

SUNGARD DATA SYSTEMS INC

Form 8-K

April 04, 2014

**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 31, 2014**

**Commission file numbers:**

**SunGard Capital Corp. 000-53653**

**SunGard Capital Corp. II 000-53654**

**SunGard Data Systems Inc. 1-12989**

**SunGard® Capital Corp.**

**SunGard® Capital Corp. II**

**SunGard® Data Systems Inc.**

**(Exact name of registrant as specified in its charter)**

<b>Delaware</b>	<b>20-3059890</b>
<b>Delaware</b>	<b>20-3060101</b>
<b>Delaware</b>	<b>51-0267091</b>
<b>(State or other jurisdiction</b>	<b>(I.R.S. Employer</b>
<b>of incorporation)</b>	<b>Identification No.)</b>

**680 East Swedesford Road**

<b>Wayne, Pennsylvania</b>	<b>19087</b>
<b>(Address of principal executive offices)</b>	<b>(Zip Code)</b>

**Registrant's telephone number, including area code: (484) 582-2000**

**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 March 31, 2014, SunGard Data Systems Inc. (SDS) completed its previously announced split-off of its Availability Services business (the Availability Business). Pursuant to the Separation Agreement (described below), the assets and liabilities of SDS and its subsidiaries related to the Availability Business were transferred to Sungard Availability Services Capital, Inc. (SpinCo), which is now a separate, independent company. A copy of the press release announcing completion of the split-off is attached hereto as Exhibit 99.1.

In connection with the split-off and related transactions, the following agreements, among others, were entered into on March 31, 2014.

(i) a Separation and Distribution Agreement (the Separation Agreement) among SunGard Capital Corp. (Capital), SunGard Capital Corp. II (Capital II), SunGard Holding Corp., a wholly owned subsidiary of Capital II (Holding), SunGard Holdco LLC, a wholly owned subsidiary of Holding (HoldCo), SDS (collectively with Capital, Capital II, Holding and HoldCo, the SunGard Parties), Spinco, a wholly owned subsidiary of SDS, and Sungard Availability Services Holdings, LLC, a wholly owned subsidiary of SDS (Availability LLC);

(ii) a Tax Sharing and Disaffiliation Agreement (the Tax Sharing Agreement) among Capital, SDS, SpinCo and Availability LLC;

(iii) a Trademark License Agreement (the Trademark License Agreement) between an affiliate of SunGard that owns the trademark SunGard and SpinCo;

(iv) an Amended and Restated Management Agreement (the A&R Management Agreement) among the SunGard Parties, Bain Capital Partners, LLC, Blackstone Communications Advisors I L.L.C., Blackstone Management Partners IV L.L.C., Goldman, Sachs & Co., Kohlberg Kravis Roberts & Co. L.P., Providence Equity Partners L.L.C., Silver Lake Management Company, L.L.C. and TPG GenPar IV, L.P.;

(v) a Second Amended and Restated Principal Investor Agreement (the A&R Principal Investor Agreement) among the SunGard Parties and the Principal Investors defined therein;

(vi) a Second Amended and Restated Participation, Registration Rights and Coordination Agreement (the A&R Participation Agreement) among the SunGard Parties and certain stockholders of Capital and Capital II; and

(vii) a Second Amended and Restated Stockholders Agreement (the A&R Stockholders Agreement, and, together with the A&R Management Agreement, the A&R Principal Investor Agreement and the A&R Participation Agreement, the Amended and Restated Capital Agreements) among the SunGard Parties and the stockholders of Capital and Capital II.

*The Separation Agreement*

Pursuant to the Separation Agreement, SDS and its subsidiaries transferred to Availability LLC the assets and liabilities of SDS and its subsidiaries related to the Availability Business.

Following the transfer of the Availability Business to Availability LLC, SDS contributed all of the outstanding ownership interests in Availability LLC to SpinCo in exchange for (i) approximately \$425 million aggregate principal amount of 8.75% SpinCo senior notes due 2022, (ii) approximately \$1,005 million in cash, representing the net cash proceeds of a new SpinCo term loan facility, and (iii) 197,705,449 shares of SpinCo's common stock.

Immediately after the contribution of Availability LLC to SpinCo, SDS distributed (through a series of internal distributions) all of SpinCo's common stock to Capital II. Following these internal distributions, at the direction of

the principal stockholders of Capital and Capital II, and in accordance with the stockholders agreement of Capital, Capital caused the holders of preferred stock of Capital II ( Capital II Preferred Stock ) to exchange, on a pro rata basis and at fair market value, a portion of their shares of Capital II Preferred Stock for all of the shares of SpinCo's common stock (the split-off ). In the split-off, 2,358,065 shares of Capital II Preferred Stock (including accrued and unpaid dividends thereon), constituting approximately 24% of the issued and outstanding shares of Capital II Preferred Stock as of the date of the exchange, were exchanged for all of the issued and outstanding shares of SpinCo common stock as of the date of the exchange.

Effective upon consummation of the split-off, pursuant to the Separation Agreement, SpinCo and SDS, along with their respective subsidiaries, affiliates and other related parties, mutually released the other from all actions or claims that each of them (or their related parties) had or could have against the other, subject to certain exceptions, and except for actions or claims arising under any of the agreements between the parties to be continued after, or entered into in connection with, the split-off and related transactions.

SpinCo and SDS also agreed to indemnify the other, along with its subsidiaries, affiliates and other related parties, for certain losses, including losses resulting from its business, whether arising from actions occurring before or after the date of the split-off, or from breaches of the Separation and Distribution Agreement or the related ancillary agreements by the other party.

#### *Tax Sharing Agreement*

Pursuant to the Tax Sharing Agreement, SDS and SpinCo allocate responsibility for U.S. federal, state and local and foreign income and other taxes relating to taxable periods before and after the split-off, and provide for computing and apportioning tax liabilities and tax benefits between the parties. SpinCo is generally responsible for all taxes attributable to the Availability Business for periods subsequent to the split-off, and certain non-income taxes attributable to the Availability Business for any taxable period that ends on or before the date of the split-off.

In the Tax Sharing Agreement, each of Capital, SDS and SpinCo, among other things (i) represent that they and their subsidiaries have no plan or intention to take or fail to take any action that would be inconsistent with the representations, statements, warranties and covenants provided to tax counsel in connection with their delivery of tax opinions to Capital, Capital II and SDS with respect to the split-off and certain related transactions and (ii) covenant that during the two-year period following the split-off they and their subsidiaries will not sell, issue or redeem their equity securities (except in connection with certain specified transactions), redeem or otherwise repay any of the SpinCo senior notes issued in connection with the split-off, liquidate, merge or consolidate with another person or sell or dispose of a substantial portion of their assets. During this two-year period, each of Capital and SpinCo and their respective subsidiaries may take certain actions prohibited by their respective covenants if they receive an IRS ruling or a favorable opinion of tax counsel or a nationally recognized accounting firm, reasonably satisfactory to the other party, to the effect that these actions should not affect the tax-free nature of the split-off and related transactions; provided, however, that, in the case of any action to be taken in the first year after the split-off, SpinCo must also obtain the written consent of Capital. Regardless of the receipt of any such IRS ruling or opinion or the consent of Capital, SDS must indemnify SpinCo and its subsidiaries, and SpinCo must indemnify SDS and Capital and their subsidiaries, for certain taxes resulting from the action taken and relating to the split-off or related transactions. SDS is also required to indemnify SpinCo and its subsidiaries, and SpinCo is required to indemnify SDS and Capital and their subsidiaries, for certain taxes relating to the split-off and certain related transactions that result from (i) any breach of the representations regarding, or the covenants regarding the preservation of, the intended tax-free treatment of the split-off and such related transactions undertaken in connection with the split-off, (ii) any action or omission that is inconsistent with the representations, statements, warranties and covenants provided to tax counsel in connection with their delivery of tax opinions to Capital, Capital II and SDS with respect to the split-off and certain related transactions, and (iii) any other action or omission by it or any of its subsidiaries that was likely to give rise to such taxes when taken.

In addition, if the split-off and/or certain related transactions fail to qualify as tax-free transactions for reasons other than those for which SDS or SpinCo would be wholly responsible pursuant to the provisions described above, SpinCo will be obligated to indemnify Capital and SDS for 23% of the liability for taxes imposed in respect of the split-off and such related transactions and Capital will bear the remainder of such taxes. Further, under certain circumstances, if the split-off and certain related transactions become taxable to Capital, SpinCo will be required to reimburse Capital for its costs on account of certain tax benefits to SpinCo.

#### *Trademark License Agreement*

The Trademark License Agreement sets forth the license grant and terms under which SpinCo and its affiliates are permitted to use the mark SUNGARD AVAILABILITY SERVICES, certain abbreviations thereof, and certain domain names. Under the Trademark License Agreement, SpinCo and its affiliates have an exclusive worldwide license to the mark SUNGARD AVAILABILITY SERVICES in connection with its business as conducted immediately prior to the split-off. The mark is being registered in the United States and SpinCo has the right, at its sole expense, to request of SDS to register the mark in other jurisdictions. In addition, SpinCo has the right to use certain abbreviations of the mark and to use *sungardas* as part of its domain names (including for website and email addresses).

During the first two years following the split-off, the licensed mark is royalty free. In years 3, 4 and 5, SpinCo will pay a royalty payment of 0.30% of SpinCo's worldwide revenue (not counting revenue from resellers that white label its services and do not use its name to sell the services). In years 6 and 7, the royalty is reduced to 0.15% and 0.075%, respectively. As of year 8, if SpinCo has paid all royalties, it will have a perpetual, royalty-free license to use the mark going forward. In year 6, SpinCo has the option to prepay the remaining royalties and then have a perpetual license. SpinCo also has the right to buy out the royalty payments and receive a perpetual license if SunGard undergoes a change of control prior to March 31, 2021.

#### *Amended and Restated Capital Agreements*

The A&R Management Agreement amends and restates the Management Agreement, dated as of August 11, 2005 (the Prior Management Agreement), by and among the SunGard Parties, Bain Capital Partners, LLC (Bain), Blackstone Communications Advisors I L.L.C., Blackstone Management Partners IV L.L.C. (together with Blackstone Communications Advisors I L.L.C., Blackstone), Goldman Sachs & Co. (Goldman Sachs), Kohlberg Kravis Roberts & Co. L.P. (KKR), Providence Equity Partners L.L.C. (Providence), Silver Lake Management Company, L.L.C. (Silver Lake) and TPG GenPar IV, L.P. (TPG, and collectively with Bain, Blackstone, Goldman Sachs, KKR, Providence and Silver Lake, the Sponsors). The provisions of the Prior Management Agreement relating to the payment of quarterly periodic fees and subsequent transaction fees by Capital and its subsidiaries to the Sponsors were amended to reflect the fact that Bain and KKR (such Sponsors, or their successors in this role, the AS Sponsors) are reducing the amount of management consulting services and operational advice they provide to Capital and its subsidiaries. Accordingly, the quarterly periodic management fee payable under the A&R Management Agreement is 1.1% of EBITDA for the prior calendar quarter, payable only to Blackstone, Goldman Sachs, Providence, Silver Lake and TPG in proportion to their respective ownership interests in Capital and its subsidiaries. The AS Sponsors will each receive a reduced management fee of \$50,000 per quarter. The Sponsors will continue to be entitled to take an aggregate fee (a Subsequent Fee) equal to 1% of the gross transaction value of any future debt or equity financing, acquisition, disposition or change of control transaction having a gross transaction value exceeding \$25 million. However, each Subsequent Fee will be divided among the Sponsors in proportion to the advisory services provided by each Sponsor in connection with the subsequent transaction, as determined by a two-thirds supermajority of the voting interests held by the Sponsors at the time of such subsequent transaction.

The A&R Principal Investor Agreement amends the Amended and Restated Principal Investor Agreement, dated as of November 7, 2012 (the *Prior Principal Investor Agreement* ), by and among the funds comprising the shareholders designated as the *Principal Investor Groups* in the Certificate of Incorporation of Capital (each a *Principal Investor Group* and, collectively, the *Principal Investor Groups* ) and the SunGard Parties. The *Prior Principal Investor Agreement* was amended to provide that the *Principal Investor Groups* whose designees are serving as directors of SpinCo will no longer be able to designate representatives to serve on the operating committee of Capital.

The A&R Stockholders Agreement amends the Amended and Restated Stockholders Agreement, dated as of November 7, 2012 (the *Prior Stockholders Agreement* ), by and among the SunGard Parties and the stockholders of Capital and Capital II. The *Prior Stockholders Agreement* was amended to provide that, subject to certain limited exceptions, all stockholders party thereto will be prohibited from directly or indirectly selling, transferring or disposing of any shares of Capital, Capital II, Holding, Holdco LLC or SDS (i) for one year following the split-off and (ii) in the second year following the split-off unless accompanied by a tax opinion stating that the sale, transfer or disposition should not disqualify the split-off or any of the related transactions from tax-free treatment.

The A&R Participation Agreement amends the Amended and Restated Participation, Registration Rights and Coordination Agreement, dated as of November 7, 2012 (the *Prior Participation Agreement* ), by and among the SunGard Parties, the *Principal Investor Groups* and certain other stockholders of Capital and Capital II. The *Prior Participation Agreement* was amended to clarify that the exercise of demand registration rights by the *Principal Investor Groups* is subject to the transfer restrictions in the A&R Stockholders Agreement and to remove the Availability Business from the definition of the businesses of SDS.

The foregoing description of the Separation Agreement, the Tax Sharing Agreement, the Trademark License Agreement and the Amended and Restated Capital Agreements do not purport to be complete and are qualified in the entirety by reference to the Separation Agreement, the Tax Sharing Agreement, the Trademark License Agreement, the A&R Management Agreement, the A&R Principal Investor Agreement, the A&R Participation Agreement, and the A&R Stockholders Agreement, which are filed as Exhibits 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 2.7 respectively, and each of which is incorporated herein by reference.

#### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

#### **Item 2.02 Results of Operations and Financial Condition.**

The unaudited pro forma condensed consolidated financial information of Capital, Capital II and SDS, after giving effect to the split-off, and the related notes thereto, are attached hereto as Exhibit 99.2.

#### **Item 2.06. Material Impairments.**

Capital, Capital II and SDS (collectively with Capital and Capital II, the *Company* ) concluded that a material non-cash charge for impairment to the SunGard trade name is required under U.S. generally accepted accounting principles and will be recorded in the *Company*'s results of operations for the three-month period ended March 31, 2014. The impairment is a result of the split-off and from the effects that the split-off has on the valuation assumptions underlying the trade name, primarily the change in use of the SunGard trade name post-split by the Availability Business. While the *Company* is in the process of completing its impairment calculation, the current estimate of the impairment charge is approximately \$339 million, which has been reflected in the pro forma financial statements included in Exhibit 99.2 of this Form 8-K.



The Company is being assisted in its evaluation of its trade name by an independent valuation firm. The related valuation is being developed utilizing assumptions and projections that the Company believes to be reasonable and supportable and that reflect management's best estimates of projected future performance of the Company.

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

On March 31, 2014, James H. Greene, Jr. resigned from the boards of directors of Capital, Capital II and SDS.

On March 31, 2014, John Park was elected to the board of directors of each of SCC, SCC II and SDS in accordance with the terms of (i) the Prior Stockholders Agreement, which gives each Principal Investor Group the right to designate one nominee to the board of directors of SCC, and (ii) the Prior Principal Investor Agreement, which provides for the boards of directors of SCC II, SDS and other specified holding companies to consist of the same members as the board of SCC. Mr. Park was designated by certain funds associated with KKR. Mr. Park will not serve on any committee of the boards of directors.

KKR, the Principal Investor Group that designated Mr. Park, and its respective affiliates have from time to time entered into, and may continue to enter into, arrangements with the Company to use the Company's products and services, or for the Company to use products and services of KKR or its respective affiliates, in the ordinary course of business, which often result in revenues or costs to the Company in excess of \$120,000 annually.

**Item 9.01 Financial Statements and Exhibits.**

(b) Pro Forma Financial Information

The unaudited pro forma consolidated financial information of Capital, Capital II and SDS for the years ended December 31, 2011, 2012 and 2013, and as of December 31, 2013, giving effect to the transactions, is filed as Exhibit 99.2 to this Current Report on Form 8-K and incorporated herein by reference.

(d) Exhibits

Exhibit Number	Exhibit Title
2.1	Separation and Distribution Agreement, dated March 31, 2014, by and among SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, SunGard Data Systems Inc., Sungard Availability Services Capital, Inc., and Sungard Availability Services Holdings, LLC
2.2	Tax Sharing and Disaffiliation Agreement, dated March 31, 2014, by and among SunGard Capital Corp., SunGard Data Systems Inc., Sungard Availability Services Capital, Inc., and Sungard Availability Services Holdings, LLC
2.3	Trademark License Agreement, dated March 31, 2014, between SunGard Development LLC and Sungard Availability Services Capital, Inc.
2.4	Amended & Restated Management Agreement, dated March 31, 2014, by and among SunGard Data Systems Inc., SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, Bain Capital Partners, LLC, Blackstone Communications Advisors I L.L.C., Blackstone Management Partners IV L.L.C., Goldman, Sachs & Co., Kohlberg Kravis Roberts & Co. L.P., Providence Equity Partners L.L.C., Silver Lake Management Company, L.L.C. and TPG GenPar IV, L.P.
2.5	Second Amended and Restated Principal Investor Agreement, dated March 31, 2014, by and among SunGard Data Systems Inc., SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, and certain principal investor parties provided therein
2.6	Second Amended and Restated Participation, Registration Rights and Coordination Agreement, dated March 31, 2014, by and among SunGard Data Systems Inc., SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, and certain stockholder parties provided therein
2.7	Second Amended and Restated Stockholders Agreement, dated March 31, 2014, by and among SunGard Data Systems Inc., SunGard Capital Corp., SunGard Capital Corp. II, SunGard Holding Corp., SunGard Holdco LLC, and the stockholder parties provided therein
99.1	Press Release, dated March 31, 2014
99.2	Unaudited Pro Forma Condensed Consolidated Financial Information of Capital, Capital II and SDS for the years ended December 31, 2011, 2012 and 2013, and as of December 31, 2013

**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.

SunGard Capital Corp.

SunGard Capital Corp. II

SunGard Data Systems Inc.

April 4, 2014

By: /s/ Charles J. Neral  
Charles J. Neral  
Senior Vice President, Finance and Chief Financial  
Officer

**Exhibit Index**

**Exhibit**

**Number**

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- |      |   |
|------|---|
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