

SMUCKER J M CO
Form DEFM14A
September 04, 2008
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

Proxy Statement pursuant to Section 14(a) of the

Securities Exchange Act of 1934

Filed by the Registrant ☒ x

Filed by a Party other than the Registrant ☐ ..

Check the appropriate box:

☐ .. Preliminary Proxy Statement

☐ .. **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ x Definitive Proxy Statement

☐ .. Definitive Additional Materials

☐ .. Soliciting Material Pursuant to §240.14a-12

The J. M. Smucker Company

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

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(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(1) Amount previously paid:

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(3) Filing Party:

(4) Date Filed:

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September 3, 2008

MERGER PROPOSED YOUR VOTE IS IMPORTANT

You are cordially invited to attend The J. M. Smucker Company's Special Meeting of Shareholders at 11:00 a.m. Eastern Daylight Time, on Thursday, October 16, 2008, in Fisher Auditorium at the Ohio Agricultural Research and Development Center, 1680 Madison Avenue, Wooster, Ohio 44691. A notice of the special meeting and the proxy statement follow.

At the meeting, you will be asked to approve a proposal to issue Smucker common shares in a merger of the coffee business of The Procter & Gamble Company, including the Folgers brand, with a wholly owned subsidiary of Smucker and to authorize the transactions relating to the merger. You will also be asked to approve a proposal to adopt amended articles of incorporation of Smucker in connection with the merger. After the completion of the merger and related transactions, the coffee business of P&G, including the Folgers brand, will be owned by The Folgers Coffee Company, which will be a wholly owned subsidiary of Smucker. As more fully described in the accompanying proxy statement, P&G will make an offer to P&G shareholders to exchange shares of P&G common stock for shares of Folgers common stock, based upon the market prices of shares of P&G common stock and Smucker common shares calculated during a specified period pursuant to the terms of the exchange offer, at a discount to be set by P&G when the exchange offer is commenced. If the exchange offer is completed but not fully subscribed, any shares of Folgers common stock not exchanged for shares of P&G common stock in the exchange offer will be distributed pro rata to P&G shareholders. Pursuant to the merger, Folgers common stock will convert into Smucker common shares on a one-for-one basis. Shareholders of Smucker as of a record date prior to the commencement of the exchange offer will also receive a cash dividend of \$5.00 per share. In the merger, Smucker expects to issue approximately 63,077,885 Smucker common shares, which may be increased in the event Folgers is unable to obtain all of the \$350 million in debt financing that is contemplated in connection with the transactions, as described in this proxy statement. We expect that, subject to adjustment, the Smucker common shares outstanding immediately prior to the merger will represent approximately 46.5% of the Smucker common shares that will be outstanding immediately after the merger, and that Smucker common shares issued in connection with the conversion of Folgers common stock in the merger will represent approximately 53.5% of the Smucker common shares that will be outstanding immediately after the merger. All Smucker common shares issued in the merger will be listed on The New York Stock Exchange under our current symbol SJM.

Your board of directors believes that the merger and the addition of the coffee business of P&G, which includes the Folgers brand, should enhance shareholder value by further enhancing the high quality, great tasting, diverse product offerings that consumers expect from Smucker and by growing revenue and earnings power while maintaining a strong financial position to continue Smucker's historic dividend practice. **Your Board of Directors unanimously recommends that you vote FOR the proposal to issue Smucker common shares in the merger and to authorize the related transactions, FOR the proposal to adopt amended articles of incorporation of Smucker in connection with the merger, and FOR the proposal to approve adjournments or postponements of the special meeting for the purpose of soliciting additional proxies, if necessary.**

Your vote is very important. Please vote by completing, signing and dating the enclosed proxy card(s) for the special meeting and mailing the proxy card(s) to us, whether or not you plan to attend the special meeting. If you sign, date and mail your proxy card without indicating how you want to vote, your proxy will be counted as a vote **FOR** each of the proposals presented at the special meeting. In addition, you may vote by proxy by calling the toll-free telephone number or by using the internet as described in the instructions included with the enclosed proxy card(s). If you do not return your card, vote by telephone or by using the internet, or if you do not specifically instruct your broker how to vote any shares held for you in street name, your shares will not be voted on the proposals relating to the merger at the special meeting.

This document is a proxy statement by Smucker for its use in soliciting proxies for the special meeting. This document answers questions about the proposed merger and related transactions and the special meeting and includes a summary description of the merger and related transactions. We urge you to review this entire document carefully. **In particular, you should also consider the matters discussed under Risk Factors beginning on page 29.**

We are very excited about the opportunities the proposed merger brings, and we thank you for your consideration and continued support.

Sincerely,

Timothy P. Smucker

Richard K. Smucker

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*Chairman and
Co-Chief Executive Officer*

*President and
Co-Chief Executive Officer*

This document is dated September 3, 2008 and is first being mailed to Smucker shareholders on or about September 8, 2008.

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THE J. M. SMUCKER COMPANY

Strawberry Lane

Orrville, Ohio 44667-0280

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

A special meeting of shareholders of The J. M. Smucker Company ("Smucker") will be held at 11:00 a.m., Eastern Daylight Time, on Thursday, October 16, 2008 in Fisher Auditorium at the Ohio Agricultural Research and Development Center, 1680 Madison Avenue, Wooster, Ohio 44691. The special meeting will be held for the following purposes:

1. A proposal to approve the issuance of Smucker common shares in a merger of the coffee business of P&G with a wholly owned subsidiary of Smucker and to authorize the transactions relating to the merger.
2. Subject to the approval of the first proposal, a proposal to approve the adoption of amended articles of incorporation of Smucker in connection with the merger to change the date applicable to determining whether a share entitles the holder thereof to one vote per share or ten votes per share under Smucker's time phase voting rights to the closing date of the merger.
3. To consider and vote upon a proposal to approve adjournments or postponements of the special meeting, if necessary, to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting to approve the above proposals.
4. To consider and take action upon any other business that may properly come before the special meeting or any reconvened meeting following an adjournment or postponement of the special meeting.

Smucker's board of directors has unanimously approved the merger and related transactions, the transaction agreement, and the other agreements relating to the merger and related transactions, and determined that the merger and related transactions, including the issuance of Smucker common shares in the merger, are advisable, fair to and in the best interests of Smucker and its shareholders. Smucker's board of directors unanimously recommends that shareholders vote FOR the proposal to issue Smucker common shares in the merger and to authorize the related transactions, FOR the proposal to adopt amended articles of incorporation of Smucker in connection with the merger, and FOR the proposal to approve adjournments or postponements of the special meeting for the purpose of soliciting additional proxies, if necessary.

All Smucker shareholders are cordially invited to attend the special meeting, although only those shareholders of record at the close of business on September 8, 2008 are entitled to notice of the special meeting and to vote at the special meeting and any adjournments or postponements of the special meeting.

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING IN PERSON, PLEASE COMPLETE, DATE, SIGN AND RETURN THE ENCLOSED PROXY CARD(S) IN THE ENCLOSED POSTAGE-PAID ENVELOPE OR VOTE YOUR COMMON SHARES BY CALLING THE TOLL-FREE TELEPHONE NUMBER OR BY USING THE INTERNET AS DESCRIBED IN THE INSTRUCTIONS INCLUDED WITH YOUR PROXY CARD(S) AT YOUR EARLIEST CONVENIENCE.

M. ANN HARLAN

Vice President, General Counsel and Secretary

Please vote your shares promptly. You can find instructions for voting on the enclosed proxy card(s).

If you have questions, contact

D. F. KING & CO., INC.

Call Toll-Free: 1-800-769-7666

or

1-212-269-5550 (call collect)

Orrville, Ohio, September 3, 2008

**Your vote is important. Please complete, date, sign and return your
proxy card(s) or vote your common shares by calling the toll-free
telephone number or by using the internet as described in the
instructions included with your proxy card(s) at your earliest convenience.**

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INFORMATION REGARDING CONTENT OF THIS DOCUMENT

Securities and Exchange Commission Filings

This document incorporates important business and financial information about Smucker from documents that Smucker has filed with the Securities and Exchange Commission but that have not been included in or delivered with this document. For a list of documents incorporated by reference into this document, see *Where You Can Find More Information; Incorporation By Reference* beginning on page 168.

This information is available to you without charge upon your written or oral request. You can obtain the documents incorporated by reference into this document by accessing the Securities and Exchange Commission's website maintained at www.sec.gov.

In addition, Smucker's Securities and Exchange Commission filings are available to the public on Smucker's website, www.smuckers.com. Information contained on Smucker's website is not incorporated by reference into this document, and you should not consider information contained on that website as a part of this document.

Smucker will provide you with copies of this information, without charge, if you request them in writing or by telephone from:

The J. M. Smucker Company

Strawberry Lane

Orrville, Ohio 44667-0280

Attention: Shareholder Relations

Telephone: (330) 682-3000

If you would like to request documents from Smucker, please do so by October 9, 2008 in order to receive them before the special meeting.

Information Authorship

All information contained in this document with respect to P&G, Folgers and their subsidiaries (up to the closing date of the Transactions) has been provided by P&G. All other information contained or incorporated by reference in this document, including information with respect to Smucker and its subsidiaries, has been provided by Smucker. All descriptions of Dunkin' Donuts® and the exclusive licensing agreement with Dunkin' Donuts LLC included in this document have been prepared by P&G and not by Dunkin' Donuts LLC or any of its affiliates.

Folgers Trademarks and Market and Industry Data

This document contains references to some of Folgers' owned or licensed trademarks, trade names and service marks, including Folgers®, Folgers Gourmet Selections® and, in connection with its exclusive licensing agreement with Dunkin' Donuts LLC to sell packaged coffee in the grocery stores, drug stores, mass merchandisers and club stores retail channels (excluding Dunkin' Donuts® locations), Dunkin' Donuts®. All of the marks and names of Folgers included in this document are either Folgers' registered trademarks or those of its licensors.

Unless otherwise specified in this document, all industry and market share data included in this document relating to Folgers and the coffee industry is based on P&G's market research and internally developed, proprietary analytical modeling system as well as statistical data obtained or derived from independent market research firms. Some of these third-party firms, such as ACNielsen, Information Resources Inc. (IRI) and Datamonitor plc (Datamonitor), categorize data differently than Folgers. Market share data is used by P&G in order to standardize

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market share information across different products and retail channels and is regularly used by P&G in the analysis of the Coffee Business. Folgers' market share data is not publicly available industry information and is not used by Folgers' competitors in analyzing their businesses. While P&G has no reason to believe any third-party information is not reliable, P&G has not independently verified this information. Unless otherwise stated in this document, all market share data for Folgers in this information statement refers to market share as defined under Helpful Information.

HELPFUL INFORMATION

In this document:

Code means the Internal Revenue Code of 1986, as amended;

Coffee Business means the business of P&G and its subsidiaries, including the Folgers and Millstone brands, relating to the sourcing, producing, marketing, selling, distributing, and developing products related to coffee, tea and related products and services, in a variety of different packages and formats, including roast and ground coffee beans, instant coffee, tea, caffeine, decaffeination services, and coffee equipment service and maintenance that will be transferred by P&G and its subsidiaries to Folgers as part of the Contribution;

Contribution means the transfer by P&G of certain of the assets and liabilities related to P&G's Coffee Business, including certain subsidiaries of P&G, to Folgers;

Distribution means the distribution by P&G of its shares of Folgers common stock to P&G shareholders by way of an exchange offer and, if the exchange offer is completed but is not fully subscribed, the distribution of the Remaining Shares as a pro rata dividend to P&G shareholders described herein;

Folgers means The Folgers Coffee Company, a Delaware corporation and wholly owned subsidiary of P&G;

Folgers Debt means up to \$350 million in new indebtedness to be incurred by Folgers and which will be guaranteed by Smucker following the completion of the Transactions, subject to the requirements of the Separation Agreement;

immediately after the completion of the Distribution means immediately after notice of acceptance of the shares of P&G common stock tendered for exchange is given by P&G to the exchange agent appointed by P&G and irrevocable delivery by P&G of its right and title to all shares of Folgers common stock to the exchange agent for distribution to eligible P&G shareholders in the exchange offer and pursuant to a pro rata dividend, if any;

Merger means the merger of Merger Sub with and into Folgers, with Folgers as the surviving corporation, as contemplated by the Transaction Agreement;

Merger Sub means Moon Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Smucker;

NYSE means the New York Stock Exchange;

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P&G means The Procter & Gamble Company, an Ohio corporation and, unless the context otherwise requires, its consolidated subsidiaries;

P&G shareholders means the holders of shares of P&G common stock;

Remaining Shares means any remaining shares of Folgers common stock held by P&G after completion of the exchange offer;

Smucker means The J. M. Smucker Company, an Ohio corporation and, unless the context otherwise requires, its consolidated subsidiaries;

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Smucker Group means Smucker and its consolidated subsidiaries and, for periods after the Merger, Folgers and its consolidated subsidiaries;

Smucker Special Dividend means the special cash dividend of \$5.00 per share to each record holder of Smucker common shares as of a record date prior to the commencement of the exchange offer, in connection with the Merger;

Smucker Special Dividend Financing means up to approximately \$274 million of new debt that may be incurred by Smucker to finance the payment of the Smucker Special Dividend;

Separation Agreement means the Separation Agreement, dated as of June 4, 2008, among P&G, Folgers and Smucker, which is attached hereto as Annex B;

Transaction Agreement means the Transaction Agreement, dated as of June 4, 2008, among P&G, Folgers, Smucker and Merger Sub, which is attached hereto as Annex A; and

Transactions means the transactions contemplated by the Transaction Agreement and the Separation Agreement, which provides, among other things, for the Contribution, the Folgers Debt, the Distribution and the Merger.

In addition, the following information is helpful with respect to descriptions of Folgers and the Coffee Business in this document:

at-home means packaged coffee products purchased for consumption at home or to be carried away from home;

away-from-home means coffee products purchased outside of the home;

brick packaging means a form of packaged roast and ground coffee in which the coffee is vacuum packed in the form and consistency of a brick to retain freshness for extended periods of time;

consumer means a coffee drinker, including an at-home consumer;

customer means Folgers' direct customers, including grocery stores, drug stores, mass merchandisers, club stores and dollar stores as well as commercial businesses, such as foodservice, offices, convenience stores and quick service and casual dining restaurants;

foodservice means institutional foodservice outlets such as sporting arenas, hotels, hospitals, universities, nursing homes and cafés located within places of work;

gourmet means premium roast and ground or whole bean coffee sold in bag or bulk format as opposed to canister format;

green coffee beans means raw coffee beans that have not been roasted;

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market share means the share of the U.S. retail packaged coffee market estimated by P&G based on the retail distribution channels in which Folgers competes using P&G's internally developed, proprietary analytical modeling system. Market share data is determined by combining U.S. market share data from ACNielsen and/or Information Resources, Inc. (IRI) with additional sales data purchased from a representative group of retailers, household panel data and P&G internal analytical models to create P&G's best estimate of the total U.S. retail packaged coffee market. In calculating market share, P&G defines the U.S. retail packaged coffee market as packaged coffee sold in grocery stores, drug stores, mass merchandisers, club stores and dollar stores, but not packaged coffee sold in coffee shops or other foodservice establishments, health/natural food stores, gourmet stores, convenience stores and various other channels;

market share on a volume basis means market share as measured by P&G based on servings of coffee that can be made from various forms of coffee products;

market share on a sales basis means market share as measured by P&G based on sales in dollars to the customer;

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retail or retail market means packaged coffee sold in grocery stores (*e.g.*, Kroger, Supervalu, Albertsons), drug stores (*e.g.*, CVS, Walgreens), mass merchandisers (*e.g.*, Wal-Mart), club stores (*e.g.*, Costco, Sam's Club) and dollar stores (*e.g.*, Family Dollar) and does not include prepared or ready-to-drink products or other packaged coffee sold in coffee shops or other foodservice establishments, health/natural food stores, gourmet stores, convenience stores and various other channels;

single serve means coffee products for single cup use, as opposed to multi-cup use, such as Folgers Instant[®], Folgers Singles[®], Folgers Cappuccino[®] and Folgers Pods[®]; and

volume means servings of coffee that can be made from various forms of coffee products.