

Wayfair Inc.
Form 8-K
November 19, 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): November 14, 2018

WAYFAIR INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other Jurisdiction of
Incorporation or Organization)

001-36666
(Commission
File Number)
4 Copley Place, 7th Floor

36-4791999
(I.R.S. Employer
Identification Number)

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Boston, MA 02116

(Address of principal executive offices, including zip code)

(617) 532-6100

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, 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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

Purchase Agreement

On November 14, 2018, Wayfair Inc. (Wayfair or the Company) entered into a purchase agreement (the Purchase Agreement) with certain financial institutions (collectively the Initial Purchasers) pursuant to which the Company agreed to sell \$500,000,000 aggregate principal amount of 1.125% Convertible Senior Notes due 2024 (the Notes). The Company also agreed to grant a 13-day option (the Option) to the Initial Purchasers to purchase all or part of an additional \$75,000,000 aggregate principal amount of its 1.125% Convertible Senior Notes due 2024 (the Additional Notes), solely to cover over-allotments, which Option has not been exercised as of the time of the filing of this Current Report on Form 8-K.

The Purchase Agreement includes customary representations, warranties and covenants. Under the terms of the Purchase Agreement, the Company has agreed to indemnify the Initial Purchasers against certain liabilities.

The foregoing description of the Purchase Agreement is qualified in its entirety by reference to the Purchase Agreement attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Indenture

The sale of the Notes closed on November 19, 2018. The Notes were issued pursuant to an indenture, dated November 19, 2018 (the Indenture), between the Company and U.S. Bank National Association, as trustee.

The Company will pay interest on the Notes semiannually in arrears at a rate of 1.125% per annum on May 1 and November 1 of each year commencing on May 1, 2019. The Notes are convertible based upon an initial conversion rate of 8.5910 shares of the Company's Class A common stock per \$1,000 principal amount of Notes (equivalent to a conversion price of approximately \$116.40 per share of the Company's Class A common stock). The conversion rate will be subject to adjustment upon the occurrence of certain specified events, including certain distributions and dividends to all or substantially all of the holders of the Company's Class A common stock, but will not be adjusted for accrued and unpaid interest. The Company will settle any conversions of the Notes in cash, shares of the Company's Class A common stock or a combination thereof, with the form of consideration determined at the Company's election.

The Notes will mature on November 1, 2024, unless earlier purchased, redeemed or converted. Prior to August 1, 2024, holders may convert all or a portion of their Notes only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on December 31, 2018 (and only during such calendar quarter), if the last reported sale price of the Company's Class A common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any ten consecutive trading day period (the measurement period) in which the trading price per \$1,000 principal amount of Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's Class A common stock and the conversion rate on each such trading day; (3) with respect to any Notes called for redemption by the Company, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate events. On and after August 1, 2024 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their Notes at any time, regardless of the foregoing circumstances. Holders of Notes who convert their Notes in connection with a make-whole fundamental change or a notice of redemption (each as defined in the Indenture) may be entitled to a premium in the form of an increase in the conversion rate of the Notes.

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The Company may not redeem the Notes prior to May 8, 2022. On or after May 8, 2022, the Company may redeem for cash all or part of the Notes if the last reported sale price of the Company's Class A common stock equals or exceeds 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the five trading days immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading days ending on, and including the trading day immediately preceding the date on which the Company provides notice of the redemption. The redemption price will be 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any.

Upon the occurrence of a fundamental change (as defined in the Indenture), holders may require the Company to repurchase all or a portion of their Notes for cash at a price equal to 100% of the principal amount of the Notes to be repurchased plus any accrued but unpaid interest to, but excluding, the fundamental change repurchase date.

The Indenture contains customary terms and covenants, including that upon certain events of default occurring and continuing, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding may declare the entire principal amount of all the Notes plus accrued interest, if any, to be immediately due and payable.

The Notes are general unsecured obligations of the Company. The Notes rank senior in right of payment to any of the Company's future indebtedness that is expressly subordinated in right of payment to the Notes; rank equal in right of payment to the Company's existing and future unsecured indebtedness that is not so subordinated; are effectively subordinated in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness; and are structurally subordinated to all existing and future indebtedness and liabilities of the Company's subsidiaries.

The net proceeds from the sale of the Notes were approximately \$488.7 million, after deducting the Initial Purchasers discounts and the estimated offering expenses payable by the Company. The Company used approximately \$81.3 million of the net proceeds from the offering to pay the cost of the Capped Call Transactions (as defined below). If the Initial Purchasers exercise the Option, the Company expects to use a portion of the net proceeds from the sale of the Additional Notes to enter into additional Capped Call Transactions. The Company intends to use the remainder of the net proceeds for working capital and general corporate purposes, which may include the acquisition of, or investment in, technologies, solutions or businesses that complement our business.

The foregoing description is qualified in its entirety by reference to the text of the Indenture and the Form of 1.125% Convertible Senior Notes due 2024, which are attached as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Capped Call Transactions

In connection with the pricing of the Notes, the Company entered into privately negotiated capped call transactions (the Capped Call Transactions) with one of the Initial Purchasers and certain other financial institutions (the Option Counterparties). Collectively, the Capped Call Transactions cover, initially, the number of shares of the Company's Class A common stock underlying the Notes, subject to anti-dilution adjustments substantially similar to those applicable to the Notes. The cost of the Capped Call Transactions was approximately \$81.3 million.

The Capped Call Transactions are expected generally to reduce the potential dilution and/or offset the cash payments the Company is required to make in excess of the principal amount of the Notes upon conversion of the Notes in the event that the market price per share of the Company's Class A common stock is greater than the strike price of the Capped Call Transactions (which initially corresponds to the initial conversion price of the Notes and is subject to certain adjustments under the terms of the Capped Call Transactions), with such reduction and/or offset subject to a cap based on the cap price of the Capped Call Transactions. The cap price of the Capped Call Transactions will initially be \$219.6250 per share of the Company's Class A common stock, which represents a premium of 150% over the last reported sale price of the Company's Class A common stock on November 14, 2018, and is subject to certain adjustments under the terms of the Capped Call Transactions. The options underlying the Capped Call Transactions can, at the Company's option, remain outstanding until November 1, 2024, which is the maturity date for the Notes, even if all or a portion of the Notes are converted, repurchased or redeemed prior to such date.

The Capped Call Transactions are separate transactions, in each case, entered into by the Company with the Option Counterparties, and are not part of the terms of the Notes and will not affect any holder's rights under the Notes. Holders of the Notes will not have any rights with respect to the Capped Call Transactions.

The summary of the foregoing transactions is qualified in its entirety by reference to the text of the letter agreements in respect of the Capped Call Transactions, which are attached as Exhibits 10.2, 10.3 and 10.4 to this Current Report on Form 8-K and are incorporated herein by reference.

Amended and Restated 2017 Capped Call Transactions

On September 15, 2017, the Company issued \$431.25 million aggregate principal amount of 0.375% Convertible Senior Notes due 2022 (the 2017 Notes), which includes the exercise in full of the \$56.25 million over-allotment option, to certain financial institutions (the 2017 Initial Purchasers). On September 11, 2017, in connection with the pricing of the 2017 Notes, the Company entered into privately negotiated capped call transactions (the 2017 Base Capped Call Transactions) with each of Citibank, N.A., Goldman Sachs & Co. LLC and Bank of America, N.A. (the 2017 Option Counterparties) and, in connection with the exercise in full of the over-allotment option by the 2017 Initial Purchasers, on September 14, 2017, entered into additional capped call transactions (such additional capped call transactions, the 2017 Additional Capped Call Transactions) and, together with the 2017 Base Capped Call Transactions, the 2017 Capped Call Transactions) with the 2017 Option Counterparties. Collectively, the 2017 Capped Call Transactions covered, initially, the number of shares of the Company's Class A common stock underlying the 2017 Notes, subject to anti-dilution adjustments substantially similar to those applicable to the 2017 Notes.

On November 15, 2018 (the Amendment Date), the Company amended and restated the 2017 Capped Call Transactions (the Restated 2017 Capped Call Transactions) with each 2017 Option Counterparty in order to, among other things, provide that the options underlying the Restated 2017 Capped Call Transactions can, at the Company's option, remain outstanding until September 1, 2022, which is the maturity date for the 2017 Notes, even if all or a portion of the 2017 Notes are converted, repurchased or redeemed prior to such date.

The summary of the foregoing transactions is qualified in its entirety by reference to the text of the amended and restated letter agreements in respect of the Restated 2017 Capped Call Transactions, which are attached as Exhibits 10.5, 10.6, 10.7, 10.8, 10.9 and 10.10 to this Current Report on Form 8-K and are incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth under Item 1.01 of this Current Report on Form 8-K under the heading Indenture is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth under Items 1.01 and 2.03 of this Current Report on Form 8-K is incorporated herein by reference.

The Company's offering of the Notes to the Initial Purchasers was made in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the Securities Act). The Company relied on this exemption from registration based in part on representations made by the Initial Purchasers in the Purchase Agreement, including that the Initial Purchasers would only offer, sell or deliver the Notes to persons whom they reasonably believe to be qualified institutional buyers within the meaning of Rule 144A under the Securities Act.

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The Notes and the shares of the Company's Class A common stock issuable upon conversion of the Notes have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or applicable exemption from registration requirements.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit	Number	Description of Exhibit
	4.1	<u>Indenture, dated as of November 19, 2018, by and between Wayfair Inc. and U.S. Bank National Association, as trustee.</u>
	4.2	<u>Form of 1.125% Convertible Senior Notes due 2024 (included in Exhibit 4.1).</u>
	10.1	<u>Purchase Agreement, dated November 14, 2018, by and among Wayfair Inc. and Citigroup Global Markets Inc. and Goldman Sachs & Co. LLC, as representatives of the several Initial Purchasers.</u>
	10.2	<u>Letter Agreement, dated November 14, 2018, between Morgan Stanley & Co. LLC and Wayfair Inc. regarding the Capped Call Transaction.</u>
	10.3	<u>Letter Agreement, dated November 14, 2018, between Goldman Sachs & Co. LLC and Wayfair Inc. regarding the Capped Call Transaction.</u>
	10.4	<u>Letter Agreement, dated November 14, 2018, between Bank of America, N.A. and Wayfair Inc. regarding the Capped Call Transaction.</u>
	10.5	<u>Amended and Restated Letter Agreement, dated November 15, 2018, between Citibank, N.A. and Wayfair Inc. regarding the 2017 Base Capped Call Transaction.</u>
	10.6	<u>Amended and Restated Letter Agreement, dated November 15, 2018, between Goldman Sachs & Co. LLC and Wayfair Inc. regarding the 2017 Base Capped Call Transaction.</u>
	10.7	<u>Amended and Restated Letter Agreement, dated November 15, 2018, between Bank of America, N.A. and Wayfair Inc. regarding the 2017 Base Capped Call Transaction.</u>
	10.8	<u>Amended and Restated Letter Agreement, dated November 15, 2018, between Citibank, N.A. and Wayfair Inc. regarding the 2017 Additional Capped Call Transaction.</u>
	10.9	<u>Amended and Restated Letter Agreement, dated November 15, 2018, between Goldman Sachs & Co. LLC and Wayfair Inc. regarding the 2017 Additional Capped Call Transaction.</u>
	10.10	<u>Amended and Restated Letter Agreement, dated November 15, 2018, between Bank of America, N.A. and Wayfair Inc. regarding the 2017 Additional Capped Call Transaction.</u>

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

WAYFAIR INC.

Date: November 19, 2018

By: /s/ Enrique Colbert
Name: Enrique Colbert
Title: General Counsel and Secretary