

GFI Group Inc.
Form DFAN14A
January 16, 2015

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): January 13, 2015

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))

ITEM 8.01.OTHER EVENTS.

On January 15, 2015, BGC Partners, Inc. (BGC Partners or the Company) issued a press release regarding the contingent increase of its tender offer to acquire all of the outstanding shares of GFI Group Inc. (GFI) it does not currently own to \$5.85 per share in cash and an immediate non-contingent increase to \$5.75 per share.

On January 14, 2015, the Company issued a press release regarding the contingent increase of its tender offer to acquire all of the outstanding shares of GFI it does not currently own for \$5.60 per share in cash. (Offer price superseded by the press release issued on January 15, 2015 and described above).

Copies of the press releases are attached as Exhibits 99.1 and 99.2 to this Current Report on Form 8-K and are hereby incorporated by reference herein.

On January 13, 2015, BGC Partners entered into a settlement of previously disclosed litigation with Tullett Prebon plc (Tullett) that resolves all ten outstanding lawsuits involving the two companies. In exchange for such agreement, BGC Partners agreed to pay \$100 million in the aggregate to Tullett. The settlement amount is a fraction of the amount that Tullett originally claimed, which, as previously reported, was in excess of \$1 billion. In addition, on January 2, 2015, the judge dismissed Tullett's RICO claim, noting that Tullett had not produced enough evidence to support its claims.

As of December 31, 2014, BGC Partners will have accrued the settlement amount and all related expenses incurred through such date in accordance with U.S. Generally Accepted Accounting Principles (GAAP) and expects to pay the settlement amount from existing cash. BGC Partners intends to exclude the charges recognized in the fourth quarter of 2014 related to the settlement from its calculations of pre-tax distributable earnings and post-tax distributable earnings in the fourth quarter of 2014 and believes that the settlement will have a positive impact on these distributable earnings calculations going forward due to the reduction in ongoing legal expenses related to the claims.

Going forward, the Company does not expect to have further expenses, including legal fees, relating to these claims under either GAAP or distributable earnings. Over the course of the past five years, such fees have totaled tens of millions of dollars.

The settlement will not prohibit BGC Partners from completing its fully-financed tender offer for the outstanding shares of GFI. In addition, for a period of one year, the Company and Tullett have agreed not to hire the senior employees, including desk heads, of the other party and its subsidiaries, which would include employees of GFI if BGC Partners closes on its pending tender offer.

Distributable Earnings Defined

BGC Partners uses non-GAAP financial measures including revenues for distributable earnings, pre-tax distributable earnings and post-tax distributable earnings, which are supplemental measures of operating performance that are used by management to evaluate the financial performance of the Company and its subsidiaries. BGC Partners believes that distributable earnings best reflect the operating earnings generated by the Company on a consolidated basis and are the earnings which management considers available for distribution to BGC Partners, Inc. and its common stockholders, as well as to holders of BGC Holdings, L.P. partnership units during any period.

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

Revenues for distributable earnings are defined as GAAP revenues excluding the impact of BGC Partners, Inc.'s non-cash earnings or losses related to its equity investments, such as in Aqua Securities, L.P. and ELX Futures, L.P., and its holding company general partner, ELX Futures Holdings LLC. Revenues for distributable earnings include the collection of receivables which would have been recognized for GAAP other than for the effect of acquisition accounting. Revenues for distributable earnings also exclude certain one-time or unusual gains that are recognized under GAAP, because the Company does not believe such gains are reflective of its ongoing, ordinary operations.

Pre-tax distributable earnings are defined as GAAP income (loss) from operations before income taxes excluding items that are primarily non-cash, non-dilutive, and non-economic, such as:

- * Non-cash stock-based equity compensation charges for REUs granted or issued prior to the merger of BGC Partners, Inc. with and into eSpeed, as well as post-merger non-cash, non-dilutive equity-based compensation related to partnership unit exchange or conversion.
- * Allocations of net income to founding/working partner and other limited partnership units, including REUs, RPU, PSUs, LPU, and PSIs.
- * Non-cash asset impairment charges, if any.

Distributable earnings calculations also exclude charges related to purchases, cancellations or redemptions of partnership interests and certain unusual, one-time or non-recurring items, if any.

Compensation and employee benefits expense for distributable earnings will also include broker commission payouts relating to the aforementioned collection of receivables.

BGC's definition of distributable earnings also excludes certain gains and charges with respect to acquisitions, dispositions, or resolutions of litigation. This exclusion pertains to the one-time gain related to the NASDAQ OMX transaction. Management believes that excluding these gains and charges best reflects the operating performance of BGC. However, because NASDAQ OMX is expected to pay BGC in an equal amount of stock on a regular basis for 15 years as part of the transaction, the payments associated with BGC's receipt of such stock are expected to be included in the Company's calculation of distributable earnings. To make quarter-to-quarter comparisons more meaningful, one-quarter of the annual contingent earn-out amount will be included in the Company's calculation of distributable earnings each quarter as other revenues.

Since distributable earnings are calculated on a pre-tax basis, management intends to also report post-tax distributable earnings and post-tax distributable earnings per fully diluted share :

- * Post-tax distributable earnings are defined as pre-tax distributable earnings adjusted to assume that all pre-tax distributable earnings were taxed at the same effective rate.
- * Post-tax distributable earnings per fully diluted share are defined as post-tax distributable earnings divided by the weighted-average number of fully diluted shares for the period.

BGC's distributable earnings per share calculations assume either that:

- * The fully diluted share count includes the shares related to the dilutive instruments, such as the Convertible Senior Notes, but excludes the associated interest 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 interest expense, net of tax.

Each quarter, the dividend to common stockholders is expected to be determined by the Company's Board of Directors with reference to post-tax distributable earnings per fully diluted share. In addition to the Company's quarterly dividend to common stockholders, BGC Partners expects to pay a pro-rata distribution of net income to BGC Holdings founding/working partner and other limited partnership units, including REUs, RPU, LPUs, PSUs and PSIs, and to Cantor for its noncontrolling interest. The amount of all of these payments is expected to be determined using the above definition of pre-tax distributable earnings per share.

Certain employees who are holders of RSUs are granted pro-rata payments equivalent to the amount of dividends paid to common stockholders. Under GAAP, a portion of the dividend equivalents on RSUs is required to be taken as a compensation charge in the period paid. However, to the extent that they represent cash payments made from the prior period's distributable earnings, they do not dilute existing stockholders and are therefore excluded from the calculation of distributable earnings.

Distributable earnings is not meant to be an exact measure of cash generated by operations and available for distribution, nor should it be considered in isolation or as an alternative to cash flow from operations or GAAP net income (loss). The Company views distributable earnings as a metric that is not necessarily indicative of liquidity or the cash available to fund its operations.

Pre- and post-tax distributable earnings are not intended to replace the Company's presentation of GAAP financial results. However, management believes that they help provide investors with a clearer understanding of BGC Partners 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 distributable earnings and the GAAP measures of financial performance should be considered together.

Management does not anticipate providing an outlook for GAAP revenues, income (loss) from operations before income taxes, net income (loss) for fully diluted shares, and fully diluted earnings (loss) per share, because the items previously identified as excluded from pre-tax distributable earnings and post-tax distributable earnings are difficult to forecast. Management will instead provide its outlook only as it relates to revenues for distributable earnings, pre-tax distributable earnings and post-tax distributable earnings.

For more information on this topic, please see the tables in the most recent Earnings Release entitled Reconciliation of Revenues Under GAAP and Distributable Earnings, and Reconciliation of GAAP Income to Distributable Earnings which provide a summary reconciliation between pre- and post-tax distributable earnings and the corresponding GAAP measures for the Company in the periods discussed in such document.

Important Additional Information

This communication is provided for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell any shares of the common stock of GFI Group Inc. (GFI) or any other securities. BGC Partners, Inc. and its subsidiary BGC Partners, L.P. have commenced a tender offer for all outstanding shares of common stock of GFI and have filed with the Securities and Exchange Commission (SEC) a tender offer statement on Schedule TO (including an Offer to Purchase, a Letter of Transmittal and related documents). These documents, as they may be amended from time to time, contain important information, including the terms and conditions of the tender offer, and shareholders of GFI are advised to carefully read these documents before making any decision with respect to the tender offer.

BGC has filed a preliminary proxy statement and relevant documents in connection with the special meeting of the stockholders of GFI at which the GFI stockholders will consider certain proposals regarding the potential acquisition of GFI by CME Group Inc. (the Special Meeting Proposals). BGC and its directors and executive officers and other members of its management and employees may be deemed to be participants in the solicitation of proxies from GFI's stockholders in connection with the Special Meeting Proposals. STOCKHOLDERS OF GFI GROUP ARE URGED TO READ THE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. Investors and security holders may obtain a free copy of the proxy statement (when available) and other documents filed with respect to the tender offer at the SEC's website at www.sec.gov. These materials are also available to GFI Group security holders at no expense to them at <http://ir.bgcpartners.com> or by calling BGC Partners information agent, Innisfree M&A Incorporated, toll-free at (888) 750-5884.

Discussion of Forward-Looking Statements by BGC Partners

Statements in this report regarding BGC Partners' business that are not historical facts are forward-looking statements that involve risks and uncertainties. Except as required by law, BGC Partners undertakes no obligation to release any revisions to 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 BGC Partners' Securities and Exchange Commission filings, including, but not limited to, the risk factors set forth in our public filings, including our most recent Form 10-K and any updates to such risk factors contained in subsequent Form 10-Q or Form 8-K filings.

ITEM 9.01.FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits

Exhibit

No.	Description
99.1	BGC Partners, Inc. press release dated January 15, 2015
99.2	BGC Partners, Inc. press release dated January 14, 2015

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: January 16, 2015

By: /s/ Howard W. Lutnick

Name: Howard W. Lutnick

[Signature Page to Form 8-K, dated January 16, 2015]

Exhibit List

Exhibit

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