

THERMO FISHER SCIENTIFIC INC.
Form 8-K
December 11, 2013

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): December 11, 2013

Thermo Fisher Scientific Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

1-8002
(Commission

File Number)

04-2209186
(IRS Employer

Identification No.)

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81 Wyman Street

Waltham, Massachusetts
(Address of Principal Executive Offices)

Registrant's telephone number, including area code: (781) 622-1000

02451
(Zip 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 (*see* General Instruction A.2. below):

- .. 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))

Item 1.01. Entry into a Material Definitive Agreement.

On December 11, 2013, Thermo Fisher Scientific Inc., a Delaware corporation (the *Company*), issued \$900,000,000 aggregate principal amount of 1.30% Senior Notes due 2017 (the *2017 Notes*), \$900,000,000 aggregate principal amount of 2.40% Senior Notes due 2019 (the *2019 Notes*), \$1,000,000,000 aggregate principal amount of 4.15% Senior Notes due 2024 (the *2024 Notes*) and \$400,000,000 aggregate principal amount of 5.30% Senior Notes due 2044 (the *2044 Notes*), and together with the 2017 Notes, the 2019 Notes and the 2024 Notes, the *Notes*), in a public offering pursuant to a registration statement on Form S-3 (File No. 333-187080) and a preliminary prospectus supplement and prospectus supplement related to the offering of the Notes, each as filed with the Securities and Exchange Commission (the *SEC*). The Notes were issued under an indenture, dated as of November 20, 2009 (the *Base Indenture*), and a Sixth Supplemental Indenture, dated as of December 11, 2013 (the *Supplemental Indenture*), and together with the Base Indenture, the *Indenture*), between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. The sale of the Notes was made pursuant to the terms of an Underwriting Agreement (the *Underwriting Agreement*), dated as of December 4, 2013, among the Company and Barclays Capital Inc., J.P. Morgan Securities LLC and RBS Securities Inc., as representatives of the several underwriters named in the Underwriting Agreement. The Underwriting Agreement was separately filed with the SEC on December 6, 2013 as Exhibit 1.1 to the Company's Current Report on Form 8-K.

The 2017 Notes will mature on February 1, 2017, the 2019 Notes will mature on February 1, 2019, the 2024 Notes will mature on February 1, 2024, and the 2044 Notes will mature on February 1, 2044. Interest on the 2017 Notes will accrue at the rate of 1.30% per annum, interest on the 2019 Notes will accrue at the rate of 2.40% per annum, interest on the 2024 Notes will accrue at the rate of 4.15% per annum and interest on the 2044 Notes will accrue at the rate of 5.30% per annum. Interest on the Notes will be paid semi-annually on each February 1 and August 1, commencing August 1, 2014, to holders of record on the 15th calendar day, whether or not a business day, prior to the applicable interest payment date.

In the event that the Company does not consummate the Life Technologies Acquisition (as defined below) on or prior to July 14, 2014, or the Agreement and Plan of Merger (the *Merger Agreement*), dated as of April 14, 2013, among the Company, Life Technologies Corporation and Polpis Merger Sub Co., a Delaware corporation and a wholly owned subsidiary of the Company, is terminated at any time prior thereto, the Company will be required to redeem in whole and not in part the Notes on the Special Mandatory Redemption Date (as defined below) at a redemption price equal to 101% of the aggregate principal amount of the Notes, plus accrued and unpaid interest, if any, to, but excluding, the Special Mandatory Redemption Date. The *Special Mandatory Redemption Date* means the earlier to occur of (1) August 13, 2014, if the Life Technologies Acquisition has not been consummated on or prior to July 14, 2014, or (2) the 30th day (or if such day is not a business day, the first business day thereafter) following the termination of the Merger Agreement for any reason.

The Company may redeem the 2017 Notes and the 2019 Notes, in each case, in whole at any time or in part from time to time, at its option, at a redemption price equal to the greater of (1) 100% of the principal amount of the 2017 Notes and the 2019 Notes to be redeemed and (2) the sum of the present values of the remaining scheduled payments of principal and interest in respect of the 2017 Notes and the 2019 Notes being redeemed (not including any portion of the payments of interest accrued but unpaid as of the date of redemption) discounted on a semi-annual basis (assuming a 360-day year of twelve 30-day months), at a comparable treasury rate plus 12.5 basis points, in the case of the 2017 notes, and 15 basis points, in the case of the 2019 notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption. Prior to November 1, 2023, in the case of the 2024 notes, and August 1, 2043, in the case of the 2044 notes, the Company may redeem the 2024 Notes and the 2044 Notes, in each case, in whole at any time or in part from time to time, at its option, at a redemption price equal to the greater of (1) 100% of the principal amount of the 2024 Notes and the 2044 Notes to be redeemed and (2) the sum of the

present values of the remaining scheduled payments of principal and interest in respect of the 2024 Notes and the 2044 Notes being redeemed (not including any portion of the payments of interest accrued but unpaid as of the date of redemption) discounted on a semi-annual basis (assuming a 360-day year of twelve 30-day months), at a comparable treasury rate plus 20 basis points, in the case of the 2024 notes, and 25 basis points, in the case of the 2044 notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption. In addition, on or after November 1, 2023, in the case of the 2024 Notes and August 1, 2043, in the case of the 2044 Notes, the Company may redeem the 2024 Notes or the 2044 Notes, in whole at any time or in part from time to time, at its option, at a redemption price equal to 100% of the principal amount of the 2024 Notes and the 2044 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

Upon the occurrence of a change of control (as defined in the Indenture) of the Company and a contemporaneous downgrade of the Notes below an investment grade rating by at least two of Moody's Investors Service Inc., Standard & Poor's Ratings Services and Fitch Ratings Limited, the Company will be required to make an offer to purchase each series of Notes at a price equal to 101% of the principal amount of the Notes plus any accrued and unpaid interest to, but excluding, the date of repurchase.

The Notes are general unsecured obligations of the Company that are effectively subordinated in right of payment to any secured indebtedness of the Company to the extent of the assets securing such indebtedness and structurally subordinated to other liabilities of our existing and any future subsidiaries, including, if the Life Technologies Acquisition is consummated, Life Technologies, to the extent of assets of such subsidiaries; equal in right of payment with all existing and any future unsecured and unsubordinated indebtedness of the Company; and senior in right of payment to any existing and future indebtedness of the Company that is subordinated to the Notes.

The Indenture contains limited affirmative and negative covenants of the Company. The negative covenants restrict the ability of the Company and its subsidiaries to incur debt secured by liens on its principal property or on shares of stock of its principal subsidiaries, engage in sale and lease-back transactions with respect to any principal property and merge or consolidate or sell all or substantially all of its assets.

Upon the occurrence of an event of default under the Indenture, which includes payment defaults, defaults in the performance of affirmative and negative covenants, bankruptcy and insolvency related defaults and failure to pay certain indebtedness, the obligations of the Company under the Notes may be accelerated, in which case the entire principal amount of the Notes would be immediately due and payable.

The Company expects that the net proceeds from the sale of the Notes will be approximately \$3.17 billion after deducting underwriting discounts and estimated offering expenses. The Company intends to use the anticipated net proceeds of the Offering to fund a portion of the cash consideration payable for the Company's acquisition of Life Technologies Corporation, a Delaware corporation (the *Life Technologies Acquisition*), which is estimated in the aggregate to amount to approximately \$13.6 billion and to pay certain costs associated with the Life Technologies Acquisition. Depending on the timing of the closing of the Life Technologies Acquisition and the amount of cash available at that time, we will likely incur additional indebtedness to finance the balance of the purchase price, as described in the prospectus for the Offering.

The foregoing description of certain of the terms of the Indenture does not purport to be complete and is qualified in its entirety by reference to the full text of the Base Indenture, which was filed with the SEC on November 20, 2009 as Exhibit 99.1 to the Company's Current Report on Form 8-K, and the Supplemental Indenture, which is filed with this report as Exhibit 99.2, both of which are incorporated herein by reference.

Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Company, has issued an opinion to the Company, dated December 11, 2013, regarding the legality of the Notes. A copy of the opinion as to legality is filed as Exhibit 5.1 hereto.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

See Exhibit Index attached hereto.

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.

THERMO FISHER SCIENTIFIC INC.

Date: December 11, 2013

By: /s/ Seth H. Hoogasian
Name: Seth H. Hoogasian
Title: Senior Vice President, General

Counsel and Secretary

EXHIBIT INDEX

| Exhibit No. | Description |
|--------------------|---|
| 5.1 | Opinion of Wilmer Cutler Pickering Hale and Dorr LLP. |
| 23.1 | Consent of Wilmer Cutler Pickering Hale and Dorr LLP (contained in Exhibit 5.1 above). |
| 99.1 | Indenture, dated as of November 20, 2009, between the Company and The Bank of New York Mellon Trust Company, N.A. (filed as Exhibit 99.1 to the Registrant's Current Report on Form 8-K with the SEC on November 20, 2009 File No. 001-08002 and incorporated in this Form 8-K by reference). |
| 99.2 | Sixth Supplemental Indenture, dated as of December 11, 2013, between the Company and The Bank of New York Mellon Trust Company, N.A. |