

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): **April 26, 2023**

AGRIFY CORPORATION

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation)

001-39946

(Commission File Number)

30-0943453

(IRS Employer Identification No.)

**76 Treble Cove Rd.
Building 3
Billerica, MA**

(Address of principal executive offices)

01862

(Zip Code)

(617) 896-5243

(Registrant's telephone number, including area code)

(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))

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	AGFY	The Nasdaq Stock Market LLC

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 1.01 Entry into a Material Definitive Agreement.

As previously reported, on March 14, 2022, Agrify Corporation (the “Company”) entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with an accredited investor (the “Lender”), pursuant to which, among other things, the Company agreed to issue and sell to the Lender, in a private placement transaction, in exchange for the payment by the Lender of \$65,000,000, less applicable expenses as set forth in the Securities Purchase Agreement, a senior secured promissory note in an aggregate principal amount of \$65,000,000 (the “March 2022 Note”). On August 18, 2022, the Company and the Lender entered into a Securities Exchange Agreement. Pursuant to that agreement, the Company made a payment to the Lender of approximately \$35.2 million as a prepayment under the March 2022 Note and the Lender exchanged the remaining balance of the March 2022 Note for, among other things, a new senior secured note (the “August 2022 Note”) with an aggregate original principal amount of \$35.0 million. As also previously reported, on March 8, 2023, the Company entered into a new Securities Exchange Agreement with the Lender. Pursuant to that agreement, the Company prepaid approximately \$10.3 million in principal amount under the August 2022 Note and the Lender exchanged \$10.0 in principal amount of the remaining balance of the August 2022 Note for a new senior secured convertible note with an original principal amount of \$10.0 million.

On April 26, 2023, the Company entered into a letter agreement with the Lender (the “Letter Agreement”), pursuant to which the Company and the Lender agreed to exchange \$2.0 million of the remaining outstanding principal amount under the August 2022 Note for 8,903,927 shares (the “Exchange Shares”) of common stock of the Company, par value \$0.001 per share (the “Common Stock”). To the extent that receipt of Exchange Shares would cause the Lender to beneficially own in excess of 4.99% of the Company’s Common Stock immediately after such exchange (the “Beneficial Ownership Limitation”), the Company will only issue that number of Exchange Shares to the Lender that would not cause the Lender to exceed the Beneficial Ownership Limitation, with the balance to be held in abeyance until such balance (or a portion thereof) may be issued in compliance with the Beneficial Ownership Limitation.

The closing under the Letter Agreement is expected to occur on or around May 1, 2023, subject to customary closing conditions.

Item 3.02. Unregistered Sales of Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Letter Agreement and the issuance of the Exchange Shares pursuant to its terms is incorporated herein by reference into this Item 3.02.

The Exchange Shares will be offered and sold to the Lender in a transaction exempt from registration under the Securities Act in reliance on Section 3(a)(9) thereof. The Lender represented that it was an “accredited investor,” as defined in Regulation D, and is acquiring the Exchange Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Exchange Shares will not be registered under the Securities Act and the Exchange Shares may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor the exhibits attached hereto is an offer to sell or the solicitation of an offer to buy shares of Common Stock, notes, warrants or any other securities of the Company.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

10.1	Letter Agreement, dated as of April 26, 2023, by and between the Company and the investor listed therein
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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 thereunto duly authorized.

AGRIFY CORPORATION

By: /s/ Raymond Nobu Chang
Raymond Nobu Chang
Chief Executive Officer

Date: April 27, 2023

HIGH TRAIL CAPITAL LP
80 River Street, Suite 4C
Hoboken, NJ 07030

April 26, 2023

To: Agrify Corporation
76 Treble Cove Road, Building 3
Billerica, MA 01862
Attention: Joshua Savitz, Esq., Associate General Counsel
Email: josh.savitz@agrify.com

Re: Partial Debt Equitization

To the addressee listed above:

Reference is made to that certain Senior Secured Note due 2025 (as amended by that certain Amendment No.1 to Senior Secured Note, dated as of March 10, 2023, the “**Note**”), issued on August 19, 2022 by Agrify Corporation (“**Agrify**”) to High Trail Special Situations LLC (“**High Trail**” and together with Agrify, the “**Parties**”) issued pursuant to that certain Securities Exchange Agreement, dated as of August 18, 2022 (the “**Exchange Agreement**”) between Agrify and High Trail. The Note was previously issued to High Trail pursuant to a Securities Exchange Agreement, dated as of August 18, 2022, entered into by and between the Company and High Trail in exchange for a Senior Secured Note issued by the Company to High Trail on March 23, 2022. Accordingly, for purposes of Rule 144(d)(1), the holding period for the Note commenced on March 23, 2022. All capitalized terms used in this letter agreement, but not defined herein, shall have the meanings ascribed to such terms in the Note and the Exchange Agreement. The Parties hereby agree that in exchange for valuable consideration, the sufficiency of which is hereby acknowledged the Parties agree as follows:

1. Securities Act Exemption. The Company and High Trail are executing and delivering this letter agreement in reliance upon the exemption from securities registration afforded by Section 3(a)(9) of the Securities Act of 1933, as amended (the “1933 Act”).
 2. Exchange of Debt for Equity. The Company shall on the second Trading Day following the date hereof (the “**Closing Date**”), in reliance upon the exemptions from securities registration afforded by Section 3(a)(9) of the 1933 Act, issue to High Trail, in exchange for \$2,000,000.00 of the Principal Amount of the Note, 8,903,927 shares of Common Stock (the “**Principal Exchange Shares**”) and upon issuance, such shares will be without any restrictive legend and will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issuance thereof, with High Trail being entitled to all rights accorded to a holder of Common Stock with respect thereto and such Principal Exchange Shares shall be eligible to be offered, sold or otherwise transferred by the High Trail pursuant to Rule 144 under the Securities Act, without any requirements as to volume, manner of sale, availability of current public information. The Company shall cause its transfer agent to credit the Principal Exchange Shares to High Trail’s account with The Depository Trust Company on the Closing Date.
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3. Securities Exchange Agreement. For purposes of the Securities Exchange Agreement, the Company and High Trail hereby agree that, from and after the Closing Date, (i) the Principal Exchange Shares shall constitute Securities (as defined in the Securities Exchange Agreement) and more specifically for purposes of Sections 3(b), 3(c), 3(d), 3(e) (except with respect to any matters disclosed in the filings made by the Company with the Securities and Exchange Commission prior to the date hereof), 3(g), 3(h), 3(i), 3(j), 3(ee), 3(hh), 3(jj), 3(rr), 3(ss), 3(tt), 4(e), 4(t), 5(b), 5(c), 5(e) and 9(e) of the Securities Exchange Agreement, shall constitute Underlying Shares, and (ii) this letter agreement shall constitute a Transaction Document. The Company represents that the representations and warranties of the Company set forth in Sections 3(b), 3(c), 3(d), 3(f), 3(e) (except with respect to any matters disclosed in the filings made by the Company with the Securities and Exchange Commission prior to the date hereof), 3(g), 3(h), 3(i), 3(j), 3(ee), 3(hh), 3(jj), 3(rr), 3(ss) and 3(tt) of the Securities Exchange Agreement are true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which are true and correct in all respects) as of the Closing Date (except for representations and warranties that speak as of a specific date, which are true and correct as of such specific date). Except as set forth in the next sentence, High Trail represents that the representations and warranties of the Holders set forth in the Securities Exchange Agreement are true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which are true and correct in all respects) as of the Closing Date (except for representations and warranties that speak as of a specific date, which are true and correct as of such specific date). Notwithstanding the preceding sentence, the Company acknowledges and agrees that the Principal Exchange Shares shall be eligible to be offered, sold or otherwise transferred by the High Trail pursuant to Rule 144 under the Securities Act, without any requirements as to volume, manner of sale, availability of current public information without High Trail providing the Company with any further assurances as to the availability of Rule 144 for any such offer, sale or transfer other than any customary Rule 144 representation letters required by the Company's transfer agent or legal counsel.
4. Material Non-Public Information. By no later than 9:15 a.m., New York City time on April 27, 2023, the Company shall file a Current Report on Form 8-K disclosing all the material terms of the transactions contemplated by this letter agreement (the "**Form 8-K**"). From and after the issuance of the Form 8-K, the Company shall have disclosed all material, nonpublic information (if any) provided to High Trail by the Company or any of its subsidiaries or any of their respective officers, directors, employees or agents and neither High Trail nor any of its officers, directors, employees or agents shall be in possession of any material, non-public information regarding the Company or any of its Subsidiaries.
5. Beneficial Ownership Limitation. Notwithstanding anything to the contrary contained herein, in the event that the exchange of a portion of the Principal Amount of the Note for Principal Exchange Shares contemplated by this agreement would otherwise cause High Trail to beneficially own in excess of 4.99% of the outstanding shares of the Company's Common Stock immediately after such exchange ("**Beneficial Ownership Limitation**"), the Company shall only issue (as instructed by High Trail) such number of Principal Exchange Shares to the Holder (at a rate of 4,452 Principal Exchange Shares per \$1,000 portion of the Principal Amount of the Note) that would not cause High Trail to exceed the maximum number of shares of Common Stock permitted thereunder, with the balance to be held in abeyance until the balance (or portion thereof) may be issued in compliance with such limitations. High Trail shall provide a written notice of deemed exchange of a portion of the Principal Amount of the Note for Principal Exchange Shares (at a rate of 4,452 Principal Exchange Shares per \$1,000 portion of the Principal Amount of the Note) pursuant to the terms hereof to the Company promptly when any additional Principal Exchange Shares may be issued in compliance with the Beneficial Ownership Limitation (including, without limitation, with respect to the balance of the Principal Exchange Shares when Holder holds less than the Beneficial Ownership Limitation).

The terms and provisions of the Note and the Securities Exchange Agreement are ratified and confirmed and remain in full force and effect. Any breach of the terms and conditions of this letter agreement by the Company will constitute an event of default under the Note and a breach of the Securities Exchange Agreement, as applicable. If the foregoing correctly sets forth the understanding between the Company and High Trail, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and High Trail.

[Remainder of Page Left Blank; Signature Page Follows]

This letter agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument.

Sincerely,

HIGH TRAIL SPECIAL SITUATIONS LLC

By: /s/ Eric Helenek

Name: Eric Helenek

Title: Authorized Signatory

ACKNOWLEDGED AND AGREED:

AGRIFY CORPORATION

By: /s/ Raymond Chang

Name: Raymond Chang

Title: Chief Executive Officer