

BGC Partners, Inc.
Form 8-K
March 07, 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 6, 2018

BGC Partners, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

0-28191, 1-35591
(Commission
File Numbers)
499 Park Avenue, New York, NY 10022

13-4063515
(I.R.S. Employer
Identification No.)

(Address of principal executive offices)

Registrant's telephone number, including area code: (212) 610-2200

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 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.

The information required by this Item 1.01 is set forth under Item 8.01 below and is hereby incorporated by reference in response to this Item.

Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.

The information required by this Item 2.04 is set forth under Item 8.01 below and is hereby incorporated by reference in response to this Item.

Item 7.01. Regulation FD Disclosure.

On March 7, 2018, BGC Partners, Inc. (the Company or BGC) and Newmark Group, Inc. (Newmark) issued a joint press release (the Release) to announce the purchase by BGC and its subsidiaries of approximately 16.6 million newly issued exchangeable limited partnership units (the Units) of Newmark Holdings, L.P. (Newmark Holdings) for approximately \$242.0 million.

In the Release, BGC announced that it had updated its consolidated outlook for the first quarter of 2018. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

In the Release, BGC uses non-GAAP financial measures. See the item entitled Information Regarding Non-GAAP Financial Measures set forth under Item 8.01 below which is hereby incorporated by reference in response to this Item.

**Item 8.01. Other Events.
Investment Agreement**

On March 7, 2018, BGC, including through its subsidiary BGC Partners, L.P., purchased 16,606,726 newly issued exchangeable limited partnership units (the Units) of Newmark Holdings for approximately \$242.0 million (the Investment). The price per Unit was based on the \$14.57 closing price of Newmark's Class A common stock, par value \$0.01 per share (the Class A common stock) on March 6, 2018 as reported on the NASDAQ Global Select Market. These newly-issued Units are exchangeable, at BGC's discretion, into either shares of Class A common stock or shares of Class B common stock, par value \$0.01 per share, of Newmark (the Newmark Class B common stock).

BGC made the Investment pursuant to an Investment Agreement dated as of March 6, 2018 by and among BGC, BGC Holdings, BGC Partners, L.P., BGC Global Holdings, L.P., Newmark, Newmark Holdings and Newmark Partners, L.P. The Investment and related transactions were approved by the Audit Committees (the Audit Committees) of the Boards of Directors of BGC and Newmark (the Boards) and by the full Boards upon the recommendation of the Audit Committees.

BGC and its subsidiaries funded the Investment using the proceeds of its Controlled Equity Offering Class A common stock sales program pursuant to the Sales Agreement dated April 1, 2017 between BGC Partners, Inc. and Cantor Fitzgerald & Co. (CF&Co) with respect to 20,000,000 shares of Class A common stock (the 2017 Sales Agreement). Since December 19, 2017, BGC has sold an aggregate of 19.4 million newly-issued Class A common shares under the 2017 Sales Agreement for net proceeds of \$270.9 million. Approximately \$242.0 million of gross proceeds were used to make the Investment. The remaining funds were used to repurchase shares of BGC's Class A common stock and to purchase or redeem limited partnership interests of BGC Holdings, L.P. (BGC Holdings) and exchangeable limited

partnership interests of Newmark Holdings. All of the shares under the 2017 Sales Agreement have been sold as of the date hereof.

The foregoing description of the Investment Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Investment Agreement, which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Repayment of Term Loan

As previously disclosed, on November 22, 2017, BGC and Newmark entered into an amendment (the *Term Loan Amendment*) to the unsecured senior term loan credit agreement (the *Term Loan Credit Agreement*), dated as of September 8, 2017, with Bank of America, N.A., as administrative agent (the *Administrative Agent*), and a syndicate of lenders. The *Term Loan Credit Agreement* provided for a term loan in the aggregate principal amount of \$575.0 million (the *Term Loan*). In connection with Newmark's separation from BGC, Newmark assumed the obligations of BGC as borrower under the *Term Loan*. Newmark repaid a portion of the *Term Loan* from the proceeds of its initial public offering in December 2017 and made two additional payments of \$14.4 million each subsequent to December 31, 2017. Newmark will use the proceeds from the Investment to repay the balance of the outstanding principal amount under the *Term Loan* in the amount of approximately \$242.0 million.

The information under the heading *Update to Outlooks* set forth in Exhibit 99.1 attached to this Current Report on Form 8-K is being furnished under Item 7.01 of Form 8-K. Such information shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the *Exchange Act*), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended (the *Securities Act*), or the *Exchange Act*, except as expressly set forth by specific reference in such filing and as set forth below. The remaining information set forth in Exhibit 99.1 is being filed under the items set forth above and shall be deemed incorporated by reference in any filing under the Securities Act, except as expressly set forth by specific reference in such filing.

Discussion of Forward-Looking Statements about Newmark and BGC Partners, Inc.

Statements in this document and the attached press release regarding Newmark and BGC that are not historical facts are forward-looking statements that involve risks and uncertainties, which could cause actual results to differ from those contained in the forward-looking statements. Except as required by law, Newmark and BGC undertake no obligation to update any forward-looking statements. For a discussion of additional risks and uncertainties, which could cause actual results to differ from those contained in the forward-looking statements, see Newmark's and BGC's Securities and Exchange Commission filings, including, but not limited to, any updates to such risk factors contained in subsequent Forms 10-K, 10-Q, or Forms 8-K.

Information Regarding Non-GAAP Financial Measures

In the Press Release, BGC uses non-GAAP financial measures including, but not limited to, pre-tax Adjusted Earnings and post-tax Adjusted Earnings, which are supplemental measures of operating results that are used by management to evaluate the financial performance of the Company and its consolidated subsidiaries. BGC believes that Adjusted Earnings best reflect the operating earnings generated by the Company on a consolidated basis and are the earnings which management considers when managing its business.

As compared with income (loss) from operations before income taxes, and net income (loss) per fully diluted share, all prepared in accordance with GAAP, Adjusted Earnings calculations primarily exclude certain non-cash items and other expenses that generally do not involve the receipt or outlay of cash by the Company and/or which do not dilute existing stockholders, as described below. In addition, Adjusted Earnings calculations exclude certain gains and charges that management believes do not best reflect the ordinary results of BGC.

Adjustments Made to Calculate Pre-Tax Adjusted Earnings

BGC defines pre-tax Adjusted Earnings as GAAP income (loss) from operations before income taxes and noncontrolling interest in subsidiaries excluding items, such as:

Non-cash asset impairment charges, if any;

Allocations of net income to limited partnership units;

Non-cash charges related to the amortization of intangibles with respect to acquisitions; and

Non-cash charges relating to grants of exchangeability to limited partnership units that reflect the value of the shares of common stock into which the unit is exchangeable when the unit holder is granted exchangeability not previously expensed in accordance with GAAP.

Virtually all of BGC's key executives and producers have partnership or equity stakes in the Company and receive deferred equity or limited partnership units as part of their compensation. A significant percentage of the Company's fully diluted shares are owned by its executives, partners and employees. The Company issues limited partnership units and grant exchangeability to unit holders to provide liquidity to its employees, to align the interests of its employees and management with those of common stockholders, to help motivate and retain key employees, and to encourage a collaborative culture that drives cross-selling and revenue growth.

When the Company issues limited partnership units, the shares of common stock into which the units can be ultimately exchanged are included in BGC's fully diluted share count for Adjusted Earnings at the beginning of the subsequent quarter after the date of grant. BGC includes such shares in the Company's fully diluted share count when the unit is granted because the unit holder is expected to be paid a pro-rata distribution based on BGC's calculation of Adjusted Earnings per fully diluted share and because the holder could be granted the ability to exchange their units into shares of common stock in the future. Non-cash charges with respect to grants of exchangeability reflect the value of the shares of common stock into which the unit is exchangeable when the unit holder is granted exchangeability not previously expensed in accordance with GAAP. The amount of non-cash charges relating to grants of exchangeability the Company uses to calculate pre-tax Adjusted Earnings on a quarterly basis is based upon the Company's estimate of expected grants of exchangeability to limited partnership units during the annual period, as described further below under Adjustments Made to Calculate Post-Tax Adjusted Earnings.

Adjusted Earnings also excludes non-cash GAAP gains attributable to originated mortgage servicing rights (which Newmark refer to as OMSRs) and non-cash GAAP amortization of mortgage servicing rights (which the Company refers to as MSRs). Under GAAP, the Company recognizes OMSRs gains equal to the fair value of servicing rights retained on mortgage loans originated and sold. Subsequent to the initial recognition at fair value, MSRs are carried at the lower of amortized cost or fair value and amortized in proportion to the net servicing revenue expected to be earned. However, it is expected that any cash received with respect to these servicing rights, net of associated expenses, will increase Adjusted Earnings (and Adjusted EBITDA) in future periods.

Additionally, Adjusted Earnings calculations exclude certain unusual, one-time, non-ordinary or non-recurring items, if any. These items are excluded from Adjusted Earnings because the Company views excluding such items as a better reflection of the ongoing operations of BGC. BGC's definition of Adjusted Earnings also excludes certain gains and charges with respect to acquisitions, dispositions, or resolutions of litigation. Management believes that excluding

such gains and charges also best reflects the ongoing performance of BGC.

Recognition of Nasdaq Earn-out Payments

Consistent with Newmark's methodology of recognizing income related to the receipt of Nasdaq earn-out payments in the third quarter under GAAP, beginning with the first quarter of 2018, BGC will recognize the receipt of Nasdaq earn-out payments when earned in the third quarter for Adjusted Earnings instead of pro-rating over four quarters. This GAAP methodology will lead to earlier recognition of the Nasdaq income under Adjusted Earnings.

Adjustments Made to Calculate Post-Tax Adjusted Earnings

Because Adjusted Earnings are calculated on a pre-tax basis, BGC also intends to report post-tax Adjusted Earnings on a consolidated basis. The Company defines post-tax Adjusted Earnings as pre-tax Adjusted Earnings reduced by the non-GAAP tax provision described below and Adjusted Earnings attributable to noncontrolling interest in subsidiaries.

The Company calculates its tax provision for post-tax Adjusted Earnings using an annual estimate similar to how it accounts for its income tax provision under GAAP. To calculate the quarterly tax provision under GAAP, BGC estimates its full fiscal year GAAP income (loss) from operations before income taxes and noncontrolling interests in subsidiaries and the expected inclusions and deductions for income tax purposes, including expected grants of exchangeability to limited partnership units during the annual period. The resulting annualized tax rate is applied to BGC's quarterly GAAP income (loss) from operations before income taxes and noncontrolling interests in subsidiaries. At the end of the annual period, the Company updates its estimate to reflect the actual tax amounts owed for the period.

To determine the non-GAAP tax provision, BGC first adjusts pre-tax Adjusted Earnings by recognizing any, and only, amounts for which a tax deduction applies under applicable law. The amounts include non-cash charges with respect to grants of exchangeability; certain charges related to employee loan forgiveness; certain net operating loss carryforwards when taken for statutory purposes; certain charges related to tax goodwill amortization; and deductions with respect to charitable contributions. These adjustments may also reflect timing and measurement differences, including treatment of employee loans, changes in the value of units between the dates of grants of exchangeability and the date of actual unit exchange, variations in the value of certain deferred tax assets and liabilities and the different timing of permitted deductions for tax under GAAP and statutory tax requirements.

After application of these previously described adjustments, the result is the Company's taxable income for its pre-tax Adjusted Earnings, to which BGC then applies the statutory tax rates. This amount is the Company's non-GAAP tax provision. BGC views the effective tax rate on pre-tax Adjusted Earnings as equal to the amount of its non-GAAP tax provision divided by the amount of pre-tax Adjusted Earnings.

Generally, the most significant factor affecting this non-GAAP tax provision is the amount of non-cash charges relating to the grants of exchangeability to limited partnership units. Because the non-cash charges relating to the grants of exchangeability are deductible in accordance with applicable tax laws, increases in exchangeability have the effect of lowering the Company's non-GAAP effective tax rate and thereby increasing its post-tax Adjusted Earnings.

Management uses post-tax Adjusted Earnings in part to help it evaluate, among other things, the overall performance of the business, to make decisions with respect to the Company's operations, and to determine the amount of dividends payable to common stockholders and distributions payable to holders of limited partnership units.

BGC incurs income tax expenses based on the location, legal structure and jurisdictional taxing authorities of each of its subsidiaries. Certain of the Company's entities are taxed as U.S. partnerships and are subject to the Unincorporated Business Tax (UBT) in New York City. Any U.S. federal and state income tax liability or benefit related to the partnership income or loss, with the exception of UBT, rests with the unit holders rather than with the partnership entity. The Company's consolidated financial statements include U.S. federal, state and local income taxes on the Company's allocable share of the U.S. results of operations. Outside of the U.S., BGC operates principally through subsidiary corporations subject to local income taxes. For these reasons, taxes for Adjusted Earnings are expected to be presented to show the tax provision the consolidated Company would expect to pay if 100 percent of earnings were taxed at global corporate rates.

Adjusted Earnings Attributable to Noncontrolling Interest in Subsidiaries

Adjusted Earnings attributable to noncontrolling interest in subsidiaries is calculated based on the relevant noncontrolling interest existing on the balance sheet date. Following the Newmark IPO, noncontrolling interests exist for Newmark Group, Inc., and on the issuance of additional standalone units for BGC Holdings L.P. and Newmark Holdings L.P., because relevant units/shares may have different economic entitlements to common stock of BGC Partners, Inc.

Calculations of Pre-Tax and Post-Tax Adjusted Earnings per Common Share

BGC's Adjusted Earnings per common share calculations assume either that:

The fully diluted share count includes the shares related to any dilutive instruments, but excludes the associated expense, net of tax, when the impact would be dilutive; or

The fully diluted share count excludes the shares related to these instruments, but includes the associated expense, net of tax.

The share count for Adjusted Earnings excludes certain shares expected to be issued in future periods but not yet eligible to receive dividends and/or distributions. Each quarter, the dividend payable to BGC's common stockholders, if any, is expected to be determined by the Company's Board of Directors with reference to a number of factors, including post-tax Adjusted Earnings per common share. BGC may also pay a pro-rata distribution of net income to limited partnership units, as well as to Cantor for its noncontrolling interest. The amount of this net income, and therefore of these payments per unit, would be determined using the above definition of post-tax Adjusted Earnings per common share.

The declaration, payment, timing and amount of any future dividends payable by the Company will be at the discretion of its board of directors.

Other Matters with Respect to Adjusted Earnings

The term Adjusted Earnings should not be considered in isolation or as an alternative to GAAP net income (loss). The Company views Adjusted Earnings as a metric that is not indicative of liquidity or the cash available to fund its operations, but rather as a performance measure. Pre- and post-tax Adjusted Earnings are not intended to replace the Company's presentation of its GAAP financial results. However, management believes that these measures help provide investors with a clearer understanding of BGC's financial performance and offer useful information to both management and investors regarding certain financial and business trends related to the Company's financial condition and results of operations. Management believes that Adjusted Earnings measures and the GAAP measures of financial

performance should be considered together.

BGC anticipates providing forward-looking guidance for GAAP revenues and for certain Adjusted Earnings measures from time to time. However, the Company does not anticipate providing an outlook for other GAAP results. This is because certain GAAP items, which are excluded from Adjusted Earnings, are difficult to forecast with precision before the end of each period. The Company therefore

believes that it is not possible to forecast GAAP results or to quantitatively reconcile GAAP results to non-GAAP results with sufficient precision unless BGC makes unreasonable efforts. The items that are difficult to predict on a quarterly basis with precision and which can have a material impact on the Company's GAAP results include, but are not limited, to the following:

Allocations of net income and grants of exchangeability to limited partnership units, which are determined at the discretion of management throughout and up to the period-end;

The impact of certain marketable securities, as well as any gains or losses related to associated mark-to-market movements and/or hedging. These items are calculated using period-end closing prices;

Non-cash asset impairment charges, which are calculated and analyzed based on the period-end values of the underlying assets. These amounts may not be known until after period-end; and

Acquisitions, dispositions and/or resolutions of litigation which are fluid and unpredictable in nature.

Adjusted EBITDA and Adjusted EBITDA Before Allocations to Units Defined

BGC also provides an additional non-GAAP financial performance measure, Adjusted EBITDA, which it defines as GAAP Net income (loss) available to common stockholders, adjusted to add back the following items:

Interest expense;

Fixed asset depreciation and intangible asset amortization;

Impairment charges;

Employee loan amortization and reserves on employee loans;

Provision (benefit) for income taxes;

Net income (loss) attributable to noncontrolling interest in subsidiaries;

Non-cash charges relating to grants of exchangeability to limited partnership interests;

Non-cash charges related to issuance of restricted shares;

Non-cash earnings or losses related to BGC's equity investments; and

Net non-cash GAAP gains related to OMSR gains and MSR amortization.

The Company also discloses Adjusted EBITDA before allocations to units, which is Adjusted EBITDA excluding GAAP charges with respect to allocations of net income to limited partnership units. Such allocations represent the pro-rata portion of pre-tax earnings available to such unit holders. These units are in the fully diluted share count, and are exchangeable on a one-to-one basis into common stock. As these units are exchanged into common shares, unit holders become entitled to cash dividends rather than cash distributions. The Company views such allocations as intellectually similar to dividends on common shares. Because dividends paid to common shares are not an expense under GAAP, management believes similar allocations of income to unit holders should also be excluded by investors when analyzing BGC's results on a fully diluted share basis with respect to Adjusted EBITDA.

The Company's management believes that these Adjusted EBITDA measures are useful in evaluating BGC's operating performance, because the calculation of this measure generally eliminates the effects of financing and income taxes and the accounting effects of capital spending and acquisitions, which would include impairment charges of goodwill and intangibles created from acquisitions. Such items may vary for different companies for reasons unrelated to overall operating performance. As a result, the Company's management uses these measures to evaluate operating performance and for other discretionary purposes. BGC believes that Adjusted EBITDA is useful to investors to assist them in getting a more complete picture of the Company's financial results and operations.

Since these Adjusted EBITDA measures are not recognized measurements under GAAP, investors should use these measures in addition to GAAP measures of net income when analyzing BGC's operating performance. Because not all companies use identical EBITDA calculations, the Company's presentation of these Adjusted EBITDA measures are may not be comparable to similarly titled measures of other companies. Furthermore, these Adjusted EBITDA measures are not intended to be a measure of free cash flow or GAAP cash flow from operations, because these Adjusted EBITDA measures do not consider certain cash requirements, such as tax and debt service payments.

For a reconciliation of these non-GAAP measures to GAAP Net income (loss) available to common stockholders, the most comparable financial measure calculated and presented in accordance with GAAP, see the section of BGC's most recent quarterly financial results press release titled Reconciliation of GAAP Income (Loss) to Adjusted EBITDA.

Liquidity Defined

BGC also uses a non-GAAP measure called liquidity. The Company considers liquidity to be comprised of the sum of cash and cash equivalents plus marketable securities that have not been financed, reverse repurchase agreements, and securities owned, less securities loaned and repurchase agreements. BGC considers this an important metric for determining the amount of cash that is available or that could be readily available to the Company on short notice.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

The exhibit index set forth below is incorporated by reference in response to this Item 9.01.

EXHIBIT INDEX

| Exhibit No. | Description |
|------------------------|---|
| 10.1 | <u>Investment Agreement dated as of March 6, 2018 by and among BGC Partners, Inc., BGC Holdings, L.P., BGC Partners, L.P., BGC Global Holdings, L.P., Newmark Group, Inc., Newmark Holdings, L.P., and Newmark Partners, L.P.</u> |
| 99.1 | <u>BGC Partners, Inc. and Newmark Group, Inc. joint press release, dated March 7, 2018</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.

BGC PARTNERS, INC.

Date: March 7, 2018

By: /s/ Howard W. Lutnick
Name: Howard W. Lutnick

Title: Chairman and Chief Executive Officer

[Signature Page to Form 8-K of BGC Partners, Inc. dated March 6, 2018, regarding the BGC Purchase of
partnership units from Newmark]