

AETNA INC /PA/
Form 425
March 08, 2018

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): March 7, 2018

CVS HEALTH CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-01011
(Commission File Number)

05-0494040
(IRS Employer Identification No.)

One CVS Drive
Woonsocket, Rhode Island

02895

(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code: (401) 765-1500

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in 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 8.01 Other Events.

As previously disclosed and reported in the Current Report on Form 8-K filed by CVS Health Corporation, a Delaware corporation (CVS Health), on December 5, 2017 with the Securities and Exchange Commission (the SEC), on December 3, 2017, CVS Health, Aetna Inc., a Pennsylvania corporation (Aetna), and Hudson Merger Sub Corp., a Pennsylvania corporation and a wholly-owned subsidiary of CVS Health (Merger Sub), entered into an Agreement and Plan of Merger (the Merger Agreement) pursuant to which, subject to the satisfaction or waiver of certain conditions, Merger Sub will be merged with and into Aetna, with Aetna surviving the merger as a wholly-owned subsidiary of CVS Health (the Merger).

On February 15, 2018, a purported CVS Health stockholder filed a putative class action complaint challenging the Merger in the Superior Court of the State of Rhode Island, Providence County, against the individual members of the CVS Health board of directors (the CVS Health Board) and CVS Health. The complaint is captioned *Gawrych v. Merlo et al.*, case number PC-2018-0964 (the Action). The Action generally alleges, among other things, that the members of the CVS Health Board breached their fiduciary duties by negotiating and entering into the Merger Agreement and CVS Health and the CVS Health Board failed to disclose material information in a preliminary joint proxy statement/prospectus relating to the Merger filed by CVS Health with the SEC on February 5, 2018 on Form S-4, the definitive version of which was filed by CVS Health with the SEC on February 9, 2018 and first mailed to CVS Health stockholders on or about February 12, 2018 (the Joint Proxy Statement/Prospectus). The Action seeks, among other things, declaratory and injunctive relief, preliminary injunctive relief prohibiting or delaying the defendants from consummating the Merger, other forms of equitable relief and unspecified amounts of damages, as well as costs and attorneys' fees.

CVS Health believes that the claims asserted in the Action are without merit and no supplemental disclosure is required under applicable law. However, in order to avoid the risk of adverse effect or delay in connection with the transaction and to minimize the costs, risks and uncertainties inherent in litigation, and without admitting any liability or wrongdoing, CVS Health has determined to voluntarily supplement the Joint Proxy Statement/Prospectus as described in this Current Report on Form 8-K to address claims asserted in the Action, and the plaintiff in the Action has agreed to voluntarily dismiss the Action in light of, among other things, the supplemental disclosure. Nothing in this Current Report on Form 8-K shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the disclosures set forth herein. To the contrary, CVS Health specifically denies all allegations in the Action that any additional disclosure was or is required.

Supplemental Disclosures

The additional disclosures in this Current Report on Form 8-K supplement the disclosures contained in, and should be read in conjunction with, the Joint Proxy Statement/Prospectus, which should be read in its entirety. To the extent that information in this Current Report on Form 8-K differs from or updates information contained in the Joint Proxy Statement/Prospectus, the information in this Current Report on Form 8-K shall supersede or supplement the information in the Joint Proxy Statement/Prospectus. Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to such terms in the Joint Proxy Statement/Prospectus.

The disclosure under the heading "Background of the Merger" is hereby supplemented by adding the following sentence at the end of the second paragraph on page 92 of the Joint Proxy Statement/Prospectus:

After reviewing the potential transactions with the three managed care companies, the CVS Health board of directors determined that a transaction with Aetna presented a more favorable value creation opportunity for CVS Health's stockholders than the potential value that may have resulted from potential strategic transactions with the two other managed care companies.

The disclosure under the heading "Background of the Merger" is hereby supplemented by adding the following sentence after the fourth sentence in the fifth paragraph on page 98 of the Joint Proxy Statement/Prospectus:

The CVS Health board of directors selected Barclays and Goldman Sachs as CVS Health's financing sources in connection with the merger based on, among other things, each of the banks' reputations as internationally recognized financial institutions, their experience and familiarity with CVS Health and the industries in which CVS Health and Aetna operate, their familiarity with the proposed transaction with Aetna, and their familiarity and experience with financings for similar transactions of the type and size to be provided in connection with the merger, including with financing transactions with comparable terms and structure.

The disclosure under the heading Opinion of Barclays Capital Inc. is hereby supplemented by adding the following sentence at the end of the first paragraph starting on page 132 of the Joint Proxy Statement/Prospectus:

As of the market close on November 8, 2017, Barclays held a net long position of less than 1.0% of the outstanding Aetna common shares.

The disclosure under the heading Opinion of Goldman Sachs & Co. LLC is hereby supplemented by adding the following sentence after the second sentence in the first paragraph starting on page 134 of the Joint Proxy Statement/Prospectus:

As of the date of its opinion, none of Goldman Sachs Investment Banking Division, funds in which Goldman Sachs Investment Banking Division had a direct investment, or funds managed by Goldman Sachs Merchant Banking Division had a direct equity investment in Aetna.

No Offer or Solicitation

This communication is for informational purposes only and not intended to and does not constitute an offer to subscribe for, buy or sell, the solicitation of an offer to subscribe for, buy or sell or an invitation to subscribe for, buy or sell any securities or the solicitation of any vote or approval in any jurisdiction pursuant to or in connection with the proposed transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended, and otherwise in accordance with applicable law.

Additional Information and Where to Find It

In connection with the proposed transaction between CVS Health Corporation (CVS Health) and Aetna Inc. (Aetna), on February 9, 2018, CVS Health filed with the Securities and Exchange Commission (the SEC) an amendment to the registration statement on Form S-4 that was originally filed on January 4, 2018. The registration statement includes a joint proxy statement of CVS Health and Aetna that also constitutes a prospectus of CVS Health. The registration statement was declared effective by the SEC on February 9, 2018, and CVS Health and Aetna commenced mailing the definitive joint proxy statement/prospectus to stockholders of CVS Health and shareholders of Aetna on or about February 12, 2018. INVESTORS AND SECURITY HOLDERS OF CVS HEALTH AND AETNA ARE URGED TO READ THE DEFINITIVE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS FILED OR THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION. Investors and security holders may obtain free copies of the registration statement and the definitive joint proxy statement/prospectus and other documents filed with the SEC by CVS Health or Aetna through the website maintained by the SEC at <http://www.sec.gov>. Copies of the documents filed with the SEC by CVS Health are available free of charge within the Investors section of CVS Health's Web site at <http://www.cvshealth.com/investors> or by contacting CVS Health's Investor Relations Department at 800-201-0938. Copies of the documents filed with the SEC by Aetna are available free of charge on Aetna's internet website at <http://www.Aetna.com> or by contacting Aetna's Investor Relations Department at 860-273-0896.

Participants in the Solicitation

CVS Health, Aetna, their respective directors and certain of their respective executive officers may be considered participants in the solicitation of proxies in connection with the proposed transaction. Information about the directors and executive officers of CVS Health is set forth in its Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on February 14, 2018, its proxy statement for its 2017 annual meeting of stockholders, which was filed with the SEC on March 31, 2017, and certain of its Current Reports on Form 8-K. Information about the directors and executive officers of Aetna is set forth in its Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on February 23, 2018, its proxy statement for its 2017 annual meeting of shareholders, which was filed with the SEC on April 7, 2017, and certain of its Current Reports on Form 8-K. Other information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, are contained in the definitive joint proxy statement/prospectus filed with the SEC and other relevant materials to be filed with the SEC when they become available.

Cautionary Statement Regarding Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 (the Reform Act) provides a safe harbor for forward-looking statements made by or on behalf of CVS Health or Aetna. This communication may contain forward-looking statements within the meaning of the Reform Act. You can generally identify forward-looking statements by the use of forward-looking terminology such as anticipate, believe, can, continue, could, estimate, evaluate, expect, forecast, guidance, intend, likely, may, might, outlook, plan, potential, predict, probable, project, or similar words.

or will, or the negative thereof or other variations thereon or comparable terminology. These forward-looking statements are only predictions and involve known and unknown risks and uncertainties, many of which are beyond CVS Health's and Aetna's control.

Statements in this communication regarding CVS Health and Aetna that are forward-looking, including CVS Health's and Aetna's projections as to the closing date for the pending acquisition of Aetna (the "transaction"), the extent of, and the time necessary to obtain, the regulatory approvals required for the transaction, the anticipated benefits of the transaction, the impact of the transaction on CVS Health's and Aetna's businesses, the expected terms and scope of the expected financing for the transaction, the ownership percentages of CVS Health's common stock of CVS Health stockholders and Aetna shareholders at closing, the aggregate amount of indebtedness of CVS Health following the closing of the transaction, CVS Health's expectations regarding debt repayment and its debt to capital ratio following the closing of the transaction, CVS Health's and Aetna's respective share repurchase programs and ability and intent to declare future dividend payments, the number of prescriptions used by people served by the combined companies pharmacy benefit business, the synergies from the transaction, and CVS Health's, Aetna's and/or the combined company's future operating results, are based on CVS Health's and Aetna's managements' estimates, assumptions and projections, and are subject to significant uncertainties and other factors, many of which are beyond their control. In particular, projected financial information for the combined businesses of CVS Health and Aetna is based on estimates, assumptions and projections and has not been prepared in conformance with the applicable accounting requirements of Regulation S-X relating to pro forma financial information, and the required pro forma adjustments have not been applied and are not reflected therein. None of this information should be considered in isolation from, or as a substitute for, the historical financial statements of CVS Health and Aetna. Important risk factors related to the transaction could cause actual future results and other future events to differ materially from those currently estimated by management, including, but not limited to: the timing to consummate the proposed transaction; the risk that a regulatory approval that may be required for the proposed transaction is delayed, is not obtained or is obtained subject to conditions that are not anticipated; the risk that a condition to the closing of the proposed transaction may not be satisfied; the outcome of litigation related to the transaction; the ability to achieve the synergies and value creation contemplated; CVS Health's ability to promptly and effectively integrate Aetna's businesses; and the diversion of and attention of management of both CVS Health and Aetna on transaction-related issues.

In addition, this communication may contain forward-looking statements regarding CVS Health's or Aetna's respective businesses, financial condition and results of operations. These forward-looking statements also involve risks, uncertainties and assumptions, some of which may not be presently known to CVS Health or Aetna or that they currently believe to be immaterial also may cause CVS Health's or Aetna's actual results to differ materially from those expressed in the forward-looking statements, adversely impact their respective businesses, CVS Health's ability to complete the transaction and/or CVS Health's ability to realize the expected benefits from the transaction. Should any risks and uncertainties develop into actual events, these developments could have a material adverse effect on the transaction and/or CVS Health or Aetna, CVS Health's ability to successfully complete the transaction and/or realize the expected benefits from the transaction. Additional information concerning these risks, uncertainties and assumptions can be found in CVS Health's and Aetna's respective filings with the SEC, including the risk factors discussed in Item 1.A. Risk Factors in CVS Health's and Aetna's most recent Annual Reports on Form 10-K, as updated by their Quarterly Reports on Form 10-Q and future filings with the SEC.

You are cautioned not to place undue reliance on CVS Health's and Aetna's forward-looking statements. These forward-looking statements are and will be based upon management's then-current views and assumptions regarding future events and operating performance, and are applicable only as of the dates of such statements. Neither CVS Health nor Aetna assumes any duty to update or revise forward-looking statements, whether as a result of new information, future events or otherwise, as of any future date.

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.

Dated: March 7, 2018

CVS HEALTH CORPORATION

By: /s/ Colleen M. McIntosh
Colleen M. McIntosh
Senior Vice President and Corporate Secretary