

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 18, 2023**

BANYAN ACQUISITION CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-41236
(Commission File Number)

86-2556699
(I.R.S. Employer Identification No.)

400 Skokie Blvd
Suite 820
Northbrook, Illinois 60062
(Address of principal executive offices)

(847) 757-3812
(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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Units, each consisting of one share of Class A common stock and one-half of one Redeemable Warrant	BYN.U	New York Stock Exchange
Class A common stock, par value \$0.0001 per share	BYN	New York Stock Exchange
Redeemable Warrants, each exercisable for one share of Class A common stock at an exercise price of \$11.50 per share	BYN.WS	New York Stock Exchange

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 5.07 Submission of Matters to a Vote of Security Holders

On April 18, 2023, Banyan Acquisition Corporation (the "Company") convened and then adjourned, without conducting any other business, the Company's special meeting of stockholders (the "Special Meeting") at which the Company's stockholders will vote on, among other things, proposals to amend the Company's amended and restated certificate of incorporation (the "Charter") and trust agreement (the "Trust Agreement") to extend the date by which the Company has to consummate a business combination (the "Extension Proposals") from April 24, 2023 to December 24, 2023 (the "Proposed Extension"), and will reconvene the Special Meeting at April 21, 2023 at 10:00 a.m., Eastern time, via a virtual meeting live webcast at <https://www.cstproxy.com/banyanacquisition/2023> (the same virtual location as the adjourned Special Meeting). The only proposal submitted for a vote of the stockholders at the Special Meeting was the approval of the adjournment of such meeting to a later date or dates (the "Adjournment Proposal"). The Extension Proposals and the Adjournment Proposal are described in greater detail in the definitive proxy statement of the Company, which was filed with the Securities and Exchange Commission (the "SEC") on March 30, 2023, as supplemented by the additional definitive proxy materials filed on March 31, 2023, April 6, 2023, April 12, 2023, April 13, 2023 and April 17, 2023 (the "Extension Proxy Statement"). The Extension Proxy Statement was mailed on or about March 31, 2023 to the Company's stockholders of record as of March 24, 2023. Stockholders may obtain a copy of the Extension Proxy Statement at the SEC's website (www.sec.gov).

On April 18, 2023, the Company held the Special Meeting. On March 24, 2023, the record date for the Special Meeting, there were 31,395,000 shares of common stock of the Company entitled to be voted at the Special Meeting, 77.2% of which were represented in person or by proxy.

The Company's stockholders approved the Adjournment Proposal by the votes set forth below:

For	Against	Abstain
22,306,203	2,364,051	0

Forms of Charter Amendment and Trust Amendment

A revised form of the proposed amendment to the Company's Charter, to effect the Proposed Extension (the "Charter Amendment") is attached hereto as Exhibit 99.1, which form clarifies that no additional funds will be deposited in the Company's trust account in connection with the exercise of the Proposed Extension option. An updated form of the proposed amendment to the Trust Agreement, to effect the Proposed Extension (the "Trust Amendment") is attached hereto as Exhibit 99.2, which form also clarifies that no additional funds will be deposited in the Company's trust account in connection with the exercise of the Proposed Extension option. The foregoing changes are consistent with the existing description of the Charter Amendment and the Trust Amendment disclosure in the Extension Proxy Statement, and the forms of the Charter Amendment and the Trust Amendment attached hereto are hereby incorporated by reference herein (with all applicable references in the Extension Proxy Statement now referring to such forms).

If the Extension Proposals are approved at the reconvened Special Meeting, the Company expects to file the Charter Amendment in the form attached hereto as Exhibit 99.1 with the Secretary of State of Delaware, and to execute the Trust Amendment in the form attached hereto as Exhibit 99.2 with Continental Stock Transfer & Trust Company, as Trustee.

Participants in the Solicitation

The Company, Banyan Acquisition Sponsor LLC and the Company's directors and executive officers and other persons may be deemed to be participants in the solicitation of proxies from the Company's stockholders in respect of the Extension Meeting. Important information regarding the Company's directors and executive officers is available in its Extension Proxy Statement filed with the SEC on March 30, 2023. Additional information regarding the participants in the proxy solicitation and a description of their direct and indirect interests are contained in the Extension Proxy Statement.

No Offer or Solicitation

This communication shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which the offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

Additional Information

The Company has filed the Extension Proxy Statement with the SEC for the Extension Meeting to consider and vote upon the Extension Proposals and other matters and, beginning on or about March 31, 2023, mailed the Extension Proxy Statement and other relevant documents to its stockholders as of the March 24, 2023 record date for the Extension Meeting. The Company's stockholders and other interested persons are advised to read the Extension Proxy Statement and any other relevant documents that have been or will be filed with the SEC in connection with the Company's solicitation of proxies for the Extension Meeting because these documents will contain important information about the Company, the Extension Proposals and related matters. Stockholders may also obtain a free copy of the Extension Proxy Statement, as well as other relevant documents that have been or will be filed with the SEC, without charge, at the SEC's website located at www.sec.gov or by directing your request to Morrow Sodali LLC by telephone by dialing (800) 662-5200 or (203) 658-9400 or by sending an email to BYN.info@investor.morrowsodali.com.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	Updated Form of Proposed Charter Amendment.
99.2	Updated Form of Proposed Trust Amendment.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

Dated: April 18, 2023

Banyan Acquisition Corporation

/s/ Keith Jaffee

Keith Jaffee

Chief Executive Officer

**PROPOSED AMENDMENT
TO THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BANYAN ACQUISITION CORPORATION**

[•], 2023

Banyan Acquisition Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is “*Banyan Acquisition Corporation*.” The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 10, 2021 (the “*Original Certificate*”). The Amended and Restated Certificate of Incorporation of the Corporation (the “*Amended and Restated Certificate*”) was filed with the Secretary of State of the State of Delaware on January 19, 2022.

2. This Amendment to the Amended and Restated Certificate (this “*Amendment*”) amends the Amended and Restated Certificate.

3. This Amendment was duly adopted by the Board of Directors of the Corporation and the stockholders of the Corporation in accordance with Section 242 of the General Corporation Law of the State of Delaware.

4. The text of Section 4.3(b)(i) is hereby amended to read in full as follows:

“All outstanding shares of Class B Common Stock shall automatically convert into shares of Class A Common Stock on a one-for-one basis (the “*Initial Conversion Ratio*”) on the closing of the initial Business Combination (subject to the following clause (ii)), and any outstanding shares of Class B Common Stock shall be convertible into shares of Class A Common Stock at the Initial Conversion Ratio at any time prior to the closing of the initial Business Combination at the election of the holder of such shares of Class B Common Stock.”

5. The text of Section 9.1 is hereby amended and restated to read in full as follows:

“(a) The provisions of this *Article IX* shall apply during the period commencing upon the effectiveness of this Amended and Restated Certificate and terminating upon the consummation of the Corporation’s initial Business Combination, and an amendment to this *Article IX* shall be effective prior to the consummation of the initial Business Combination with the approval of the affirmative vote of the holders of at least sixty percent (60%) of all then outstanding shares of the Common Stock. The Corporation has until 15 months from the closing of the Offering to consummate a Business Combination; provided, however, that, if the Corporation anticipates that it may not be able to consummate a Business Combination within 15 months from the closing of the Offering, the Corporation may, at the option of Banyan Acquisition Sponsor LLC (the “*Sponsor*”), extend the period of time to consummate a Business Combination for eight months (for a total of 23 months to complete a Business Combination), subject to the Sponsor or its affiliates or permitted designees providing two calendar days’ advance notice (by April 22, 2023).

(b) Immediately after the Offering, a certain amount of the net offering proceeds received by the Corporation in the Offering (including the proceeds of any exercise of the underwriters’ over-allotment option) and certain other amounts specified in the Registration Statement, shall be deposited in the Trust Account, established for the benefit of the Public Stockholders (as defined below) pursuant to the Trust Agreement. Except for the withdrawal of interest to pay taxes, none of the funds held in the Trust Account (including the interest earned on the funds held in the Trust Account) will be released from the Trust Account until the earliest of (i) the completion of the initial Business Combination, (ii) the redemption of 100% of the Offering Shares (as defined below) if the Corporation is unable to complete its initial Business Combination within 15 months from the closing of the Offering (or up to 23 months from the closing of the Offering in certain circumstances as described in Section 9.1(a)), and (iii) the redemption of Offering Shares in connection with a vote seeking to amend any provisions of this Amended and Restated Certificate (A) to modify the substance or timing of the Corporation’s obligation to allow redemptions in connection with the Corporation’s initial Business Combination or to redeem 100% of the Offering Shares if the Corporation has not consummated an initial Business Combination within 15 months from the date of the closing of the Offering (or up to 23 months from the closing of the Offering in certain circumstances as described in Section 9.1(a)) or (B) relating to stockholders’ rights or pre-initial Business Combination activity (as described in Section 9.7). Holders of shares of the Common Stock included as part of the units sold in the Offering (the “*Offering Shares*”) (whether such Offering Shares were purchased in the Offering or in the secondary market following the Offering and whether or not such holders are the Sponsor or officers or directors of the Corporation, or affiliates of any of the foregoing), solely in their capacity as such, are referred to herein as “Public Stockholders.””

5. The text of Section 9.2(d) is hereby amended and restated to read in full as follows:

“(d) In the event that the Corporation has not consummated an initial Business Combination within 15 months from the closing of the Offering (or up to 23 months from the closing of the Offering in certain circumstances as described in Section 9.1(a)), the Corporation shall (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter subject to lawfully available funds therefor, redeem 100% of the Offering Shares in consideration of a per-share price, payable in cash, equal to the quotient obtained by dividing (A) the aggregate amount then on deposit in the Trust Account, including interest (net of taxes payable, and less up to \$100,000 of such interest to pay dissolution expenses which shall be net of taxes payable thereon), by (B) the total number of then outstanding Offering Shares, which redemption will completely extinguish rights of the Public Stockholders (including the right to receive further liquidating distributions, if any), and (iii) as promptly as reasonably possible following such redemption, subject to the approval of the remaining stockholders and the Board in accordance with applicable law, dissolve and liquidate, subject in each case to the Corporation’s obligations under the DGCL to provide for claims of creditors and other requirements of applicable law.”

6. The text of Section 9.7 is hereby amended and restated to read in full as follows:

“Additional Redemption Rights. If, in accordance with Section 9.1(a), any amendment is made to this Amended and Restated Certificate that would modify the substance or timing of the Corporation’s obligation to allow redemptions in connection with the Corporation’s initial Business Combination or to redeem 100% of the Offering Shares if the Corporation has not consummated an initial Business Combination within 15 months (or up to 23 months from the closing of the Offering in certain circumstances as described in Section 9.1(a)) from the date of the closing of the Offering, or with respect to any other provision herein relating to stockholders’ rights or pre-initial Business Combination activity, the Public Stockholders shall be provided with the opportunity to redeem their Offering Shares upon the approval of any such amendment, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (net of taxes payable), divided by the number of then outstanding Offering Shares. The Corporation’s ability to provide such opportunity is subject to the Redemption Limitation.”

IN WITNESS WHEREOF, Banyan Acquisition Corporation has caused this Amendment to the Amended and Restated Certificate to be duly executed in its name and on its behalf by an authorized officer as of the date first set above.

BANYAN ACQUISITION CORPORATION

By: _____
Name: Keith Jaffee
Title: Chief Executive Officer

PROPOSED TRUST AMENDMENT

[•], 2023

THIS AMENDMENT TO THE INVESTMENT MANAGEMENT TRUST AGREEMENT (this “Amendment”) is made as of [•], 2023, by and between Banyan Acquisition Corporation, a Delaware corporation (the “Company”), and Continental Stock Transfer & Trust Company, a New York corporation (the “Trustee”). Capitalized terms contained in this Amendment, but not specifically defined in this Amendment, shall have the meanings ascribed to such terms in that certain Investment Management Trust Agreement, dated January 19, 2022, by and between the parties hereto (the “Trust Agreement”).

WHEREAS, a total of \$246,330,000 was placed in the Trust Account from the IPO and sale of private warrants;

WHEREAS, Section 1(i) of the Trust Agreement provides that the Trustee is to liquidate the Trust Account and distribute the Property in the Trust Account after (x) receipt of, and only in accordance with, a Termination Letter; or (y) upon the date which is the later of (1) 15 months after the closing of the Offering (or up to 21 months after the closing of the Offering if the Company extends the time to complete a business combination as described in the Prospectus) and (2) such later date as may be approved by the Company’s stockholders in accordance with the Company’s amended and restated certificate of incorporation if a Termination Letter has not been received by the Trustee prior to such date;

WHEREAS, Section 6(c) of the Trust Agreement provides that Section 1(i) of the Trust Agreement may only be amended with the approval of the holders of 65% of all of the outstanding shares of Common Stock and Class B common stock of the Company voting together as a single class (the “Consent of the Stockholders”);

WHEREAS, the Company obtained the Consent of the Stockholders to approve this Amendment; and

WHEREAS, each of the Company and the Trustee desire to amend the Trust Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Amendments to Trust Agreement.

a. The following recital is hereby added as the third recital to the Trust Agreement:

WHEREAS, if a Business Combination (as defined below) is not consummated within the initial 15 month period following the closing of the Offering, upon the request of the Company’s sponsor (the “Sponsor”), the Company may extend such period (an “Extension”) by eight months, subject to the Sponsor or its affiliates or permitted designees providing two calendar days’ advance notice (by April 19, 2023) (the “Deadline”);

b. Section 1(i) of the Trust Agreement is hereby amended and restated in its entirety as follows:

Commence liquidation of the Trust Account only after and promptly following (x) receipt of, and only in accordance with the terms of, a letter from the Company (the “Termination Letter”) in a form substantially similar to that attached hereto as either Exhibit A or Exhibit B, as applicable, signed on behalf of the Company by its Chairman, Chief Executive Officer, President, Chief Financial Officer, Secretary or other authorized officer of the Company (an “Authorized Representative”), and complete the liquidation of the Trust Account and distribute the Property in the Trust Account, including interest (which interest shall be net of any taxes payable thereon, and less up to \$100,000 of interest that may be released to the Company to pay dissolution expenses), only as directed in the Termination Letter and other documents referred to therein, or (y) upon the date which is the later of (1) 15 months after the closing of the Offering (or up to 23 months after the closing of the Offering if the Company exercises the eight-month extension described in the Company’s amended and restated certificate of incorporation, as it may be further amended) and (2) such later date as may be approved by the Company’s stockholders in accordance with the Company’s amended and restated certificate of incorporation, as amended from time to time, if a Termination Letter has not been received by the Trustee prior to such date, in which case the Trust Account shall be liquidated in accordance with the procedures set forth in the Termination Letter attached as Exhibit B and the Property in the Trust Account, including interest (which interest shall be net of any taxes payable thereon, and less up to \$100,000 of interest that may be released to the Company to pay dissolution expenses) shall be distributed to the Public Stockholders of record as of such date;

c. A new Section 1(l) is hereby added as follows:

(l) Upon receipt of an extension letter (the “Extension Letter”) substantially similar to Exhibit E hereto by the Deadline, signed on behalf of the Company by an executive officer, follow the instructions set forth in the Extension Letter.

d. A new Exhibit E of the Trust Agreement is hereby added as follows:

Continental Stock Transfer & Trust Company

1 State Street, 30th Floor
New York, New York 10004
Attn: Francis Wolf and Celeste Gonzalez
Re: Trust Account Extension Letter

Ladies and Gentlemen:

Pursuant to Section 1(l) of the Investment Management Trust Agreement between Banyan Acquisition Corporation (the “Company”) and Continental Stock Transfer & Trust Company, dated as of January 19, 2022, as amended by the Amendment, dated [•], 2023 (the “Trust Agreement”), this is to advise that the Company is extending the time available to consummate a Business Combination for an additional eight (8) months, from April 24, 2023 to December 24, 2023 (the “Extension”).

This letter shall serve as the notice required with respect to the Extension at or prior to the Deadline. Capitalized words used herein and not otherwise defined shall have the same meaning as defined in the Trust Agreement.

Very truly yours,

Banyan Acquisition Corporation

By:
Name:
Title:

2. Miscellaneous Provisions.

2.1. Successors. All the covenants and provisions of this Amendment by or for the benefit of the Company or the Trustee shall bind and inure to the benefit of their permitted respective successors and assigns.

2.2. Severability. This Amendment shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Amendment or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Amendment a provision as similar in terms to such invalid or unenforceable provision as may be possible and that shall be valid and enforceable.

2.3. Applicable Law. This Amendment shall be governed by and construed and enforced in accordance with the laws of the State of New York.

2.4. Counterparts. This Amendment may be executed in several original or facsimile counterparts, each of which shall constitute an original, and together shall constitute but one instrument.

2.5. Effect of Headings. The section headings herein are for convenience only and are not part of this Amendment and shall not affect the interpretation thereof.

2.6. Entire Agreement. The Trust Agreement, as modified by this Amendment, constitutes the entire understanding of the parties and supersedes all prior agreements, understandings, arrangements, promises and commitments, whether written or oral, express or implied, relating to the subject matter hereof, and all such prior agreements, understandings, arrangements, promises and commitments are hereby canceled and terminated.

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first set forth above.

BANYAN ACQUISITION CORPORATION

By: _____
Name: Keith Jaffee
Title: Chief Executive Officer

CONTINENTAL STOCK TRANSFER & TRUST COMPANY, AS TRUSTEE

By: _____
Name:
Title:
