

**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): May 13, 2022

PFSweb, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(STATE OR OTHER JURISDICTION
OF INCORPORATION)

000-28275
(COMMISSION FILE NUMBER)

75-2837058
(IRS EMPLOYER
IDENTIFICATION NO.)

505 MILLENNIUM DRIVE
ALLEN, TX 75013
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

(972) 881-2900
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

N/A
(FORMER NAME OR 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 communication 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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.001 par value	PFSW	Nasdaq Capital Market

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.

INFORMATION TO BE INCLUDED IN THE REPORT

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

As previously disclosed in the Company's Form 8-K filed with the SEC on July 6, 2021, the Company's Compensation Committee approved the payment of certain transaction related cash bonuses to Mr. Michael C. Willoughby, the Company's Chief Executive Officer, and Mr. Thomas J. Madden, the Company's Chief Financial Officer contingent upon a change in control of the Company in connection with its strategic alternatives initiative. As the term of the underlying transaction bonuses agreements were contingent upon a Company sale occurring on or prior to April 1, 2022, the Company's Compensation Committee on May 13, 2022 approved, for incentive and retention purposes, new transaction bonuses (to substitute in their entirety the expired transaction bonuses) to be paid in cash on the same terms as the previously approved transaction bonuses, except for providing that a Company sale instead must occur on or prior to December 31, 2022, in order for the bonuses to be payable. Pursuant to the terms of the transaction bonuses, Messrs. Willoughby and Madden will each be eligible to receive a cash payment equal to 0.255% and 0.225%, respectively, of the total "transaction value" received by the Company upon a change in control of the Company. For purposes of the calculation of the transaction bonuses, "transaction value" will have the same meaning as set forth in the engagement letter with Raymond James, the investment banking firm working with the Company on the strategic alternatives initiative. The bonuses will be paid as soon as practicable upon the closing of any such transaction, but in no event later than 30 days of the closing of a transaction. The transaction bonuses for Messrs. Willoughby and Madden provide a full gross up if the transaction bonus along with all other compensation constitute "parachute payments" that will be subject to the excise tax. If the Company experiences a change in control, the gross up payment, if any, will be equal to the sum of the excise tax payable by the executive, plus the amount necessary to put the executive in the same after-tax position (taking into account any and all applicable federal, state, local and foreign income, employment and excise taxes, including the excise tax and any income and employment taxes imposed on the gross-up payment) that the executive would have been in if the executive had not incurred any tax liability under Section 4999 of the IRS Code. If owed, the Company shall pay to the executive, no later than the time the excise tax is required to be paid by the executive or withheld by the Company.

A copy of the form Transaction Bonus Agreement entered into between the Company and certain executives of the Company, including Mr. Willoughby and Mr. Madden, relating to a change in control of the Company in connection with its strategic alternatives initiative is filed herewith as Exhibit 5.2.

As disclosed in the Company's Form 8-K filed with the SEC on January 24, 2022, the Company on January 20, 2022, amended the terms of the transaction bonus agreement with Zach Thomann, the Company's Chief Operating Officer and President of Priority Fulfillment Services, Inc.

ITEM 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.

5.2	Form Transaction Bonus Agreement
104	Cover Page Interactive Data file, formatted in Inline XBRL

Cautionary Note Regarding Forward-Looking Statements. This Current Report on Form 8-K and the press release contain forward-looking statements which involve certain risks and uncertainties that could cause actual results to differ materially from those expressed or implied by these statements.

SIGNATURE

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.

PFSweb, Inc.

Dated: May 16, 2022

By: /s/ Thomas J. Madden
Thomas J. Madden
Executive Vice President,
Chief Financial Officer

TRANSACTION BONUS AGREEMENT

This Transaction Bonus Agreement (this "Agreement"), dated as of _____ (the "Effective Date"), is by and between _____ (the "Executive"), PFSweb, Inc., ("PFSW") and Priority Fulfillment Services, Inc. (the "Company" and, together with the Executive PFSW, the "Companies") (each a "Party," and collectively, the "Parties").

WHEREAS, the Companies are currently exploring a potential strategic alternatives, which may involve a transaction that could result in a Change of Control (as defined below) (a "Transaction") pursuant to a definitive transaction agreement (a "Transaction Agreement");

WHEREAS, the continuing efforts of the Executive are necessary to the successful performance of the ongoing operations of the Company and its subsidiaries and, should the Board of Directors of PFSW (the "Board") authorize the Company to enter into any such Transaction, would be necessary to the successful negotiation and execution of a Transaction Agreement and consummation of the transactions contemplated by any such Transaction Agreement (the "Closing"); and

WHEREAS, as an inducement to the Executive to remain employed by the Company or PSFW, as the case may be, through the Closing of any Transaction, the Company has determined that, subject to and effective upon the Closing occurring with respect to such Transaction, the Executive shall be entitled to receive a transaction bonus on the terms and conditions described herein.

1. Transaction Bonus.

(a) In connection with a potential Transaction, the Company approved the granting of Transaction Bonuses, contingent upon a successful sale of PFSW being completed on or prior to December 31, 2022, or such later date as agreed by the Compensation Committee of the Board of Directors (the "Outside Closing Date"). The Executive shall be eligible to receive a transaction bonus (the "Transaction Bonus") in cash in an amount equal to _____% of the transaction value (the "Transaction Value") of the transaction, "transaction value" having the same meaning as set forth in the engagement letter with Raymond James, the banker working with the Company on the transaction. Except as set forth in Section 1(b) below, the Transaction Bonus shall be subject to (i) the Executive actively supporting and working towards the execution of a Transaction Agreement and the completion of all of the requirements necessary to consummate the Transaction, as reasonably determined by the Compensation Committee of the Board, prior to the Closing, (ii) the Executive continuing to be employed in good standing by the Company or PSFW, as the case may be, from the Effective Date through the Closing and (iii) the Closing of a Transaction occurring on or prior to the "Outside Closing Date." If all of the foregoing conditions are satisfied, the Transaction Bonus shall be paid to the Executive in a single lump-sum payment as soon as administratively practicable following Closing, but in any event not later than thirty (30) days following Closing.

For the purposes of this Agreement, "Change of Control" means (i) the merger or consolidation of the Company with, or the sale of all or substantially all of the assets of the Company to, any other corporation or other entity, in each case, unless, following such merger, consolidation or sale (A) the voting securities of the Company outstanding immediately prior thereto continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving or purchasing entity (the "Surviving Entity")) more than fifty percent (50%) of the combined voting power of the voting securities of the Company or the Surviving Entity outstanding immediately after such merger, consolidation or sale; and (B) at least a majority of the members of the board of directors of the Surviving Entity were Incumbent Directors at the time of the execution of the initial agreement, or of the action of the Board,

providing for such merger, consolidation or sale; or (ii) sale of an operating business segment of the Company for which the Employee is designated or allocated to perform services or is otherwise employed under.

(b) If the Executive's employment is terminated by the Company prior to a Change of Control in connection with or in anticipation of such Change of Control the Executive shall be entitled to, and the Company shall be required to, subject to the Executive's execution of a general release in favor of the Company that is reasonably acceptable to the Company (the "Release") within (30) days following such termination (which release is not revoked), pay the Executive the Transaction Bonus on the later of (i) the Payment Date or (ii) forty-five (45) days following the Executive's termination of employment; provided that the Closing of the Transaction occurs on or prior to the Outside Closing Date.

2. 280G Parachute Payments. If the Executive is a "disqualified individual," as defined in paragraph (c) of Code Section 280G, then, notwithstanding any other provision of this Agreement or of any other agreement, contract, or understanding heretofore entered into by the Executive and the Company (an "Other Agreement"), except an agreement, contract, or understanding that expressly addresses Code Section 280G or Code Section 4999 (a "280G Agreement"), and notwithstanding any formal or informal plan or other arrangement for the direct or indirect provision of compensation to the Executive (or an employee group of which the Executive is a member), whether or not such compensation is deferred, is in cash, or is in the form of a benefit to or for the Executive (a "Benefit Arrangement"), if any of the payments or benefits provided or to be provided by the Company or its affiliates to the Executive or for the Executive's benefit pursuant to the terms of this Agreement, all Other Agreements and all Benefit Arrangements ("Covered Payments") constitute parachute payments ("Parachute Payments") within the meaning of Code Section 280G and would, but for this Section, be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the "Excise Tax"), then prior to making the Covered Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) to the Executive of the Covered Payments after payment of the Excise Tax to (ii) the Net Benefit to the Grantee if the Covered Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under (i) above is less than the amount under (ii) above will the Covered Payments be reduced to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax (that amount, the "Reduced Amount"). "Net Benefit" shall mean the present value of the Covered Payments net of all federal, state, local, foreign income, employment and excise taxes. Any such reduction shall be made in accordance with Section 409A of the Code and the following: (i) the Covered Payments which do not constitute nonqualified deferred compensation subject to Section 409A of the Code shall be reduced first; and (ii) the Covered Payments shall be reduced in a manner that maximizes the Grantee's economic position. In applying this principle, the reduction shall be made in a manner consistent with the requirements of Section 409A of the Code, and where two economically equivalent amounts are subject to reduction but payable at different times, such amounts shall be reduced on a pro rata basis but not below zero. The foregoing shall not be interpreted so as to restrict, reduce, amend or modify any of the existing terms and provisions of any 280G Agreement to which the Executive and the Company may be a party and any payment hereunder shall be entitled to the benefits thereof.

3. Entire Agreement. This Agreement contains the entire agreement between the Executive and the Company with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

4. **Waiver and Amendments.** This Agreement may be amended, modified, superseded, or canceled, and the terms and conditions hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

5. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles thereof. All disputes arising out of or related to this Agreement shall be submitted to the state and federal courts of Texas, and the Parties irrevocably consent to such personal jurisdiction and waive all objections thereto, but do so only for the purposes of this Agreement.

6. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

7. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Parties or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

10. **Section 409A.** This Agreement is intended to be excepted from Section 409A as installment payments made during the short-term deferral period in compliance with Treasury regulation Section 1.409A-1(b)(4). To the extent this Agreement results in “nonqualified deferred compensation” subject to Section 409A, it is expressly intended that the Agreement shall comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended. To the extent that any provision in this Agreement is ambiguous as to its compliance with Section 409A, the provision shall be read in such a manner so that all payments hereunder shall comply with Section 409A. Notwithstanding the foregoing, the Company makes no representation that this Agreement complies with Section 409A and shall have no liability to the Executive for any failure to comply with Section 409A.

11. **Tax Withholding.** The Company shall have the right to deduct from any payment due under this Agreement, any applicable withholding taxes or other deductions required by law to be withheld with respect to such payment and to take such action as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such taxes.

12. **Termination of Agreement.** Notwithstanding anything to the contrary herein, if either (a) the Closing fails to be consummated by the Outside Closing Date or (b) the Executive’s employment terminates for any reason (other than an Anticipatory Termination) prior to the Closing, then this Agreement shall automatically terminate without any further action by the Parties hereto and this Agreement shall be null and void and have no further force and effect. Notwithstanding the foregoing, Section 2 of this Agreement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have executed this Agreement as of the day and year first above mentioned.

PRIORITY FULFILLMENT SERVICES, INC. EXECUTIVE

By: _____

Name: Name:

Title: Executive