BON TON STORES INC

FORM 8-K
(Current report filing)

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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 5, 2017**

THE BON-TON STORES, INC.
(Exact name of registrant as specified in its charter)

Pennsylvania	**0-19517**	**23-2835229**
(State or Other Jurisdiction Of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2801 E. Market Street, York, Pennsylvania 17402
(Address of principal executive offices, zip code)

(717) 757-7660
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))

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

Resignation as Director and Officer

On May 5, 2017, M. Thomas Grumbacher notified the Board of Directors (the "Board") of The Bon-Ton Stores, Inc. (the "Company") that he will resign as Chairman and as a member of the Board, as Strategic Initiatives Officer of the Company, and from all other director and officer positions he holds with the Company and its subsidiaries, effective as of May 13, 2017. Mr. Grumbacher did not resign as a result of any disagreement with respect to the Company's operations, policies or practices.

Amendment No. 4 of Executive Transition Agreement with Mr. Grumbacher

On May 5, 2017, the Company entered into Amendment No. 4 ("Amendment No. 4") of the Executive Transition Agreement with Mr. Grumbacher, effective as of May 13, 2017. The material terms of Amendment No. 4 are as follows: (i) Mr. Grumbacher will remain an employee of the Company serving in the non-officer positions of Chairman Emeritus and Advisor to the Chief Executive Officer of the Company; (ii) Mr. Grumbacher's annual salary will be $450,000; and (iii) the term of the Executive Transition Agreement is extended to February 1, 2018, and thereafter the term shall be automatically renewed unless either party terminates the Executive Transition Agreement in accordance with its terms.

The foregoing description of Amendment No. 4 is not complete and is subject to the full text of Amendment No. 4, which is attached to this Current Report on Form 8-K as Exhibit 10.1 and incorporated by reference herein. The full text of the press release is attached hereto as Exhibit 99.1.

Item 8.01 Other Events

Election of Debra Simon as Chairman of the Board

On May 5, 2017, the Board (i) elected Debra Simon as Chairman of the Board and (ii) provided that as non-executive Chairperson of the Board she shall be paid, in addition to other compensation in respect of service as a director of the Company, an annual cash retainer of $175,000, in each case effective as of May 13, 2017.

Item 9.01 Exhibits

Exhibit Number	Description
10.1	Amendment No. 4 of Executive Transition Agreement, dated as of May 5, 2017, between the Company and M. Thomas Grumbacher
99.1	Press Release dated May 5, 2017 regarding the retirement of the Chairman of the Board of Directors

Cautionary Note Regarding Forward-Looking Statements

Certain information included in this Current Report on Form 8-K contains statements that are forward-looking within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements, which may be identified by words such as "may," "could," "will," "plan," "expect," "anticipate," "believe," "estimate," "project," "intend" or other similar expressions and include the Company's fiscal 2017 guidance, involve important risks and uncertainties that could significantly affect results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by or on behalf of the Company. Factors that could cause such differences include, but are not limited to: risks related to retail businesses generally; a significant and prolonged deterioration of general economic conditions which could negatively impact the Company in a number of ways, including the potential write-down of the current valuation of intangible assets and deferred taxes; risks related to the Company's proprietary credit card program; potential increases in pension obligations; consumer spending patterns, debt levels, and the availability and cost of consumer credit; additional competition from existing and new competitors or changes in the competitive environment; inflation; deflation; changes in the costs of fuel and other energy and transportation costs; weather conditions that could negatively impact sales; uncertainties associated with expanding or remodeling existing stores; the ability to attract and retain qualified management; the dependence upon relationships with vendors and their factors; a data security breach or system failure; the ability to reduce or control SG&A expenses, including initiatives to reduce expenses and improve efficiency; operational disruptions; unsuccessful marketing initiatives; the ability to expand our capacity and improve efficiency through our new eCommerce fulfillment center; changes in, or the failure to successfully implement, our key strategies, including initiatives to improve our merchandising, marketing and operations; adverse outcomes in litigation; the incurrence of unplanned capital expenditures; the ability to obtain financing to fund working capital, capital expenditures, losses and general corporate expenses; the impact of regulatory requirements including the Health Care Reform Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act; the inability or limitations on the Company's ability to favorably adjust the valuation allowance on deferred tax assets; and the financial condition of mall operators. Additional factors that could cause the Company's actual results to differ from those contained in these forward-looking statements are discussed in greater detail under Item 1A of the Company's Form 10-K filed with the Securities and Exchange Commission.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THE BON-TON STORES, INC.

By: /s/ Nancy A. Walsh
Nancy A. Walsh
Executive Vice President – Chief Financial Officer

Dated: May 9, 2017

Exhibit 10.1

AMENDMENT NO. 4 TO

EXECUTIVE TRANSITION AGREEMENT

THIS AMENDMENT NO. 4 is effective as of the 5th day of May, 2017, between The Bon-Ton Stores, Inc., a Pennsylvania corporation (the "Company"), and Mr. M. Thomas Grumbacher (the "Executive").

WHEREAS, the Company and the Executive are parties to an Executive Transition Agreement effective as of February 1, 2005;

WHEREAS, as of December 6, 2007, the Company and the Executive entered Amendment No. 1 to the Executive Transition Agreement extending its term until January 31, 2010, and making certain other changes;

WHEREAS, as of February 1, 2010, the Company and the Executive entered into Amendment No. 2 to the Executive Transition Agreement ("Amendment No. 2") extending its term until December 31, 2010, and making certain other changes; and

WHEREAS, as of December 20, 2010, the Company and the Executive entered into Amendment No. 3 to the Executive Transition Agreement ("Amendment No. 3") extending its term until February 5, 2012 and for successive one-year periods and making certain other changes;

WHEREAS, the parties wish to amend the Transition Agreement, as amended (with all amendments, the "Transition Agreement"), to extend its term, to provide for a change in position and duties, and to make certain other changes.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Capitalized Terms. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings ascribed to such terms in the Transition Agreement.

2. Amendments to Transition Agreement. The Transition Agreement is hereby amended, as follows:

(a) Section I of the Transition Agreement is hereby amended by deleting the existing section and substituting the following:

" Term. The term of the Executive's service hereunder shall commence as of February 1, 2005 (the "Effective Date") and shall remain in effect through February 1, 2018, or until such earlier time at which the Executive ceases to serve as Chairman Emeritus and Advisor to the Chief Executive Officer (the "Term"). The Term shall automatically renew for successive periods of one year unless either party shall give written notice to the other party not less than 60 days prior to the end of the then current Term that it does not wish to renew the Transition Agreement."

(b) Section II of the Transition Agreement is hereby amended by deleting the existing section and substituting the following:

“ Position and Duties . During the Term, Executive shall serve as Chairman Emeritus and Advisor to the Chief Executive Officer of the Company. In such role, the Executive shall perform such duties that are appropriate for such role as the Board may assign in its reasonable discretion from time to time, and it is understood that Executive’s duties, authority and responsibilities in such role shall be governed by and subject to the applicable provisions of the Company’s “Governance Policies and Procedures” adopted by the Board, as the same may be in effect from time to time.”

(c) Section III.A of the Transition Agreement is hereby amended by deleting the existing section and substituting the following:

“A. Base Salary . Effective as of the date of this Amendment No. 4 and for each fiscal year of the Company (each, a “Fiscal Year”) during the Term, the Executive shall receive a base salary at the rate of $450,000 per year (“Base Salary”), payable in accordance with the Company’s normal payroll practices.”

(d) Section IV.A of the Transition Agreement is hereby amended by deleting the existing section and substituting the following:

“A. Medical Insurance . During the Term, the Executive and his eligible dependents shall be eligible to participate in the Company’s group medical plans in accordance with the terms of such plans and subject to the restrictions and limitations contained in the plans or applicable insurance or agreements. Following the cessation of the Executive’s service as Chairman Emeritus and Advisor to the Chief Executive Officer for any reason, the Executive (for the duration of his lifetime) and his wife Debra Simon (for the duration of her lifetime) shall be reimbursed for the costs actually incurred by them (or either of them following the death of the other) for the purchase of health coverage generally similar to the coverage available to active employees of the Company; provided, however, that any such coverage shall be of a type that is coordinated with and pays secondarily after benefits the Executive and/or Ms. Simon are entitled to receive from the U.S. government (such as Medicare coverage), or, in the alternative, if possible, the Company shall purchase such a policy for the Executive and/or Ms. Simon, as applicable. Reimbursements to the Executive and/or Ms. Simon shall be paid to them on provision of appropriate documentation indicating the amounts actually paid by the Executive and/or Ms. Simon, and shall be paid at a time and in a manner that is consistent with the requirements set forth in Treasury Regulation Section 1.409A-3(i)(1)(iv) (that permits certain arrangements that call for the payment of reimbursements or the provision of in-kind benefit plans to be treated as creating a fixed schedule of payments as permitted with regard to nonqualified deferred compensation plans subject to Code Section 409A). In addition, in the event the arrangement is treated as creating a tax liability for the Executive (and/or Ms. Simon), such tax liability shall be “grossed up” (i.e., the Company shall pay to Executive and/or Ms. Simon, as applicable, an additional payment (the “Gross Up Payment”) in an amount that is sufficient so that, after payment of all tax liabilities attributable to the Gross Up Payment itself, Executive and/or Ms. Simon, as applicable, shall have an amount that is sufficient to pay the tax liability attributable to the benefit arrangement) and payments of any such amounts as are required to be paid as such a gross up shall be paid consistent with the requirements of Treasury Regulation Section 1.409A-3(i)(1), including provisions regarding tax gross-up payments. The Company shall continue to provide the Executive with the Pinnacle Care Plan (or similar coverage) through the date of Executive's cessation of service as Chairman Emeritus and Advisor to the Chief Executive Officer, and the Company shall continue to provide such coverage (or similar coverage) at no cost to either the Executive or Mr. Simon for the lifetime of each of them, but only if such coverage is available and does not violate any applicable law, including, but not limited to, provisions of law enacted as part of federal healthcare reform legislation."

(e) Section IV.B of the Transition Agreement is hereby amended by deleting the existing section and substituting the following:

"B. Other Benefits . During the Term, the Executive shall be eligible to participate in the Company's tax-qualified retirement plans, discount program, life insurance, long-term disability plan and other employee benefit program generally made available to executives of the Company, subject to their respective generally applicable eligibility requirements, terms and conditions and restrictions; provided however, that the Executive shall not participate in any nonqualified excess or supplemental retirement plan or severance plan of the Company. The Company's obligations under this provision shall not apply to any insurance benefit program or plan made available on an individual basis to one or more select executive employees by contract if such insurance benefit program or plan is not made available to all executive employees. During the Term, the Company will pay for the maintenance and gasoline for the Executive's car."

(f) Section IV.C of the Transition Agreement is hereby amended by deleting the existing section and substituting the following:

"C. Expenses . During the Term, the Executive shall be entitled to receive prompt reimbursement for all reasonable and customary expenses incurred by the Executive in performing services hereunder, including all expenses of travel and living expenses while away from home on business or at the request of and in the service of the Company (collectively, "Business Expenses"), provided that such Business Expenses are incurred and accounted for in accordance with the policies and procedures established by the Company."

3. Legal Fees . The Company shall pay or reimburse the Executive for all attorneys' fees and other charges of counsel reasonably incurred by the Executive in connection with the negotiation and execution of this Amendment No. 4, promptly upon presentation of appropriate supporting documentation and in accordance with the expense reimbursement policy of the Company, up to an aggregate amount of $15,000.

4. Full Force and Effect . Except as amended hereby, the Transition Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Company has caused this Amendment No. 4 to be duly executed and the Executive has hereunto set his hand, effective as of the date first set forth above.

THE BON-TON STORES, INC.

By: /s/ Kathryn Bufano
Name: Kathryn Bufano
Title: President and Chief Executive Officer

EXECUTIVE

/s/ M. Thomas Grumbacher
M. Thomas Grumbacher

Exhibit 99.1

THE BON•TON STORES INC.

Your Store. Your Style.

BON•TON Bergner's Boston Store Carson's Elder-Beerman Herberger's Younkers

N E W S   R E L E A S E

THE BON-TON STORES, INC. ANNOUNCES RETIREMENT OF TIM GRUMBACHER AND ELECTION OF DEBRA K. SIMON AS CHAIRMAN OF THE BOARD

York, PA, May 5, 2017 — The Bon-Ton Stores, Inc. (NASDAQ: BONT) announced that Tim Grumbacher has informed the Board of Directors of the Company of his decision to retire as Chairman of the Board of Directors and Strategic Initiatives Officer effective May 13, 2017. Mr. Grumbacher will continue to serve as Chairman Emeritus and Advisor to the Chief Executive Officer. Debra K. Simon, a current member of the Board of Directors of the Company, has been elected to succeed Mr. Grumbacher as Chairman of the Board, also effective May 13, 2017.

Mr. Grumbacher has been a member of the Board of Directors since 1967 and served as Chairman of the Board since 1991. He also served as Chief Executive Officer of the Company from 1985 to 1995 and held various senior management positions within the Company since 1977.

Ms. Simon, the wife of Mr. Grumbacher, has been a member of the Board since March 2016. She had been a practicing CPA and was employed by SF & Company (now Baker Tilly) for 32 years before retiring in 2015. She served in various leadership positions during her tenure at SF & Company, including Chief Operating Officer from 2010 to 2015.

Michael Gleim, Vice Chairman of Board, stated, “Tim Grumbacher is the person most responsible for the growth and success of Bon-Ton over the past several decades. During his leadership, the Company grew from fewer than 10 stores in 1967, to 261 stores presently. His experience, vision and leadership have been tremendous assets to the Company.”

Mr. Gleim continued, “We are excited that Debra Simon will succeed Tim as Chairman of the Board. She is an existing Board member and we expect to leverage her financial and operational skills as we execute our strategy and navigate through the challenges facing the department store industry. We look forward to her leadership and continued contributions.”

About The Bon-Ton Stores, Inc.

The Bon-Ton Stores, Inc., with corporate headquarters in York, Pennsylvania and Milwaukee, Wisconsin, operates 261 stores, which includes nine furniture galleries and four clearance centers, in 25 states in the Northeast, Midwest and upper Great Plains under the Bon-Ton, Bergner’s, Boston Store, Carson’s, Elder-Beerman, Herberger’s and Younkers nameplates. The stores offer a broad assortment of national and private brand fashion apparel and accessories for women, men and children, as well as cosmetics and home furnishings. The Bon-Ton Stores, Inc. is an active and positive participant in the communities it serves. For further information, please visit http://investors.bonton.com.

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