

**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): June 22, 2023**

**Petco Health and Wellness Company, Inc.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-39878**  
(Commission  
File Number)

**81-1005932**  
(IRS Employer  
Identification No.)

**10850 Via Frontera**  
**San Diego, California**  
(Address of Principal Executive Offices)

**92127**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (858) 453-7845**

(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
Class A common stock, par value \$0.001 per share	WOOF	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 3.03. Material Modification to Rights of Security Holders.**

The information set forth under Item 5.03 below is incorporated by reference in this Item 3.03.

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

On June 22, 2023, upon recommendation of the Board of Directors (the “Board”) of Petco Health and Wellness Company, Inc. (the “Company”), at the 2023 Annual Meeting of Stockholders of the Company (the “Annual Meeting”), the Company’s stockholders approved the First Amendment (the “Plan Amendment”) to the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (the “2021 Plan” and, as amended by the Plan Amendment, the “Amended Plan”) to increase the shares of the Company’s Class A common stock, \$0.001 par value per share (the “Common Stock”), reserved for issuance under the 2021 Plan by 15,500,000 shares of Common Stock. The Amended Plan is described in more detail in the Company’s definitive proxy statement as filed with the U.S. Securities and Exchange Commission on May 12, 2023 (the “2023 Proxy Statement”).

This summary of the Plan Amendment does not purport to be complete and is subject to and qualified in its entirety by reference to the text of the Plan Amendment filed as Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated herein by reference.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal year.**

On June 22, 2023, at the Annual Meeting, upon the recommendation of the Board, the Company’s stockholders approved amendments to Article XI of the Company’s Second Amended and Restated Certificate of Incorporation (the “Certificate”) to provide for the elimination of monetary liability of certain officers of the company in certain circumstances as is or may be permitted under Delaware law (the “Amendment”).

As a result, the Company filed a Certificate of Amendment to the Certificate with the Secretary of State of the State of Delaware on June 22, 2023 setting forth the Amendment (the “Certificate of Amendment”), which became effective upon filing.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to (i) the description of the Amendment set forth under the heading “Proposal 4—Approval of Amendment to the Company’s Second Amended and Restated Certificate of Incorporation to Limit the Liability of Certain Officers as Permitted by Delaware Law” of the Company’s 2023 Proxy Statement, and (ii) the full text of the Certificate of Amendment, a copy of which is attached as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 5.07. Submission of Matters to a Vote of Security Holders.**

At the Annual Meeting, the stockholders voted upon the following matters: (1) the election of Gary Briggs, Nishad Chande, and Mary Sullivan (the “Director Nominees”) to the Board as Class III directors, each to serve for a three-year term expiring at the Company’s 2026 annual meeting of stockholders and until his or her successor is duly elected and qualified, or until his or her earlier death, resignation, removal, retirement, or disqualification (“Proposal 1”); (2) the approval, on a non-binding, advisory basis, of the compensation of the Company’s named executive officers (“Proposal 2”); (3) the approval of the Plan Amendment to increase the number of shares of Class A Common Stock authorized for issuance under the 2021 Plan (“Proposal 3”); (4) the approval of the Amendment to limit the liability of certain officers as permitted by Delaware law (“Proposal 4”); and (5) the ratification of the appointment of Ernst & Young LLP as the Company’s independent registered public accounting firm for the fiscal year ending February 3, 2024 (“Proposal 5”).

Holders of the Company’s Class A common stock were entitled to vote on all matters presented for stockholder vote at the Annual Meeting. Holders of the Company’s Class B-1 common stock were entitled to vote on all matters presented for stockholder vote at the Annual Meeting, except for Proposal 1. Holders of the Company’s Class B-2 common stock were entitled to vote only on Proposal 1 at the Annual Meeting.

Based on the votes cast by holders of Class A common stock, Class B-1 common stock, and Class B-2 common stock, with Class A and Class B-2 common stock voting together on Proposal 1, and Class A and Class B-1 common stock voting together on Proposals 2 through 5, the final results for each proposal presented to the Company’s stockholders at the Annual Meeting are set forth below:

1. The election of the Director Nominees to the Board as Class III directors (Proposal 1):

<u>Director Nominee</u>	<u>Votes For</u>	<u>Votes Withheld</u>	<u>Broker Non-Votes</u>
Gary Briggs	206,685,215	39,207,476	11,046,270
Nishad Chande	221,142,972	24,749,719	11,046,270
Mary Sullivan	207,311,021	38,581,670	11,046,270

2. The approval, on a non-binding, advisory basis, of the compensation of the Company's named executive officers (Proposal 2):

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
187,027,131	58,773,041	92,519	11,046,270

3. The approval of the Plan Amendment to increase the number of shares of Class A Common Stock authorized for issuance under the 2021 Plan (Proposal 3):

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
219,369,606	26,481,478	41,607	11,046,270

4. The approval of the Amendment to limit the liability of certain officers as permitted by Delaware law (Proposal 4):

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
198,915,189	46,911,567	65,935	11,046,270

5. The ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending February 3, 2024 (Proposal 5):

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
256,717,516	145,665	75,780	N/A

No other matters were considered and voted on by the Company's stockholders at the Annual Meeting.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

3.1 [Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Petco Health and Wellness Company, Inc.](#)

10.1 [First Amendment to Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan](#)

104 The cover page from this Current Report on Form 8-K, formatted in Inline XBRL

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**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.

**Petco Health and Wellness Company, Inc.**

Date: June 23, 2023

By: /s/ Ilene Eskenazi

Name: Ilene Eskenazi

Title: Chief Legal and Human Resources Officer and Secretary

**CERTIFICATE OF AMENDMENT  
OF  
THE SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
PETCO HEALTH AND WELLNESS COMPANY, INC.**

**Pursuant to Section 242  
of the General Corporation Law of the State of Delaware**

Petco Health and Wellness Company, Inc., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Second Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by deleting Article XI thereof in its entirety and inserting the following in lieu thereof:

**"ARTICLE XI  
LIABILITY OF DIRECTORS AND OFFICERS**

Section 11.1 No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, as applicable.

Section 11.2 Amendment or Repeal. Any amendment, repeal or elimination of this Article XI, or the adoption of any provision inconsistent with this Article XI, shall not affect its application with respect to an act or omission by a director or officer occurring before such amendment, adoption, repeal or elimination. If the DGCL hereafter is amended to eliminate or limit the liability of a director or officer, then a director or officer of the Corporation, in addition to the circumstances in which a director or officer is not personally liable as set forth in the preceding sentence, shall not be liable to the fullest extent permitted by the DGCL, as so amended."

2. The foregoing amendment to the Second Amended and Restated Certificate of Incorporation of the Corporation were duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

*[Signature Page Follows]*

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IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation on this 22<sup>nd</sup> day of June, 2023.

**PETCO HEALTH AND WELLNESS COMPANY, INC.**

By: /s/ Ilene Eskenazi

Name: Ilene Eskenazi

Title: Chief Legal and Human Resources Officer  
and Secretary

**FIRST AMENDMENT TO THE  
PETCO HEALTH AND WELLNESS COMPANY, INC.  
2021 EQUITY INCENTIVE PLAN**

**WHEREAS, Petco Health and Wellness Company, Inc., a Delaware corporation (the “Company”), maintains the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (the “Plan”); and**

**WHEREAS,** pursuant to Section 20 of the Plan, the Board may amend the Plan to increase the maximum number of shares of Common Stock for which awards may be granted under the Plan, subject to the approval of the stockholders of the Company.

**NOW, THEREFORE,** pursuant to its authority under Section 20 of the Plan, the Board hereby amends the Plan as follows, effective as of April 27, 2023 (the “Amendment Effective Date”), subject to the approval of the stockholders of the Company:

1. Section 5(a) of the Plan is hereby amended and restated in its entirety to read as follows:

“(a) *Aggregate Limits.* The aggregate number of shares of Common Stock issuable under the Plan shall be equal to 43,771,641. The aggregate number of shares of Common Stock available for grant under this Plan and the number of shares of Common Stock subject to Awards outstanding at the time of any event described in Section 16 shall be subject to adjustment as provided in Section 16. The shares of Common Stock issued pursuant to Awards granted under this Plan may be shares that are authorized and unissued or shares that were reacquired by the Company, including shares purchased in the open market.”

2. Section 5(d) of the Plan is hereby amended and restated in its entirety to read as follows:

“(d) *Tax Code Limits.* The aggregate number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options granted under this Plan shall be equal to 43,771,641, which number shall be calculated and adjusted pursuant to Section 16 only to the extent that such calculation or adjustment will not affect the status of any option intended to qualify as an Incentive Stock Option under Section 422 of the Code.”

3. This First Amendment shall be interpreted and construed in accordance with the laws of the State of Delaware and applicable federal law.
4. All capitalized terms used but not otherwise defined herein shall have the meaning assigned to them in the Plan. Except as expressly amended hereby, the Plan shall remain in full force and effect in accordance with its terms.

[Signature Page Follows]

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**IN WITNESS WHEREOF**, the undersigned has executed this First Amendment to the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan, effective as of the Amendment Effective Date, subject to the approval of the stockholders of the Company.

**PETCO HEALTH AND WELLNESS COMPANY, INC.**

By: /s/ Ilene Eskenazi

Name: Ilene Eskenazi

Title: Chief Legal and Human Resources Officer and  
Secretary

SIGNATURE PAGE TO  
FIRST AMENDMENT TO THE  
PETCO HEALTH AND WELLNESS COMPANY, INC.  
2021 EQUITY INCENTIVE PLAN