

GENWORTH FINANCIAL INC
Form 8-K
August 14, 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

August 14, 2018

Date of Report

(Date of earliest event reported)

GENWORTH FINANCIAL, INC.
(Exact name of registrant as specified in its charter)

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| Delaware (State or other jurisdiction of | 001-32195 (Commission | 80-0873306 (I.R.S. Employer |
| incorporation or organization) | File Number) | Identification No.) |
| 6620 West Broad Street, Richmond, VA (Address of principal executive offices) | (804) 281-6000 | 23230 (Zip Code) |

(Registrant's telephone number, including area code)

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 (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))
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 any 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.

As previously reported, on October 21, 2016, Genworth Financial, Inc. (the Company), Asia Pacific Global Capital Co., Ltd., a limited liability company incorporated in the People's Republic of China (Parent), and Asia Pacific Global Capital USA Corporation, a Delaware corporation and an indirect, wholly owned subsidiary of Parent (Merger Sub), entered into an Agreement and Plan of Merger (the Merger Agreement), pursuant to which, subject to the terms and conditions set forth therein, the Company will be acquired by Parent through a merger effected under Delaware law. The Merger Agreement provides that, subject to the satisfaction or waiver of certain conditions, Merger Sub will merge with and into the Company (the Merger). As a result of the Merger, Merger Sub will cease to exist and the Company will survive as an indirect, wholly owned subsidiary of Parent. In addition to the Merger Agreement, the Company, Parent and Merger Sub have entered into that certain (i) Waiver and Agreement, dated as of August 21, 2017, (ii) Second Waiver and Agreement, dated as of November 29, 2017, (iii) Third Waiver and Agreement, dated as of February 23, 2018; (iv) Fourth Waiver and Agreement, dated as of March 27, 2018, and (v) Fifth Waiver and Agreement, dated as of June 28, 2018. Capitalized terms used but not defined in the Current Report on Form 8-K have the meanings ascribed to such terms under the Merger Agreement.

On August 14, 2018, the Company, Parent and Merger Sub entered into a Sixth Waiver and Agreement (the Waiver Agreement) pursuant to which the Company and Parent each agreed to extend the End Date (as defined under the Merger Agreement) to December 1, 2018, and accordingly waive until December 1, 2018 its right to terminate the Merger Agreement and abandon the Merger due to a failure of the Merger to have been consummated on or before August 15, 2018.

Under the terms of the Waiver Agreement, the Company, Parent and Merger Sub, as applicable, waived (i) the unstacking condition under Section 7.2(d) of the Merger Agreement (Unstacking Condition); (ii) compliance by the other party or parties with Section 6.5 of the Merger Agreement to the extent relating to approvals of the Unstacking Condition (Unstacking Approvals); and (iii) any claim that it may have against the other party or other parties under the Merger Agreement or otherwise, including any claim that the other party or parties has or have failed to comply with Section 6.5 of the Merger Agreement, resulting from, arising out of or relating to obtaining or failing to obtain any of the Unstacking Approvals.

In addition, the Company waived (i) Parent's obligation to contribute \$525,000,000 to the Company to facilitate the Unstacking Condition (Unstacking Capital Commitment); (ii) Parent's obligation to contribute \$600,000,000 to the Company for the repayment of the Company's 6.515% senior unsecured notes due May 2018 (2018 Debt Capital Commitment) and together with the Unstacking Capital Commitment, the Capital Commitments; (iii) compliance with the terms of the Equity Commitment Letter (as defined under the Merger Agreement) to the extent relating to the Capital Commitments, and (iv) any claim that the Company may have against Parent, Merger Sub or their respective Affiliates under the Merger Agreement, the Equity Commitment Letter or otherwise, resulting from, arising out of or relating to the failure of Parent to contribute the Capital Commitments, including any such claim that Parent has failed to comply with Section 6.16 or Section 6.17 of the Merger Agreement, and any such claim of the Company under Section 7 of the Equity Commitment Letter.

The Waiver Agreement recites that Parent has agreed to make or cause certain of its Affiliates to make capital contributions of approximately \$1,500,000,000 in aggregate to the Company between the consummation of the Merger and March 31, 2020, subject to (i) the occurrence of the closing the merger, and (ii) any notice or filing required to be made, or approval, consent or authorization required to be obtained, from any Governmental Entity with respect to such capital contributions.

Further, pursuant to the Waiver Agreement, each of Parent and Merger Sub, on the one hand, and the Company, on the other hand, acknowledges that as of August 14, 2018, there has been no breach of the Merger Agreement on the part of the other party and irrevocably waives any claim against such other party based upon or arising out of any actual or alleged breach of any representation, warranty, covenant or agreement set forth in the Merger Agreement

based upon the facts or circumstances existing or occurring on or prior to August 14, 2018.

The foregoing description of the Waiver Agreement is qualified in its entirety by reference to the Waiver Agreement, a copy of which is filed as Exhibit 2.1 hereto and incorporated herein by reference.

Item 8.01 Other Events.

On August 14, 2018, the Company issued a press release (the Press Release) announcing the execution of the Waiver Agreement. The Press Release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.
(d) Exhibits.

2.1 Sixth Waiver and Agreement, dated as of August 14, 2018, among the Company, Parent and Merger Sub

99.1 Press Release issued by the Company, dated August 14, 2018

Cautionary Note Regarding Forward-Looking Statements

This communication includes certain statements that may constitute forward-looking statements within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements may be identified by words such as expects, intends, anticipates, plans, believes, seeks, estimates, will or words of similar meaning and in not limited to, statements regarding the outlook for the company's future business and financial performance. Forward-looking statements are based on management's current expectations and assumptions, which are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict. Actual outcomes and results may differ materially from those in the forward-looking statements and factors that may cause such a difference include, but are not limited to, risks and uncertainties related to: (i) the risk that the transaction may not be completed in a timely manner or at all, which may adversely affect Genworth's business and the price of Genworth's common stock; (ii) the parties' inability to obtain regulatory approvals, or the possibility that regulatory approvals may further delay the transaction or will not be received prior to December 1, 2018 (and either or both of the parties may not be willing to further waive their End Date termination rights beyond December 1, 2018) or that materially burdensome or adverse regulatory conditions may be imposed in connection with any such regulatory approvals (including those conditions that either or both of the parties may be unwilling to accept); (iii) the risk that the parties will not be able to obtain other regulatory approvals, including in connection with the parties' intent to seek approval of the Oceanwide transaction with no unstacking or in connection with the current geo-political environment; (iv) the parties' inability to obtain any necessary regulatory approvals for the post-closing capital plan; (v) the risk that a condition to closing of the transaction may not be satisfied; (vi) potential legal proceedings that may be instituted against Genworth following announcement of the transaction; (vii) the risk that the proposed transaction disrupts Genworth's current plans and operations as a result of the announcement and consummation of the transaction; (viii) potential adverse reactions or changes to Genworth's business relationships with clients, employees, suppliers or other parties or other business uncertainties resulting from the announcement of the transaction or during the pendency of the transaction, including but not limited to such changes that could affect Genworth's financial performance; (ix) certain restrictions during the pendency of the transaction that may impact Genworth's ability to pursue certain business opportunities or strategic transactions; (x) continued availability of capital and financing to Genworth before the consummation of the transaction; (xi) further rating agency actions and downgrades in Genworth's financial strength ratings; (xii) changes in applicable laws or regulations; (xiii) Genworth's ability to recognize the anticipated benefits of the transaction; (xiv) the amount of the costs, fees, expenses and other charges related to the transaction; (xv) the risks related to diverting management's attention from Genworth's ongoing business operations; (xvi) the impact of changes in interest rates and political instability; and (xvii) other risks and uncertainties described in the Definitive Proxy Statement, filed with the SEC on January 25, 2017, and Genworth's Annual Report on Form 10-K, filed with the SEC on February 28, 2018. Unlisted factors may present significant additional obstacles to the realization of forward-looking statements. Consequences of material differences in results as compared with those anticipated in the forward-looking statements

could include, among other things, business disruption, operational problems, financial loss, legal liability to third parties and similar risks, any of which could have a material adverse effect on Genworth's consolidated financial condition, results of operations, credit rating or liquidity. Accordingly, forward-looking statements should not be relied upon as representing Genworth's views as of any subsequent date, and Genworth does not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

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.

Date: August 14, 2018

GENWORTH FINANCIAL, INC.

By: */s/ Ward E. Bobitz*

Ward E. Bobitz

Executive Vice President and General Counsel