

CHS INC
Form 8-K
August 12, 2015

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 11, 2015**

CHS INC.

(Exact Name of Registrant as Specified in Charter)

Minnesota
(State or Other Jurisdiction of
Incorporation)

001-36079
(Commission File Number)

41-0251095
(IRS Employer Identification
Number)

5500 Cenex Drive, Inver Grove Heights, Minnesota 55077

(Address of Principal Executive Offices)

(Zip Code)

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651-355-6000

(Registrant's Telephone Number, Including Area Code)

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))

Item 1.01 Entry into a Material Definitive Agreement.

On August 11, 2015, CHS Inc. (the Company) entered into a supply agreement (the Supply Agreement) with CF Industries Nitrogen LLC (CF Nitrogen) for the purchase of urea in granular form (Granular Urea) and urea ammonium nitrate solution (UAN). CF Nitrogen is a subsidiary of CF Industries Holdings, Inc. (CF Holdings). On August 11, 2015, the Company also entered into an Amended and Restated Limited Liability Company Agreement (the LLC Agreement) with CF Industries Sales, LLC (CFS), a subsidiary of CF Holdings, pursuant to which the Company, subject to the satisfaction of certain conditions, agreed to invest \$2.8 billion in cash in exchange for an approximately 11.4% limited liability company membership interest in CF Nitrogen.

Supply Agreement

The Supply Agreement has an 80 year term and may only be terminated by mutual agreement of the parties or as a remedy for an event of default.

Under the Supply Agreement, the Company has the right, but not the obligation, to purchase Granular Urea and UAN up to a specified annual quantity. The sale and delivery of Granular Urea and UAN that the Company elects to purchase is subject to scheduling by forecasts that permit a degree of flexibility in the purchase and acceptance of product quantities. Periodic forecasts become firm monthly schedules, as further described below. Deliveries of product are made either at the applicable CF Nitrogen production facility, or to a destination nominated by the Company. Transport logistics are factored into the sales price for the applicable product, as further described below.

The periodic forecasts described above, which take into account planned outages at the applicable production facilities, become firm monthly schedules, and a failure to deliver or failure to take by a party in accordance with a firm monthly schedule will, subject to customary force majeure exceptions, result in the defaulting party being liable to the other party for the difference between the contract price for the affected shipment and the actual market price achieved to sell to, or to source replacement product from, third parties.

Products are delivered with customary title and specification warranties. Title and risk of loss to product pass to the Company at the applicable delivery point, although the selling party remains liable for off-specification product that is identified within a limited period of delivery. The Company is responsible for paying all taxes imposed on or with respect to the product after the applicable delivery point. The selling party is responsible for paying all taxes imposed on or with respect to the product before or at the applicable delivery point.

The Supply Agreement provides for a market price that is calculated based upon third party sales at the place of shipment plus actual freight costs. Each party provides customary indemnification to the other party, including that the selling party indemnifies the Company with respect to the operation of the applicable production facilities.

The Supply Agreement includes event of default provisions addressing uncured payment failures, bankruptcy events and uncured failures by a party to perform covenants or obligations (subject to customary limitations and cure period), and is governed by New York law. The parties' respective rights to injunctive and equitable relief are preserved with respect to their respective sale and purchase obligations.

LLC Agreement

On August 11, 2015, the Company entered into the LLC Agreement with CFS, a subsidiary of CF Holdings. The LLC Agreement provides for the investment by the Company, subject to the satisfaction of certain conditions, of \$2.8 billion in cash in exchange for an approximately 11.4% limited liability company membership interest in CF Nitrogen.

The LLC Agreement provides that the closing date for the Company's investment (the Closing Date) will occur on the later of February 1, 2016 or the third business day after the satisfaction or waiver (to the extent permitted by law) of certain conditions set forth in the LLC Agreement, including conditions relating to the absence of any injunction or other order by a court or other governmental authority or law that prohibits or makes illegal the

consummation of the investment transaction, the execution by the parties of certain ancillary agreements, the accuracy in all material respects of the representations and warranties of the parties in the LLC Agreement, and the performance by the parties in all material respects of their obligations required under the LLC Agreement to be performed prior to the Closing Date. In addition, either party may terminate the LLC Agreement if conditions with respect to the confirmation of certain tax and financial accounting matters relating to the investment transaction are not satisfied by specified dates.

The LLC Agreement provides that the purpose of CF Nitrogen is to (i) develop, own, operate and maintain manufacturing facilities for nitrogen, methanol and related products, including production facilities located in Donaldson, Louisiana, Port Neal, Iowa, Yazoo City, Mississippi and Woodward, Oklahoma (collectively, the Assets), (ii) perform its obligations under the Supply Agreement, a supply agreement to be entered into between CF Nitrogen and CFS (the CFS Supply Agreement) and any other supply agreements entered into by CF Nitrogen upon approval of its board of managers (the Board of Managers) and (iii) enter into and perform its obligations under certain ancillary agreements to be entered into by the parties in connection with the LLC Agreement.

Except with respect to matters expressly requiring the approval of the members of CF Nitrogen, the LLC Agreement provides that the business and affairs of CF Nitrogen will be managed exclusively by the Board of Managers, which is comprised of four managers appointed by CFS and one manager appointed by the Company (or a permitted transferee of the Company designated by it). A majority of the managers will constitute approval of the Board of Managers on all matters.

An affirmative vote of CFS and the Company (or a permitted transferee of the Company designated by it) will be required to approve (i) the sale, transfer or other disposition of all or substantially all of the assets, properties and business of CF Nitrogen, (ii) the merger of CF Nitrogen with any person that is not an affiliate of CF Nitrogen or any member of CF Nitrogen, (iii) the dissolution of CF Nitrogen, (iv) certain amendments to the LLC Agreement, (v) a change in the legal domicile of the CF Nitrogen from Delaware to any other jurisdiction and (vi) any election by CF Nitrogen to be treated other than as a partnership for federal income tax purposes.

CFS will be permitted, but not required, to contribute additional assets to (and withdraw assets from) CF Nitrogen from time to time, in its sole discretion, except that CFS will be required at all times to (i) maintain sufficient assets in CF Nitrogen such that CF Nitrogen's facilities have aggregate capacity to produce at least 2 million nutrient tons of fertilizer product (the Minimum Production Requirements) and (ii) maintain a liquidity facility, in the form of cash on hand, standby letter of credit, demand line of credit issued by CF Holdings, or similar borrowing facility, with availability of at least \$427 million (the Liquidity Facility) to be used solely to make distributions to the Company required pursuant to the LLC Agreement. If CF Nitrogen requires additional capital for any capital expenditures, repair or replacement costs or increased operation costs in order for CF Nitrogen's facilities to satisfy the Minimum Production Requirements, the LLC Agreement provides that CFS is required to make additional capital contributions in the amount determined by the Board of Managers to permit such operation.

Distributions will be made by CF Nitrogen on a semiannual basis (i) first to each of the Company and CFS in an amount equal to 1% of the net profits of CF Nitrogen and (ii) second to the Company and to CFS in an amount that is based on the volume of Granular Urea and UAN purchased by either party or its permitted assigns pursuant to the applicable supply agreement. To the extent the net profits of CF Nitrogen exceed (i) and (ii) above, an amount equal to such excess will be distributed by CF Nitrogen to CFS, less the amount of any intercompany loan obligations owed by CF Nitrogen to CFS or its affiliates. If, at the time that distributions are payable by CF Nitrogen pursuant to the LLC Agreement, CF Nitrogen does not have sufficient cash on hand to pay the amount due to the Company in accordance with (ii) above, CF Nitrogen will be required to draw upon the Liquidity Facility, up to the amount available under the Liquidity Facility, for any shortfall and immediately distribute such amounts solely to the Company.

Net profits, losses and deductions of CF Nitrogen will be allocated to the capital account of each of its members substantially in accordance with the foregoing cash distribution priorities. No member will have an obligation to restore any deficit capital account balance upon the dissolution

or other liquidation of CF Nitrogen or otherwise.

The LLC Agreement provides that until the first anniversary of the Closing Date, the Company may not transfer all or any part of its membership interest in CF Nitrogen, other than transfers to affiliates of the Company. At any time from and after the first anniversary of the Closing Date, the Company may transfer all or a portion, at least equal to one third of, its membership interest in CF Nitrogen for cash consideration to third parties that are not competitors of CF Nitrogen as set forth in the LLC Agreement (Competitors), subject to a customary right of first refusal in favor of CFS with respect to the

purchase the membership interest proposed to be transferred. CFS is not permitted to transfer all or any part of its membership interest at any time. Pledges, mortgages, assignments by way of security or other forms of security interest in a member's membership interest for indebtedness for borrowed money will not be deemed to be a transfer for this purpose. No member will have the right to resign or withdraw from CF Nitrogen, other than in connection with a permitted transfer of its membership interest.

The provisions in the LLC Agreement restricting the transfer of membership interests do not restrict the Company or CFS from assigning its rights to purchase products from CF Nitrogen under the Supply Agreement or the CFS Supply Agreement, respectively, to a third party that is not a Competitor. The LLC Agreement also includes an express agreement that consent to a transfer of a membership interest in CF Nitrogen to a third party may not be conditioned on transfer or assignment of the Supply Agreement or the CFS Supply Agreement, as applicable, to such transferee, and nothing in the LLC Agreement requires any transferee to be a party to the Supply Agreement or the CFS Supply Agreement.

Pursuant to the LLC Agreement, the Board of Managers may authorize the issuance of additional limited liability company membership interests and the admission of additional members, subject to an obligation to offer the Company the right to purchase the additional membership interests issued on the same terms and subject to the same conditions as agreed with the prospective additional member. If the Company elects to purchase such additional membership interests, the Company also must enter into a supply agreement with CF Nitrogen on the same terms and conditions as the supply agreement that is to be entered into by and between the prospective additional member and CF Nitrogen.

The LLC Agreement includes covenants requiring CF Nitrogen to take certain steps to maintain and document its legal separateness from its members and its affiliates.

Pursuant to the LLC Agreement, CF Nitrogen will be required to provide its members with audited annual and unaudited quarterly financial statements in a timely manner and a copy of its annual budget within 60 days after the beginning of the fiscal year. CF Nitrogen will also be required to cooperate with the reasonable requests of the Company with respect to financial and tax reporting.

The Board of Managers will be permitted to amend the LLC Agreement without the consent of the Company (including to reflect the admission of additional members to the extent such changes do not adversely affect the economic rights of other members), except that the Company's consent (or consent of its permitted transferee designated by the Company) is required to amend particular provisions of the LLC Agreement.

The LLC Agreement may be terminated at any time prior to the Closing Date (i) by mutual agreement of the Company and CFS, (ii) by either the Company or CFS if the conditions to its obligation to consummate the investment transaction have become incapable of being satisfied and (iii) in connection with either party's failure to confirm or waive confirmation of certain tax and financial accounting matters as noted above. If the LLC Agreement is terminated prior to the Closing Date, the Supply Agreement and all ancillary agreements entered into by the parties will also automatically terminate.

The LLC Agreement is governed by Delaware law.

A copy of the press release announcing the Company's entry into the Supply Agreement and the LLC Agreement is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) *Exhibits*

99.1 Press release dated August 12, 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, hereunto duly authorized.

CHS INC.

Date: August 12, 2015

/s/ Timothy Skidmore
Timothy Skidmore
Executive Vice President and Chief Financial Officer

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**Exhibit
No.**

Description

99.1 Press release dated August 12, 2015.