Agreement.

The Merger Agreement contains certain termination rights for both Southwest and AirTran, including if the Merger is not consummated on or before September 26, 2011 (subject to extension by mutual agreement of the parties) and if the approval of AirTran's stockholders is not obtained. The Merger Agreement further provides that, upon termination of the Merger Agreement under specified circumstances, including termination of the Merger Agreement by AirTran as a result of an adverse change in the recommendation of AirTran's board of directors, AirTran may be required to pay to Southwest a termination fee of \$39 million.

The foregoing description of the Merger Agreement is not a complete description of all of the parties' rights and obligations under the Merger Agreement and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit 2.1 hereto and is incorporated herein by reference.

The Merger Agreement and the above description of the Merger Agreement have been included to provide investors and security holders with information regarding the terms of the Merger Agreement. It is not intended to provide any other factual information about Southwest, AirTran, or their respective subsidiaries or affiliates. The representations, warranties, and covenants contained in the Merger Agreement were made only for purposes of that 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 Southwest, AirTran, or any of their respective subsidiaries, affiliates, or businesses. 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 Southwest or AirTran. Accordingly, investors should read the representations and warranties in the Merger Agreement not in isolation but only in conjunction with the other information about Southwest or AirTran and their respective subsidiaries that the respective companies include in reports, statements, and other filings they make with the SEC.

#### **Item 8.01 Other Events.**

On September 27, 2010, Southwest issued a press release announcing execution of the Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated by reference into this Item 8.01.

***Important Information for Investors and Stockholders***

Communications in this Current Report on Form 8-K do not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. The proposed acquisition of AirTran by Southwest will be submitted to the stockholders of AirTran for their consideration. In connection therewith, Southwest will file a registration statement on Form S-4 with the SEC that will include a proxy statement of AirTran that also constitutes a prospectus of Southwest. Southwest and AirTran also plan to file other documents with the SEC regarding the proposed transaction. **SOUTHWEST URGES INVESTORS AND SECURITY HOLDERS OF AIRTRAN TO READ THE PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.** Investors and security holders may obtain free copies of the proxy statement/prospectus and other documents containing important information about Southwest and AirTran, once such documents are filed with the SEC, through the website maintained by the SEC at [www.sec.gov](http://www.sec.gov). Copies of the documents filed with the SEC by Southwest will be available free of charge on Southwest's website at [www.southwest.com](http://www.southwest.com) under the tab Investor Relations or by contacting Southwest's Investor Relations Department at (214) 792-4415. Copies of the documents filed with the SEC by AirTran will be available free of charge on AirTran's website at [www.airtran.com](http://www.airtran.com) under the tab Investor Relations or by contacting AirTran's Investor Relations Department at (407) 318-5187.

Southwest, AirTran, and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of AirTran in connection with the proposed transaction. Information about the directors and executive officers of Southwest is set forth in its proxy statement for its 2010 annual meeting of shareholders, which was filed with the SEC on April 16, 2010. Information about the directors and executive officers of AirTran is set forth in its proxy statement for its 2010 annual meeting of stockholders, which was filed with the SEC on April 2, 2010. These documents can be obtained free of charge from the sources indicated above. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

***Cautionary Statement Regarding Forward-Looking Statements***

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These include statements relating to Southwest's plans and expectations with respect to the acquisition of AirTran and the anticipated impact of the acquisition on Southwest's financial and operational results, including without limitation, the expected impact of the acquisition on (i) Southwest's strategies and goals; (ii) its growth and competitive position; (iii) its Customer experience; (iv) its future operations, including fleet plans; and (v) its results of operations, including expected synergies and earnings and cash flow impact. These forward-looking statements are based on Southwest's current intent, expectations, and projections and are not guarantees of future performance. These statements involve risks, uncertainties, assumptions, and other factors that are difficult to predict and that could cause actual results to vary materially from those expressed in or indicated by them. Factors include, among others, (i) the possibility that the transaction is delayed or does not close, including due to the inability of Southwest and AirTran to obtain all approvals necessary or the failure of other closing conditions; (ii) Southwest's ability to successfully integrate AirTran's business and realize the expected synergies from the transaction; (iii) the impact of the economy on demand for air travel and fluctuations in consumer demand generally for the services to be provided as a result of the transaction; (iv) the impact of fuel prices and economic conditions on Southwest's business plans and strategies; (v) actions of competitors, including without limitation pricing, scheduling, and capacity decisions, and consolidation and alliance activities; and (vi) the impact of governmental regulations on Southwest's operations.

Southwest cautions that the foregoing list of factors is not exclusive. Additional information concerning these and other risks is contained in Southwest's and AirTran's most recently filed Annual Reports on Form 10-K, subsequent Quarterly Reports on Form 10-Q, recent Current Reports on Form 8-K, and other SEC filings. Southwest undertakes no obligation to publicly update any of these forward-looking statements to reflect events or circumstances that may arise after the date hereof.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
2.1	Agreement and Plan of Merger among Southwest Airlines Co., AirTran Holdings, Inc. and Guadalupe Holdings Corp., dated as of September 26, 2010 (the schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K)
99.1	Press Release issued by Southwest Airlines Co., dated September 27, 2010

**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.

**SOUTHWEST AIRLINES CO.**

Date: September 27, 2010

By: /s/ LAURA H. WRIGHT  
Name: **Laura H. Wright**  
Title: **Senior Vice President Finance &**

**Chief Financial Officer**

**(Principal Financial and Accounting Officer)**

**EXHIBIT INDEX**

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