

CNO FINANCIAL GROUP, INC.

FORM 8-K (Current report filing)

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**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): **February 3, 2010**



CONSECO®

CONSECO, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other
Jurisdiction of Incorporation)

001-31792
(Commission File Number)

75-3108137
(I.R.S. Employer
Identification No.)

**11825 North Pennsylvania Street
Carmel, Indiana 46032**
(Address of Principal Executive Offices) (Zip Code)

(317) 817-6100
(Registrant's telephone number, including area code)

Not Applicable
(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 1.01. Entry into a Material Definitive Agreement.

The information set forth in Item 8.01 below is incorporated herein by reference. In connection with the repurchase of 3.5% Convertible Debentures due September 30, 2035 (the “Old Debentures”) and the second closing with respect to the 7.0% Convertible Senior Debentures due 2016 (the “New Debentures”) described in Item 8.01 below, Consec, Inc. (the “Company”) entered into Amendment Number One to the Purchase Agreement and the First Supplemental Indenture, which are attached hereto as Exhibits 10.1 and 4.2, respectively.

Item 3.02. Unregistered Sales of Equity Securities.

Information regarding the second closing of \$64 million of the New Debentures is set forth in Item 8.01 below and is incorporated herein by reference. Further information regarding the sales of the New Debentures, which were not registered under the Securities Act of 1933, as amended, is set forth in Item 1.01 and Item 3.02 of the Company’s Current Report on Form 8-K that was filed with the Securities and Exchange Commission (the “SEC”) on October 19, 2009, which is incorporated herein by reference.

Item 8.01. Other Events.

On February 4, 2010, the Company announced that it had repurchased \$64 million aggregate principal amount of its Old Debentures in a privately-negotiated transaction. In connection with the repurchase of the Old Debentures, the Company completed a second closing of \$64 million aggregate principal amount of its New Debentures as part of its previously-announced private offering of New Debentures. The first closing of \$176.5 million of the New Debentures was completed on November 13, 2009, upon settlement of a tender offer for the Old Debentures. Further information regarding the New Debentures is set forth in Item 1.01 of the Company’s Current Report on Form 8-K that was filed with the SEC on October 19, 2009.

The purchase price for the \$64 million of Old Debentures was equal to 100% of the aggregate principal amount plus accrued and unpaid interest. As a result of the repurchase, the Company expects to realize a loss on the extinguishment of debt of approximately \$2 million, representing the write-off of unamortized discount and issuance costs associated with the Old Debentures that were repurchased.

The issuance of the \$64 million of New Debentures was made pursuant to the purchase agreement that the Company entered into in October 2009 relating to the private offering of up to \$293 million of the New Debentures. Consec received aggregate net proceeds of approximately \$61.4 million in the second closing of the New Debentures (after taking into account the discounted offering price less the initial purchaser’s discounts and commissions, but before expenses). An aggregate of \$52.5 million of the Old Debentures remain outstanding.

In connection with the repurchase of the Old Debentures and the issuance of the New Debentures, the Company entered into a First Supplemental Indenture, which amended the Indenture for the New Debentures, and Amendment Number One to the Purchase Agreement for the New Debentures, in each case to include repurchases of the Old Debentures as a type of transaction under which the New Debentures may be issued or sold, as the case may be.

**Item 9.01 Financial Statements and Exhibits.
(d).**

- 4.2 First Supplemental Indenture dated as of February 3, 2010 among Consec, Inc. and The Bank of New York Mellon Trust Company, N.A., as trustee.
- 10.1 Amendment Number One to the Purchase Agreement dated as of February 3, 2010 between Consec, Inc. and Morgan Stanley & Co. Incorporated.
- 99.1 Press release of Consec, Inc. dated February 4, 2010.

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.

CONSECO, INC.

Date: February 4, 2010

By: /s/ John R. Kline
John R. Kline
Senior Vice President and
Chief Accounting Officer

FIRST SUPPLEMENTAL INDENTURE

dated as of February 3, 2010

among

CONSECO, INC.,
Issuer

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
Trustee

7.0% Convertible Senior Debentures Due 2016

THIS FIRST SUPPLEMENTAL INDENTURE (this “**First Supplemental Indenture**”), entered into as of February 3, 2010, between Conseco, Inc., a corporation incorporated under the laws of Delaware (the “**Company**”), and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (the “**Trustee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture (as defined below).

RECITALS

WHEREAS, the Company and the Trustee entered into the Indenture, dated as of October 16, 2009 (the “**Indenture**”), relating to the Company’s 7.0% Convertible Senior Debentures Due 2016 (the “**Debentures**”);

WHEREAS, Section 8.01(i) of the Indenture provides that the Company, when authorized by a resolution of its Board of Directors, and the Trustee, upon receipt of a Company Order, may enter into an indenture supplemental to the Indenture to make any change that benefits the Holders without the consent of any Holder;

WHEREAS, the Company desires to enter into this First Supplemental Indenture in order to amend certain provisions of the Indenture; and

WHEREAS, all requirements necessary to make this First Supplemental Indenture a valid and binding instrument in accordance with its terms have been duly performed and complied with, and the execution and delivery of this First Supplemental Indenture have been duly authorized in all respects and the Company has delivered to the Trustee a Company Order (accompanied by a Board Resolution), an Officers’ Certificate and Opinion of Counsel as required by Article 8 of the Indenture.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and intending to be legally bound, the parties to this First Supplemental Indenture hereby agree as follows:

Section 1. The second paragraph under the caption “Recitals of the Company” in the Indenture shall be deleted in its entirety and replaced with the following:

“WHEREAS, the aggregate principal amount of Debentures to be issued by the Company will be equal to the sum of (a) the aggregate principal amount of the Company’s 3.50% Convertible Debentures due September 30, 2035 (the “**Existing Debentures**”) purchased by the Company in the issuer tender offer it commenced on October 15, 2009 and any subsequent issuer tender offer for the Existing Debentures that expires before October 5, 2010 (each, a “**Tender Offer**” and the Business Day following the date on which the Tender Offer expires, a “**Tender Offer Closing Date**”), (b) the aggregate principal amount of Existing Debentures repurchased by the Company in privately negotiated transactions from time to time that settle before October 5, 2010 (the Business Day on which each such repurchase settles, a “**Repurchase Closing Date**”), (c) the aggregate principal amount of Existing Debentures that the Issuer is required by holders thereof to repurchase on September 30, 2010 (such date, the “**Put Right Closing Date**”) pursuant to the terms of the Existing Debentures and (d) the aggregate principal amount of Existing Debentures redeemed by the Company on October 5, 2010 (such date, the “**Redemption Closing Date**” and

collectively with the Tender Offer Closing Date(s), the Repurchase Closing Date(s) and the Put Right Closing Date, the “ **Closing Dates** ” and individually, a “ **Closing Date** ”) pursuant to the terms of the Existing Debentures; and”

Section 2. The term “Repurchase Closing Date” shall be inserted as a defined term in Section 1.01 immediately after the defined term “Reorganization Event” as follows:

“Repurchase Closing Date” has the meaning ascribed to it in the second paragraph under the caption “Recitals of the Company.”

Section 3. Capitalized terms used herein and not otherwise defined herein are used as defined in the Indenture.

Section 4. The Trustee affirms its acceptance of the trusts created by the Indenture, as supplemented by this First Supplemental Indenture, and agrees to perform the same upon the terms and conditions of the Indenture, as supplemented by this First Supplemental Indenture.

Section 5. THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND TO BE PERFORMED THEREIN.

Section 6. This First Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 7. This First Supplemental Indenture is an amendment supplemental to the Indenture and the Indenture and this First Supplemental Indenture will henceforth be read together.

Section 8. The Indenture, as amended and supplemented by this First Supplemental Indenture, is in all respects confirmed and preserved.

Section 9. Notwithstanding anything contained herein, nothing in this First Supplemental Indenture shall relieve the Company or the Trustee of any of their obligations under the Indenture, as amended and supplemented by this First Supplemental Indenture, and the Debentures.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the date first above written.

CONSECO, INC.

By: /s/ Karl W. Kindig
Name: Karl W. Kindig
Title: Secretary

THE BANK OF NEW YORK MELLON TRUST COMPANY,
N.A., as Trustee

By: /s/ Linda E. Garcia
Name: Linda E. Garcia
Title: Vice President

**AMENDMENT NUMBER ONE TO THE
PURCHASE AGREEMENT**

dated as of

February 3, 2010

between

CONSECO, INC.

and

MORGAN STANLEY & CO. INCORPORATED

relating to the purchase and sale

of

UP TO \$293,000,000 AGGREGATE PRINCIPAL AMOUNT

7.0% CONVERTIBLE SENIOR NOTES DUE 2016

of

CONSECO, INC.

This AMENDMENT NUMBER ONE TO THE PURCHASE AGREEMENT, dated February 3, 2010 (the “**Amendment**”), is entered into by Conseco, Inc. (the “**Company**”) and Morgan Stanley & Co. Incorporated (“**Morgan Stanley**”).

WITNESSETH:

WHEREAS, on October 14, 2009, the Company and Morgan Stanley entered into a Purchase Agreement (the “**Agreement**”) pursuant to which the Company has agreed to issue and sell to Morgan Stanley, as initial purchaser, and Morgan Stanley has agreed to buy from the Company, subject to the conditions set forth therein, up to \$293,000,000 aggregate principal amount of Securities on any Tender Offer Closing Date, the Put Right Closing Date or the Redemption Closing Date;

WHEREAS, the Company seeks to repurchase its outstanding Existing Convertibles from holders thereof pursuant to privately negotiated transactions and issue and sell to Morgan Stanley an aggregate principal amount of Securities equal to the aggregate principal amount of Existing Convertibles repurchased by the Company in such transactions; and

WHEREAS, the Company and Morgan Stanley have determined that the Agreement should be amended as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto hereby agree as follows:

Section 1. *Amendments to the Agreement* .

(a) The second paragraph of the Preamble to the Agreement shall be deleted and replaced with the following:

“As described in Section 2, the Company will, upon receipt of payment therefor, issue Securities as follows: (a) on the closing date for the cash tender offer for any and all of its outstanding 3.50% Convertible Debentures due September 30, 2035 (the “**Existing Convertibles**”) that it intends to commence soon after the execution of this Agreement and, if any Existing Convertibles remain outstanding, on the closing date for any subsequent issuer tender offer for the Existing Convertibles that expires before October 5, 2010, (each, a “**Tender Offer**” and collectively, the “**Tender Offers**”), (b) on the closing date for any privately negotiated repurchase by the Company of any of its outstanding Existing Convertibles that settles before October 5, 2010 (each, a “**Repurchase**” and collectively, the “**Repurchases**”), (c) if any Existing Convertibles remain outstanding, on September 30, 2010, the date the holders of the Existing Convertibles are entitled to require the Company to repurchase such securities pursuant to their terms (if such holders exercise their repurchase right), and (d) if any Existing Convertibles remain outstanding, on October 5, 2010, the date the

Company is entitled to redeem from the holders thereof the Existing Convertibles pursuant to their terms (if the Company exercises its redemption right).”

(b) The fourth paragraph of the Preamble to the Agreement shall be deleted and replaced with the following:

“The Private Placement, the Tender Offers, any Repurchases and the offer and sale of the Securities are hereinafter referred to as the “**Transactions**”. The Indenture and this Agreement are hereinafter referred to as the “**Transaction Agreements**.” Except where the context expressly provides for the contrary, the representations, warranties and other provisions of this Agreement should not be interpreted as referring to the Tender Offers, any Repurchases or the Private Placement.”

(c) Section 2 of the Agreement shall be deleted and replaced with the following:

“*Agreements to Sell and Purchase*. The Company hereby agrees to sell to the Initial Purchaser, and the Initial Purchaser, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees to purchase from the Company the Securities at a purchase price equal to the aggregate principal amount of the Securities purchased on the applicable Closing Date (as defined below) multiplied by $(1 - (0.07 \times N/365))$, where N equals the number of days from, and including, the Effectiveness Date to, and excluding, the applicable Closing Date, less an amount equal to 2% of the aggregate principal amount of such Securities, (the “**Purchase Price**”), as follows:

- i. On each date that a Tender Offer settles (a “**Tender Offer Closing Date**”), the Initial Purchaser will purchase an aggregate principal amount of Securities equal to the aggregate principal amount of Existing Convertibles accepted for purchase by the Company in each such Tender Offer;
- ii. On each date that a Repurchase settles (a “**Repurchase Closing Date**”), the Initial Purchaser will purchase an aggregate principal amount of Securities equal to the aggregate principal amount of Existing Convertibles repurchased by the Company in each such Repurchase;
- iii. On September 30, 2010 (the “**Put Right Closing Date**”), the Initial Purchaser will purchase the aggregate principal amount of Existing Convertibles remaining after the completion of the Tender Offers and any Repurchases, if any, that the Company is required by holders thereof to repurchase pursuant to the terms of the Existing Convertibles; and
- iv. On October 5, 2010 (the “**Redemption Closing Date**”), the Initial Purchaser will purchase the aggregate principal amount of Existing

Convertibles remaining after the completion of the Tender Offers, any Repurchases and the Put Right Closing Date, if any, that the Company elects to redeem from the holders thereof pursuant to the terms of the Existing Convertibles.

Any Tender Offer Closing Date, any Repurchase Closing Date, the Put Right Closing Date, and the Redemption Closing Date, each a “**Closing Date**,” are collectively referred to herein as the “**Closing Dates**”. For the avoidance of doubt, even if any Existing Convertibles remain outstanding on the Redemption Closing Date, the Company shall be under no obligation to sell and the Initial Purchaser shall be under no obligation to buy, any Securities subsequent to the Redemption Closing Date and this Agreement shall immediately terminate without any obligation or liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement by reason of this Agreement, provided that Section 9 and Section 11 shall survive any such termination.

Notwithstanding anything to the contrary set forth herein, but subject to the conditions set forth in Section 5, this Agreement (including the Initial Purchaser’s obligation to purchase and pay for the Securities on each Closing Date, upon satisfaction of the conditions set forth in Section 6), shall become effective two Business Days (as defined below) after execution and delivery of this Agreement by the parties hereto (such date, the “**Effectiveness Date**”). For purposes of this Agreement, a “**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City or the City of Chicago are authorized or obligated by law or executive order to close.”

Section 2. Effectiveness

This Amendment shall become effective upon execution by the parties hereto.

Section 3. Reference to and Effect on the Agreement.

(a) On and after the date of this Amendment, each reference in the Agreement to “this Agreement,” “hereunder,” “hereof,” or “herein” shall mean and be a reference to the Agreement as amended by this Amendment.

(b) Except as specifically amended above, the Agreement shall remain in full force and effect and is hereby ratified and confirmed.

Section 4. Due Authorization, Execution and Delivery.

Each of the Company and Morgan Stanley represents and warrants that this Amendment has been duly authorized, executed and delivered by it.

Section 5. *Governing Law.*

THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK.

Section 6. *Defined Terms.*

Capitalized terms used herein and not otherwise defined shall have the respective meanings given such terms in the Agreement.

Section 7. *Counterparts and Method of Execution.*

This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall constitute but one and the same instrument.

Section 8. *Headings.*

The headings of the sections of this Amendment have been inserted for convenience of reference only and shall not be deemed a part of this Amendment.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their duly authorized officers as of the date first written above.

CONSECO, INC.

By: /s/ Karl W. Kindig
Name: Karl W. Kindig
Title: Secretary

MORGAN STANLEY & CO. INCORPORATED

By: /s/ Kenneth G. Pott
Name: Kenneth G. Pott
Title: Managing Director



CONSECO®

news

For Release Immediate
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 (Investors) Scott Galovic, Investor Relations 317.817.3228

Conseco Announces Repurchase of \$64 Million of 3.50% Convertible Debentures and Second Closing of 7.0% Convertible Senior Debentures Due 2016

Carmel, Ind., February 4, 2010 – Conseco, Inc. (NYSE:CNO) announced today that it has repurchased \$64 million of its 3.50% Convertible Debentures due September 30, 2035 (the “Old Debentures”) in a privately negotiated transaction. In connection with the repurchase, the Company completed a second closing of \$64 million aggregate principal amount of its 7.0% Convertible Senior Debentures due 2016 (the “New Debentures”) as part of its previously announced private offering of New Debentures. The first closing of \$176.5 million of the New Debentures was completed on November 13, 2009, upon settlement of a tender offer for Old Debentures.

The purchase price for the \$64 million of Old Debentures was equal to 100% of the principal amount plus accrued and unpaid interest. As a result of the repurchase, Conseco expects to recognize a loss on the extinguishment of debt of approximately \$2 million, representing the write-off of unamortized discount and issuance costs associated with the Old Debentures that were repurchased.

The issuance of the \$64 million of New Debentures was made pursuant to the purchase agreement that Conseco entered into in October 2009 relating to the private offering of up to \$293 million of the New Debentures. Conseco received aggregate net proceeds of approximately \$61.4 million in the second closing of the New Debentures (after taking into account the discounted offering price less the initial purchaser’s discounts and commissions, but before expenses). After the repurchase announced today, an aggregate of \$52.5 million of the Old Debentures remain outstanding.

This press release does not constitute an offer to sell, or the solicitation of an offer to buy, any securities. The New Debentures and common stock issuable upon conversion of the New Debentures have not been registered under the Securities Act of 1933, as amended (the “Securities Act”) or the securities laws of any other jurisdiction and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. The New Debentures were resold only to “qualified institutional buyers” pursuant to Rule 144A under the Securities Act.

About Conseco

Conseco, Inc.’s insurance companies help protect working American families and seniors from financial adversity: Medicare supplement, long-term care, cancer, critical illness and accident policies protect people against major unplanned expenses; annuities and life insurance products help people plan for their financial futures. For more information, visit Conseco’s website at www.conseco.com.

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