

Express Scripts Holding Co.
Form 425
March 09, 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 8, 2018

EXPRESS SCRIPTS HOLDING COMPANY
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35490
(Commission
File Number)

45-2884094
(I.R.S. Employer
Identification No.)

One Express Way, St. Louis, MO

63121

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code 314-996-0900

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))

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 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

Agreement and Plan of Merger

On March 8, 2018, Express Scripts Holding Company, a Delaware corporation (the Company), entered into an Agreement and Plan of Merger (the Merger Agreement) with Cigna Corporation, a Delaware corporation (Cigna), Halfmoon Parent, Inc., a Delaware corporation and a direct wholly owned subsidiary of Cigna (Holdco), Halfmoon I, Inc., a Delaware corporation and a direct wholly owned subsidiary of Holdco (Merger Sub 1) and Halfmoon II, Inc., a Delaware corporation and a direct wholly owned subsidiary of Holdco (Merger Sub 2) and, together with Merger Sub 1, the Merger Subs).

The Merger Agreement provides that, upon the terms and subject to the conditions set forth therein, Cigna will acquire the Company in a cash and stock transaction through: (a) the merger of Merger Sub 1 with and into Cigna (the Whitman Merger), with Cigna as the surviving entity in the Whitman Merger and a direct wholly owned subsidiary of Holdco and (b) the merger of Merger Sub 2 with and into the Company (the Emerson Merger) and, together with the Whitman Merger, the Merger) with the Company as the surviving entity in the Emerson Merger and a direct wholly owned subsidiary of Holdco. The Whitman Merger and Emerson Merger shall become effective concurrently (such time, the Effective Time). Upon the consummation of the Merger, Cigna and the Company will be direct wholly owned subsidiaries of Holdco.

Upon the terms and subject to the conditions of the Merger Agreement, which has been approved by the boards of directors of the Company and Cigna, at the Effective Time, each issued and outstanding share of Company common stock, par value \$0.01 per share (other than shares of the Company common stock (a) held by the Company as treasury shares, (b) owned by Cigna or by direct or indirect wholly owned subsidiaries of the Company or Cigna (including Holdco and the Merger Subs) or (c) shares with respect to which appraisal rights are properly exercised and not withdrawn), will be converted automatically into (i) 0.2434 of a fully paid and nonassessable share of Holdco common stock (the Stock Consideration) and (ii) the right to receive \$48.75 in cash, without interest (the Cash Consideration) and, together with the Stock Consideration and any cash in lieu of fractional shares of Holdco common stock, the Merger Consideration). No fractional shares of Holdco common stock will be issued in the Merger, and the Company's stockholders will receive cash in lieu of any fractional shares of Holdco common stock.

Subject to the terms and conditions of the Merger Agreement, at the Effective Time, each issued and outstanding share of Cigna common stock, par value \$0.25 per share (other than shares of Cigna common stock (a) held by Cigna as treasury shares or (b) by Holdco or Merger Sub 1) will be converted automatically into one fully paid and nonassessable share of Holdco common stock.

The Merger Agreement generally provides that Company stock options, restricted stock units (RSUs) (other than those held by non-employee directors) and deferred stock units that are outstanding immediately prior to the Effective Time will be converted into equivalent Holdco awards. Company performance share units that are outstanding immediately prior to the Effective Time generally will vest at the level of performance determined by the Compensation Committee of the Company's Board of Directors prior to closing (provided that awards granted in 2018 will vest at the maximum level of performance) and will be cancelled at the Effective Time in exchange for the right to receive the Merger Consideration.

Company RSUs held by non-employee directors will be cancelled in exchange for a cash payment in an amount equal to the Merger Consideration.

Cigna stock options, restricted shares, RSUs, strategic performance shares and deferred stock units that are outstanding immediately prior to the Effective Time will be converted into equivalent Holdco awards.

Board of Directors of Holdco

Pursuant to the Merger Agreement, at the Effective Time, the board of directors of Holdco will consist of 13 directors, comprised of (a) eight independent members of Cigna's board of directors, (b) Cigna's chief executive officer and (c) 4 independent members of the Company's board of directors. Within 30 days of the Merger Agreement, the Company will provide Cigna a list of the board of directors willing to serve as members of the board of directors of Holdco, and within 30 days of the delivery of such list Cigna will select from such list the 4 members of the board of directors of the Company who will serve as members of the board of directors of Holdco effective at the Effective Time.

Regulatory Efforts

Pursuant to the terms of the Merger Agreement, each of the Company and Cigna are required to use reasonable best efforts to take, or cause to be taken, all actions necessary, proper or advisable under applicable laws to consummate the Merger and other contemplated transactions as soon as practicable. In furtherance thereof, Cigna has agreed to accept restrictions on its and the Company's assets to the extent necessary to resolve such objections and eliminate every impediment that a governmental entity of competent jurisdiction asserts under any regulatory law, unless such restrictions would result in, or would be reasonably likely to result in, individually or in the aggregate, a material adverse effect on the Company, Cigna and their respective subsidiaries, taken as a whole, after giving effect to the Merger, including the synergies expected to be realized from the Merger (a Burdensome Condition).

No Solicitation; Change of Recommendation

The Merger Agreement provides that, during the period from the date of the Merger Agreement until the Effective Time, each of the Company and Cigna will be subject to certain restrictions on its ability to solicit alternative acquisition proposals from third parties, to provide non-public information to third parties and to engage in discussions with third parties regarding alternative acquisition proposals, subject to customary exceptions. The Company has a right to terminate the Merger Agreement (a) if the board of directors of Cigna has changed its recommendation (or resolved to effect a change in recommendation), or (b) in order to enter into an alternative acquisition agreement with respect to a Company Superior Proposal (as defined in the Merger Agreement). Cigna has reciprocal rights to terminate the Merger Agreement.

Notwithstanding these restrictions, prior to receiving their respective stockholder approval, the board of directors of the Company may, (i) in response to a Company Intervening Event (as defined in the Merger Agreement) or (ii) following receipt of a Company Superior Proposal, change its recommendation that the Company stockholders adopt the Merger Agreement. The board of directors of Cigna has reciprocal rights to change its recommendation.

Conditions

Consummation of the Merger is subject to certain customary conditions, including approval by the holders of a majority of the outstanding shares of Company common stock entitled to vote on the adoption of the Merger Agreement and approval by the holders of a majority of the outstanding shares of Cigna common stock entitled to vote on the adoption of the Merger Agreement, the shares of Holdco common stock to be issued in the Merger having been approved for listing on the New York Stock Exchange, the receipt of certain necessary governmental and regulatory approvals without the imposition of a Burdensome Condition, the lack of pending litigation instituted by certain governmental entities to enjoin, restrain or prohibit the Merger, and the receipt by each of the Company and Cigna of certain tax opinions. The obligation of each of the Company and Cigna to consummate the Merger is also conditioned upon the other party's representations and warranties being true and correct (subject to certain materiality and Material Adverse Effect (as defined in the Merger Agreement) qualifications), the other party having performed in all material respects its obligations under the Merger Agreement, in each case as set forth in the Merger Agreement. Consummation of the Merger is not subject to a financing condition.

Representations, Warranties and Covenants

The Company and Cigna each made certain representations, warranties and covenants in the Merger Agreement, including, among other things, covenants by the Company and Cigna to conduct their businesses in the ordinary course during the period between the execution of the Merger Agreement and consummation of the Merger.

Financing

Cigna entered into a commitment letter, dated as of March 8, 2018, with Morgan Stanley Senior Funding, Inc., and The Bank of Tokyo-Mitsubishi UFJ, Ltd. (together, the Banks), pursuant to which the Banks have committed to provide, subject to the terms and conditions of the commitment letter, a \$26.7 billion 364-day senior unsecured bridge term loan facility.

Termination

The Merger Agreement provides for certain termination rights for both the Company and Cigna, including (a) the right of either party to terminate the Merger Agreement if the Merger is not consummated by December 8, 2018 (subject to a six-month extension by either the Company or Cigna to June 8, 2019 if all closing conditions are satisfied other than the absence of a legal restraint relating to a regulatory law or the receipt of the requisite regulatory approvals for the Merger) (such date, the Termination Date), (b) if the approval of Company or Cigna stockholders is not obtained, (c) in order to enter into a binding agreement with respect to a superior proposal, (d) if a legal restraint from specific competent jurisdictions prohibiting consummation of the Merger has become final or non-appealable or (e) if the board of directors of the other party changes its recommendation that its stockholders adopt the Merger Agreement.

If the Merger Agreement is terminated (a) by Cigna because the Company's board of directors changed its recommendation prior to obtaining the adoption of the Merger Agreement by the Company's stockholders, (b) by Cigna or the Company if the Company's board of directors changed its recommendation and Company stockholders voted against adopting the Merger Agreement or (c) by the Company in order to enter into an alternative acquisition agreement with respect to a superior proposal that did not result from a breach of the Company's non-solicitation obligations, then the Company must pay Cigna a fee equal to \$1.6 billion (the Company Termination Fee). Further, if the Merger Agreement is terminated under certain circumstances and within 12 months after the date of such termination the Company enters into an agreement regarding a sale of a majority of the Company's assets or equity or consummates such a sale, then the Company will be obligated to pay the Company Termination Fee concurrently with such entry or consummation. Cigna has reciprocal obligations to pay a \$1.6 billion termination fee to the Company.

Additionally, in the event that the Merger Agreement is terminated by either the Company or Cigna if (i) a regulatory restraint preventing consummation of the Merger has become final or non-appealable or (ii) the Merger has not been consummated on or prior to the Termination Date and at the time of such termination, the conditions to Cigna's obligation to consummate the Merger have been satisfied other than those that relate to a regulatory restraint or a regulatory approval, Cigna may be required to pay the Company a reverse termination fee of \$2.1 billion.

The foregoing description of the Merger Agreement and the transactions contemplated thereby is not complete and is subject to and qualified in its entirety by reference to the Merger Agreement, a copy of which is attached hereto as Exhibit 2.1 and the terms of which are incorporated herein by reference.

The representations, warranties and covenants of the Company and Cigna contained in the Merger Agreement (a) have been made only for purposes of the Merger Agreement, (b) have been qualified by (i) the matters specifically disclosed in certain of the Company's and Cigna's filings with the United States Securities and Exchange Commission and (ii) confidential disclosures made in the disclosure schedules delivered in connection with the Merger Agreement, (c) are subject to materiality qualifications contained in the Merger Agreement which may differ from what may be viewed as material by investors, (d) were made only as of the date of the Merger Agreement or such other date as is specified in the Merger Agreement and (e) have been included in the Merger Agreement for the purpose

of allocating risk between the contracting parties rather than establishing matters of fact. Accordingly, the Merger Agreement is included with this filing only to provide investors with information regarding the terms of the Merger Agreement, and not to provide investors with any other factual information regarding the Company, Cigna or their respective affiliates or businesses, including Holdco and the Merger Subs. Investors should not rely on the representations, warranties or covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company, Cigna or any of their respective affiliates, including Holdco and the Merger Subs. Moreover, information concerning the subject matter of the representations, warranties or covenants may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's, Cigna's or Holdco's public disclosures.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On March 7, 2018 and effective on the same date, the Company's Board of Directors amended the Amended and Restated Bylaws of the Company (the Bylaw Amendment). The Bylaw Amendment adopts a forum selection clause, designating the Delaware Court of Chancery (or in some cases, other state or federal courts in Delaware) as the sole and exclusive forum for certain proceedings relating to the Company.

The foregoing description is qualified in its entirety by reference to the full text of the Bylaw Amendment, a copy of which is attached hereto as Exhibit 3.1.

* * *

FORWARD LOOKING STATEMENTS

Cautionary Notes on Forward Looking Statements

Information included or incorporated by reference in this communication, and information which may be contained in other filings with the Securities and Exchange Commission (the SEC) and press releases or other public statements, contains or may contain forward-looking statements. These forward-looking statements include, among other things, statements of plans, objectives, expectations (financial or otherwise) or intentions.

Forward-looking statements, as they relate to Express Scripts Holding Company or Cigna Corporation, the management of either such company or the transaction, involve risks and uncertainties. Actual results may differ significantly from those projected or suggested in any forward-looking statements. Express Scripts Holding Company and Cigna Corporation do not undertake any obligation to release publicly any revisions to such forward-looking statements to reflect events or circumstances occurring after the date hereof or to reflect the occurrence of unanticipated events. Any number of factors could cause actual results to differ materially from those contemplated by any forward-looking statements, including, but not limited to, the risks associated with the following:

the inability of Express Scripts Holding Company and Cigna Corporation to obtain stockholder or regulatory approvals required for the merger or the requirement to accept conditions that could reduce the anticipated benefits of the merger as a condition to obtaining regulatory approvals;

a longer than anticipated time necessary to consummate the proposed merger;

problems regarding the successful integration of the businesses of Express Scripts Holding Company and Cigna Corporation;

unexpected costs regarding the proposed merger;

diversion of management's attention from ongoing business operations and opportunities;

potential litigation associated with the proposed merger;

the ability to retain key personnel;

the availability of financing;

effects on the businesses as a result of uncertainty surrounding the proposed merger; and

the industry may be subject to future risks that are described in SEC reports filed by Express Scripts Holding Company and Cigna Corporation.

You should carefully consider these and other relevant factors, including those risk factors in this communication and other risks and uncertainties that affect the businesses of Express Scripts Holding Company and Cigna Corporation described in their respective filings with the SEC, when reviewing any forward-looking statement. These factors are noted for investors as permitted under the Private Securities Litigation Reform Act of 1995. Investors should understand it is impossible to predict or identify all such factors or risks. As such, you should not consider either foregoing lists, or the risks identified in SEC filings, to be a complete discussion of all potential risks or uncertainties.

IMPORTANT INFORMATION ABOUT THE TRANSACTION AND WHERE TO FIND IT

This communication does not constitute an offer to buy or solicitation of an offer to sell any securities. In connection with the proposed transaction, Halfmoon Parent, Inc. (Holdco) intends to file with the SEC a registration statement on Form S-4 that will include a joint proxy statement of Cigna Corporation and Express Scripts Holding Company that also constitutes a prospectus of Holdco. Cigna Corporation and Express Scripts Holding Company also plan to file other relevant documents with the SEC regarding the proposed transaction. **INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION.** You may obtain a free copy of the joint proxy statement/prospectus (if and when it becomes available) and other relevant documents filed by Holdco, Cigna Corporation and Express Scripts Holding Company with the SEC at the SEC's website at www.sec.gov. Copies of documents filed with the SEC by Cigna Corporation will be available free of charge on Cigna Corporation's website at www.cigna.com or by contacting Cigna Corporation's Investor Relations Department at (215) 761-4198. Copies of documents filed with the SEC by Express Scripts Holding Company will be available free of charge on Express Scripts Holding Company's website at www.express-scripts.com or by contacting Express Scripts Holding Company's Investor Relations Department at (314) 810-3115.

PARTICIPANTS IN THE SOLICITATION

Cigna Corporation and Express Scripts Holding Company and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction under the rules of the SEC. Investors may obtain information regarding the names, affiliations and interests of directors and executive officers of Cigna Corporation (and, in some instances, Holdco) in Cigna Corporation's Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on February 28, 2018, and its preliminary proxy statement for its 2018 Annual Meeting, which was filed with the SEC on March 2, 2018. Investors may obtain information regarding the names, affiliations and interests of Express Scripts Holding Company's directors and executive officers in Express Scripts Holding Company's Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on February 27, 2018, and its proxy statement for its 2017 Annual Meeting, which was filed with the SEC on March 17, 2017. You may obtain free copies of these documents at the SEC's website at www.sec.gov, at Cigna Corporation's website at

www.cigna.com or by contacting Cigna Corporation's Investor Relations Department at (215) 761-4198. Copies of documents filed with the SEC by Express Scripts Holding Company will be available free of charge on Express Scripts Holding Company's website at www.express-scripts.com or by contacting Express Scripts Holding Company's Investor Relations Department at (314) 810-3115. 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 joint proxy statement/prospectus and other relevant materials to be filed with the SEC regarding the proposed transaction if and when they become available. Investors should read the joint proxy statement/prospectus carefully and in its entirety when it becomes available before making any voting or investment decisions.

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.

Item 9.01. Financial Statements and Exhibits.

| Exhibit No. | Description |
|-------------|---|
| 2.1 | <u>Agreement and Plan of Merger, dated as of March 8, 2018, by and among Cigna Corporation, Express Scripts Holding Company, Halfmoon Parent, Inc., Halfmoon I, Inc., and Halfmoon II, Inc.</u> |
| 3.1 | <u>Amendment No. 1 to Amended and Restated Bylaws of Express Scripts Holding Company.</u> |

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.

EXPRESS SCRIPTS HOLDING COMPANY
(Registrant)

By: /s/ Martin Akins
Name: Martin Akins
Title: Senior Vice President and General
Counsel

Dated: March 9, 2018