

**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) **April 1, 2017**

Comfort Systems USA, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

1-13011

(Commission
File Number)

76-0526487

(IRS Employer
Identification No.)

**675 Bering, Suite 400
Houston, Texas**

(Address of principal executive offices)

77057

(Zip Code)

Registrant's telephone number, including area code **(713) 830-9600**

(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:

- 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 2.01 Completion of Acquisition.

On April 1, 2017, Comfort Systems USA, Inc. (the "Company") completed its previously-announced acquisition of all of the outstanding securities of BCH Holdings, Inc., a Florida corporation ("BCH") pursuant to the terms of the Stock Purchase Agreement (the "Purchase Agreement"), dated as of February 21, 2017, by and among the Company, BCH, the holders of all the outstanding securities of BCH (collectively, the "Selling Shareholders") and Daryl W. Blume, as representative of the Selling Shareholders.

Pursuant to the Purchase Agreement, the Company paid to the Selling Shareholders an initial aggregate purchase price comprised of approximately \$85.7 million payable in cash subject to working capital and certain other adjustments set forth in the Purchase Agreement, and \$14.3 million aggregate principal amount of unsecured promissory notes (the "Notes") in favor of the Selling Shareholders bearing interest at a rate of 3% per annum and maturing on the fourth anniversary of the closing of the transaction. In addition, the Purchase Agreement provides for an additional earn-out amount to become payable by the Company to the extent that BCH's EBITDA (as defined in the earn-out agreement) during each of the years following the closing of the transaction through December 31, 2021 exceeds certain thresholds (the "Earn-Out Payments"). The Notes and the Earn-Out Payments are subject to offset by the Company in respect of any indemnity claims made pursuant to the Purchase Agreement. The Purchase Agreement contains customary representations, warranties, covenants and indemnities. The closing of the transaction was subject to customary closing conditions.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, a copy of which was filed as Exhibit 2.1 to the current report on Form 8-K by the Company with the U.S. Securities and Exchange Commission (the "SEC") on February 23, 2017 and is incorporated herein by reference. The foregoing description of the Notes does not purport to be complete and is qualified in its entirety by reference to the Note, a copy of which is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

The foregoing description and the copy of the Purchase Agreement have been included to provide investors with information regarding the terms of the Purchase Agreement. They are not intended to provide any other factual information about the Company, BCH or their respective subsidiaries or affiliates. The representations, warranties and covenants contained in the Purchase Agreement were made only for purposes of those agreements and as of specific dates, were solely for the benefit of the parties to the Purchase Agreement, and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each contracting party to the other for the purposes of allocating contractual risk between them that differ from those applicable to investors. Investors should be aware that the representations, warranties and covenants or any description thereof may not reflect the actual

state of facts or condition of the Company, BCH or any of their respective subsidiaries, affiliates or businesses. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in public disclosures by the Company or BCH. Accordingly, investors should read the representations and warranties in the Purchase Agreement not in isolation but only in conjunction with the other information about the Company and BCH and their respective subsidiaries that the Company includes in reports, statements and other filings that it makes with the SEC.

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

The information disclosed in Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 7.01 Regulation FD Disclosure.

On April 3, 2017 the Company issued a press release. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

The information included in this Current Report on Form 8-K under this Item 7.01 (including Exhibit 99.1 hereto) is being “furnished” and shall not be deemed to be “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of Section 18, nor shall it be incorporated by reference into a filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except as shall be expressly set forth by specific reference in such filing. The information included in this Current Report on Form 8-K under this Item 7.01 (including Exhibit 99.1 hereto) will not be deemed an admission as to the materiality of any information required to be disclosed solely to satisfy the requirements of Regulation FD.

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Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Form of Promissory Note, dated April 1, 2017, issued by the Company in favor of each of the Selling Shareholders.
99.1	Press Release of Comfort Systems USA, Inc. dated April 3, 2017.

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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.

COMFORT SYSTEMS USA, INC.

By: /s/ Trent T. McKenna
Trent T. McKenna, Senior Vice President,
General Counsel and Secretary

Date: April 3, 2017

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EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Exhibit Title or Description</u>
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99.1	Press Release of Comfort Systems USA, Inc. dated April 3, 2017.

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PROMISSORY NOTE

April 1, 2017

[]

FOR VALUE RECEIVED, Maker promises to pay to [Name of Payee], at [Address of Payee] (or at such other place as Payee may hereafter designate in writing), in immediately available funds and in lawful money of the United States of America, the principal sum of [·] (\$[·]), together with interest thereon calculated in accordance with the provisions of this note.

1. **Definitions.** As used in this note, terms that are capitalized but not defined herein shall have the meanings ascribed to them in the Purchase Agreement. In addition, the following terms shall have the respective meanings indicated:

- (a) “Debt” means the indebtedness evidenced by this note.
- (b) “Maker” means Comfort Systems USA, Inc., a Delaware corporation.
- (c) “Maturity Date” means April 1, 2021.
- (d) “Payee” means [Name of Payee].
- (e) “Purchaser Indemnified Persons” means any Maker-related party entitled to indemnification or other payments due under the Purchase Agreement.
- (f) “Purchase Agreement” means that certain Stock Purchase Agreement, dated the date hereof, among Sellers, Sellers’ Representative, the Company and Maker.

2. **Payments of Principal and Interest.**

(a) From the date hereof until the date when the principal amount under this note has been paid in full, interest shall accrue on the unpaid principal amount of this note at the rate of three percent (3%) per annum. Such interest shall accrue and paid quarterly in arrears on each of March 31, June 30, September 30 and December 31 and shall be compounded annually. In addition, all accrued and unpaid interest on the unpaid principal balance of this note shall be due and payable at the Maturity Date. Such interest shall be computed for the actual number of days elapsed in a year consisting of 365 or 366 days, as the case may be.

(b) The principal of this note shall be due and payable in two equal installments of \$[·] each, less any offset pursuant to Section (c) and Section 5 hereunder. The first installment shall be due and payable on the third anniversary of the Closing Date, and the second installment shall be due and payable on the Maturity Date; provided, that on the Maturity Date, the entire unpaid principal balance of this note and all accrued and unpaid interest on the unpaid principal balance of this note shall be finally due and payable.

(c) In the event that, during any twelve-month period ending prior to the date on which any regularly scheduled payment of principal or interest is due under this Section 2, the Maker is entitled to any monetary payment pursuant to Section 7.5 of the Purchase Agreement, then at Maker’s sole option, Maker may elect to reduce the amount of such scheduled payment due and payable hereunder as described in Section 5 herein.

3. **No Usury Intended; Spreading.** Notwithstanding any provision to the contrary contained in this note, it is expressly provided that in no case or event shall the aggregate of (i) all interest on the unpaid balance of this note, accrued or paid from the date hereof and (ii) the aggregate of any other amounts accrued or paid pursuant to this note, which under applicable laws are or may be deemed to constitute interest upon the indebtedness evidenced by this note from the date hereof, ever exceed the highest lawful amount permissible under the then-applicable usury laws. In furtherance thereof, none of the terms of this note shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the maximum legal rate. Maker or other parties now or hereafter becoming liable for payment of the indebtedness evidenced by this note shall never be liable for interest in excess of such maximum legal amount. If, for any reason whatever, the interest paid or received on this note during its full term produces a rate which exceeds the maximum legal amount, Payee shall credit against the principal of this note (or, if such indebtedness shall have been paid in full, shall refund to the Maker) such portion of said interest as shall be necessary to cause the interest paid on this note to produce a rate equal to the maximum legal rate. All sums contracted for, charged or received by Payee for the use, forbearance or detention of the indebtedness evidenced hereby shall, to the extent required to avoid or minimize usury and to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term of this note so that the interest rate does not exceed the maximum legal rate. The provisions of this Paragraph shall control all agreements, whether now or hereafter existing and whether written or oral, between Maker and Payee.

4. **Default and Remedies in Event of Default.** The occurrence of any of the following events shall constitute a default under this note, whereupon the Payee may, at its option, by notice in writing to Maker, declare the principal of this note and accrued interest to the date of such declaration to be due and payable immediately, and upon any such declaration by Payee such amounts shall become immediately due and payable, and may otherwise exercise any or all rights, powers and remedies afforded by law:

(a) After giving effect to Maker’s rights of offset pursuant to Section 2(c) and Section 5 hereunder, any remaining part of the Debt, including any accrued interest thereon, is not paid when due, whether by lapse of time or acceleration or otherwise, unless such default is fully cured within fifteen (15) calendar days after such due date.

(b) Any proceeding is instituted by or against the Maker under any present or future bankruptcy or insolvency statutory or similar law and, if involuntary, the same are not stayed or dismissed within ninety (90) days, or the Maker makes an assignment for the benefit of creditors, or a receiver, trustee, conservator or other judicial representative is appointed for the Maker.

All powers and remedies afforded to Payee by this Section 4, shall, to the extent permitted by law, be deemed cumulative and not exclusive of other remedies available to Payee, whether hereunder or by judicial proceedings or otherwise, to enforce the observance or performance of the covenants and agreements contained in this note. No delay or omission by Payee to exercise any right or power accruing upon any default hereunder shall impair such right or power or shall be construed as a waiver or acquiescence therein. Every power and remedy given to Payee by this Section 4 or by law may be exercised by Payee from time to time and as often as Payee shall deem expedient.

5. **Offset Rights.** The parties hereto agree and acknowledge that if Payee shall become liable to the Purchaser Indemnified Persons for indemnification under the Purchase Agreement or for any other payments under the Purchase Agreement or otherwise, Maker shall have the right, in addition to its other rights under of the Purchase Agreement, at law or in equity, to withhold and offset any amounts owed to Maker under this note or otherwise until such liability is satisfied in full as set forth in Section 7.5 of the Purchase Agreement. Any reductions to payments made pursuant to this provision shall be applied first to principal and then to interest, in each case such offsets shall be apportioned pursuant to Payee's Pro Rata Percentage, as set forth in Schedule 1 to the Purchase Agreement. Prior to withholding and offsetting any such amount, Maker shall provide Payee with fifteen (15) days prior written notice specifying the nature and any particulars of the events and occurrences that are the basis for such action by Maker. In the event that Payee disputes its liability for all or any portion of the applicable claim, Maker and Payee shall use reasonable efforts to settle such dispute within the fifteen (15) day notice period. If the parties are unable to resolve the dispute prior to the fifteenth day after Maker gave notice of its intent to offset, Maker may offset the disputed amount in accordance with this Section 5 and Section 7.5 of the Purchase Agreement, and Payee may pursue all remedies available to it in accordance with the Purchase Agreement. In the event that a court of competent jurisdiction or an arbitration panel determines that any offset made by Maker pursuant to this Section 5 was impermissible, Maker shall refund the amount improperly offset to Payee together with accrued and unpaid interest thereon at the rate set forth herein. To the extent the amount offset pursuant to this Section 5 became payable and was withheld in accordance with Section 2(c), then interest on amounts improperly offset shall accrue at the rate set forth in Section 7.5 of the Purchase Agreement.

6. **Paragraph Headings.** Paragraph headings appearing in this note are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this note.

7. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF GEORGIA AND THE UNITED STATES OF AMERICA FROM TIME TO TIME IN EFFECT.

8. **Reformation and Severability.** The provisions of this note shall be separable and a determination that any provision of this note is invalid, illegal, unenforceable or void shall not affect the validity, legality or enforceability of any other provision of this note. In case any provision of this note shall be invalid, illegal, unenforceable or void, it shall, to the extent possible, be modified and/or interpreted in such manner as to be valid, legal and enforceable, but so as to most nearly retain the intent of the parties, and if such modification is not possible, such

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provision shall be severed from this note, and in either case, the validity, legality and enforceability of the remaining provisions of this note shall not in any way be affected or impaired thereby. Any court of competent jurisdiction is authorized and directed by the parties to enforce any otherwise invalid, illegal or unenforceable provision in part, to modify it, to enforce it only to a degree and not fully, or otherwise to enforce that provision only in a manner and to an extent, or for a shorter period of time, that renders the provision valid or enforceable. The intent of the parties is that this note be enforceable and enforced to the maximum extent possible after excising (or deeming excised) all invalid or unenforceable provisions, whether or not the remaining provisions are grammatically correct.

9. **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in accordance with Section 9.4 of the Purchase Agreement.

10. **Prepayment.** Maker may at any time pay the full amount or any part of this note without the payment of any premium, penalty or fee.

11. **Assignments.** This Note and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Note nor any of the rights, interests and obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties; *provided, however*, that Maker may assign its rights under this Note to (i) any Affiliate of Maker, (ii) its lenders as collateral or (iii) to any Person who by purchase, merger or otherwise directly or indirectly acquires all or substantially all of the assets of Maker.

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NOTICE PURSUANT TO TEX. BUS. & COMM. CODE §26.02

THIS NOTE CONSTITUTES A WRITTEN LOAN AGREEMENT, WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THIS NOTE.

[Signature Page Follows]

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By: /s/ Trent T. McKenna

Name: Trent T. McKenna

Title: Senior Vice President, General Counsel & Secretary



675 Bering Drive, Suite 400
Houston, Texas 77057
713-830-9600

CONTACT: William George
Chief Financial Officer
(713) 830-9600

FOR IMMEDIATE RELEASE

COMFORT SYSTEMS USA ANNOUNCES ACQUISITION

- Announces Closing of BCH Holdings Acquisition -

Houston, TX — April 3, 2017 — Comfort Systems USA, Inc. (NYSE: FIX), a leading provider of commercial, industrial and institutional heating, ventilation and air conditioning (“HVAC”) services, today announced that it has closed its previously announced transaction to acquire the BCH Holdings, Inc. family of companies (“BCH Mechanical”) headquartered in Tampa, Florida.

BCH Mechanical[®] is a regional mechanical contractor based in Tampa, Florida. BCH Mechanical engages in a broad range of mechanical contracting projects and services in central Florida, and conducts service operations in 10 states throughout the southeast.

Brian Lane, Comfort Systems USA’s Chief Executive Officer, commented, “We are extremely happy to announce the closing of the BCH Mechanical acquisition, extending our family of companies in the central Florida area. We believe that BCH Mechanical is a premier mechanical contractor, providing extraordinary outcomes for its customers in industrial, medical and commercial markets. BCH Mechanical brings an established reputation for innovation and excellence, and we believe that they will greatly improve our customer offering throughout Florida and the southeast.”

Daryl Blume, BCH Mechanical principal owner and President, commented, “We believe that Comfort Systems USA shares our core beliefs, including customer value, innovation and employee growth and opportunity. We look forward to a strong partnership for our collective future.”

As previously disclosed, initially BCH Mechanical is expected to contribute annualized revenues of approximately \$100 million to \$110 million at profitability levels that are generally equal to or above those currently experienced by existing Comfort Systems USA operations. In light of the required amortization expense related to intangibles and other costs associated with the transaction, the acquisition is expected to make a neutral to slightly accretive contribution to earnings per share during the first 12 to 18 months after the acquisition.

Comfort Systems USA[®] is a premier provider of business solutions addressing workplace comfort, with 104 locations in 93 cities around the nation. For more information, visit the Company’s website at www.comfortsystemsusa.com.

Certain statements and information in this press release may constitute forward-looking statements regarding our future business expectations, which are subject to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The words “believe,” “expect,” “anticipate,” “plan,” “intend,” “foresee,” “should,” “would,” “could,” or other similar expressions are intended to identify forward-looking statements, which are generally not historic in nature. These forward-looking statements are based on the current expectations and beliefs of Comfort Systems USA, Inc. and its subsidiaries (collectively, the “Company”) concerning future developments and their effect on the Company. While the Company’s management believes that these forward-looking statements are reasonable as and when made, there can be no assurance that future developments affecting the Company will be those that it anticipates. All comments concerning the Company’s expectations for future revenue and operating results are based on the Company’s forecasts for its existing operations and do not include the potential impact of any future acquisitions. The Company’s forward-looking statements involve significant risks and uncertainties (some of which are beyond the Company’s control) and assumptions that could cause actual future results to differ materially from the Company’s historical experience and its present expectations or projections. Important factors that could cause actual results to differ materially from those in the forward-looking statements include, but are not limited to: the use of incorrect estimates for bidding a fixed-price contract; undertaking contractual commitments that exceed the Company’s labor resources; failing to perform contractual obligations efficiently enough to maintain profitability; national or regional weakness in construction activity and economic conditions; financial difficulties affecting projects, vendors, customers, or subcontractors; the Company’s backlog failing to translate into actual revenue or profits; failure of third party subcontractors and suppliers to complete work as anticipated; difficulty in obtaining or increased costs associated with bonding and insurance; impairment to goodwill; errors in the Company’s percentage-of-completion method of accounting; the result of competition in the Company’s markets; the Company’s decentralized management structure; material failure to comply with varying state and local laws, regulations or requirements; debarment from bidding on or performing government contracts; shortages of labor and specialty building materials; retention of key management; seasonal fluctuations in the demand for mechanical systems; the imposition of past and future liability from environmental, safety, and health regulations including the inherent risk associated with self-insurance; adverse litigation results; an increase in our effective tax rate; an information technology failure or cyber security breach; and other risks detailed in our reports filed with the Securities and Exchange Commission.

For additional information regarding known material factors that could cause the Company’s results to differ from its projected results, please see its filings with the SEC, including its Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K.

Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. The Company undertakes no obligation to publicly update or revise any forward-looking statements after the date they are made, whether as a result of new information, future events, or otherwise.

