

Covidien plc
Form 425
June 16, 2014

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 16, 2014 (June 15, 2014)

COVIDIEN PUBLIC LIMITED COMPANY

(Exact name of registrant as specified in its charter)

Ireland
(State or other jurisdiction of

incorporation or organization)

001-33259
(Commission

File Number)
20 On Hatch, Lower Hatch Street

98-0624794
(I.R.S. Employer

Identification No.)

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Dublin 2, Ireland

(Address of principal executive offices)

+353 (1) 438-1700

Registrant's telephone number, including area code:

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))

Item 1.01. Entry into a Material Definitive Agreement.

Transaction Agreement and Conditions Appendix

The Acquisition and the Merger

On June 15, 2014, Covidien plc, an Irish public limited company (Covidien), entered into a Transaction Agreement (the Transaction Agreement) by and among Covidien, Medtronic, Inc., a Minnesota corporation (Medtronic), Kalani I Limited, a private limited company organized under the laws of Ireland (Holdco), Makani II Limited, a private limited company organized under the laws of Ireland and a wholly owned subsidiary of Holdco (IrSub), Aviation Acquisition Co., Inc., a Minnesota corporation (U.S. AcquisitionCo) and Aviation Merger Sub, LLC, a Minnesota corporation and a wholly owned subsidiary of U.S. AcquisitionCo (MergerSub). Under the terms of the Transaction Agreement, (i) IrSub will acquire Covidien (the Acquisition) pursuant to a scheme of arrangement under Section 201, and a capital reduction under Sections 72 and 74, of the Irish Companies Act of 1963 (the Scheme) and (ii) MergerSub will merge with and into Medtronic, with Medtronic as the surviving corporation (the Merger and, together with the Acquisition, the Transactions). As a result of the Transactions, both Medtronic and Covidien will become wholly owned subsidiaries of Holdco.

At the effective time of the Scheme, (a) Covidien shareholders will be entitled to receive \$35.19 in cash and 0.956 of a newly issued Holdco share (the Scheme Consideration) in exchange for each Covidien share held by such shareholders; and (b) Covidien equity awards will be treated in accordance with the terms of the applicable Covidien equity incentive plan as set forth in the Transaction Agreement, such that (i) each outstanding Covidien option will be converted into an option to acquire a certain number of Holdco ordinary shares at a certain exercise price per share, (ii) each outstanding Covidien share award granted prior to June 15, 2014 will be converted into the right to receive the Scheme Consideration with respect to the Covidien shares underlying such award, and (iii) each outstanding Covidien share award granted on or after June 15, 2014 will be converted into a Holdco share award. Cash will be paid in lieu of any fractional shares of Holdco. At the effective time of the Merger, (1) each share of Medtronic common stock will be converted into the right to receive one Holdco share and (2) each Medtronic option, restricted share award and other Medtronic share-based award that is outstanding will be converted into the right to receive an equity award from Holdco, which award shall be subject to the same number of shares and the same terms and conditions as were applicable to the Medtronic award in respect of which it was issued. The effectiveness of the Merger is conditioned only upon the effectiveness of the Scheme.

Conditions to the Transactions

The conditions to the implementation of the Transactions are set forth in Appendix III to the announcement (the Rule 2.5 Announcement) issued by Covidien and Medtronic pursuant to Rule 2.5 of the Irish Takeover Rules on June 15, 2014 (the Conditions Appendix). Each party's obligation to implement the Transactions is conditional upon, among other conditions (a) the adoption of the Transaction Agreement by Medtronic shareholders holding a majority of the outstanding shares of Medtronic common stock, (b) the approval of the Scheme by a majority in

number of the Covidien shareholders representing 75% or more in value of the Covidien shares held by such holders, present and voting either in person or by proxy, at the court meeting of Covidien shareholders, and the approval by Covidien shareholders of certain other resolutions, (c) the sanction by the Irish High Court of the Scheme and registration of the Court Order with the Irish Registrar of Companies, (d) all applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 in connection with the Acquisition and/or the Merger having expired or having been terminated, and the receipt of certain foreign regulatory approvals, (e) there having been no change in applicable U.S. tax law or official interpretation thereof, or bill passed in both houses of the U.S. Congress, that, once effective, in the opinion of nationally recognized U.S. tax counsel, would cause Holdco to be treated as a U.S. domestic corporation for U.S. federal income tax purposes (the Tax Condition), (f) the truth and accuracy of the other party's representations and warranties in the Transaction Agreement, generally subject to a Material Adverse Effect standard (as defined in the Transaction Agreement) and (g) the performance by the other party of all of its obligations and compliance with all of its covenants under the Transaction Agreement in all material respects.

Holdco Board of Directors

Pursuant to the Transaction Agreement, effective as of the closing of the Transactions, the directors of Holdco will consist of (i) no more than eleven individuals who are members of the Medtronic board of directors immediately prior to the effective time and (ii) two individuals who are members of the Covidien board of directors immediately prior to the effective time, to be selected by the Nominating and Corporate Governance Committee of the Medtronic board of directors.

Representations, Warranties and Covenants

The Transaction Agreement contains customary representations, warranties and covenants by Medtronic and Covidien. Medtronic and Covidien have agreed, among other things, subject to certain exceptions, not to (a) directly or indirectly solicit, initiate, or knowingly encourage any offer or alternative proposal for specified alternative transactions, or (b) participate in discussions or negotiations regarding such an offer or proposal with, or furnish any nonpublic information regarding such an offer or proposal to, any person that has made or, to Medtronic's or Covidien's knowledge, is considering making such an offer or proposal, (c) waive, terminate, modify, or fail to use its reasonable best efforts to enforce any standstill or similar obligation (subject to certain conditions), or (d) enter into any agreement with respect to an alternative proposal. In addition, certain covenants require each of the parties to use, subject to the terms and conditions of the Transaction Agreement, their reasonable best efforts to cause the Transactions to be consummated as promptly as practicable. Subject to certain exceptions, the Transaction Agreement also requires each of Medtronic and Covidien to call and hold shareholders' meetings and requires the board of directors of each of Medtronic and Covidien to recommend approval of the Transactions.

Termination

The Transaction Agreement may be terminated by mutual written consent of the parties. The Transaction Agreement also contains certain termination rights, including, among others, the

right of either party if (a) the Scheme shall not have become effective by March 15, 2015 (the End Date), subject to certain conditions, provided that the End Date shall be extended to June 15, 2015 if the regulatory conditions are not satisfied on March 15, 2015, (b) the Covidien and/or Medtronic shareholder approvals are not obtained, (c) the other party breaches its representations and covenants and such breach would result in the closing conditions not being satisfied, (d) the Irish High Court declines to sanction the Scheme, unless both parties agree to appeal the decision, or (e) there is a failure of the Tax Condition. Covidien also has the right, prior to the receipt of Covidien shareholder approval, to accept a Covidien Superior Proposal (as defined in the Agreement) in certain circumstances.

The Transaction Agreement also provides that Medtronic must pay Covidien a termination fee of \$850,000,000 if the Transaction Agreement is terminated because the Medtronic board of directors changes its recommendation for the transaction and the Medtronic shareholders vote against the Transaction, and either (i) Covidien obtained the requisite Covidien shareholder approval or (ii) Medtronic effected such termination prior to the completion of the Covidien shareholder meeting.

Expenses Reimbursement Agreement

In addition, on June 15, 2014, Medtronic and Covidien entered into an Expenses Reimbursement Agreement (the ERA), the terms of which have been approved by the Irish Takeover Panel. Under the ERA, Covidien has agreed to pay to Medtronic the documented, specific and quantifiable third-party costs and expenses incurred by Medtronic in connection with the Acquisition upon the termination of the Transaction Agreement in certain specified circumstances. The maximum amount payable by Covidien to Medtronic pursuant to the ERA is an amount equal to 1% of the total value of the issued share capital of Covidien as ascribed by the terms of the Acquisition.

The foregoing description of the terms of the Transaction Agreement, the Conditions Appendix and the ERA are only summaries, and do not purport to be complete, and are qualified in their entirety by the complete text of the Transaction Agreement, the Conditions Appendix and the ERA, copies of which are filed as Exhibits 2.1, 2.2 and 2.3 hereto and incorporated herein by reference. The documents attached hereto have been included to provide investors with information regarding their terms. The Transaction Agreement contains representations and warranties made by and to the parties thereto as of specific dates. The statements embodied in those representations and warranties were made for purposes of the contract between the parties and may be subject to qualifications and limitations agreed by the parties in connection with negotiating the terms of that contract. In addition, certain representations and warranties were made as of a specified date, may be subject to a contractual standard of materiality different from those generally applicable to investors, or may have been used for the purpose of allocating risk between the parties rather than establishing matters as facts.

Item 7.01. Regulation FD Disclosure.

In connection with the Transactions, Covidien and Medtronic issued the Rule 2.5 Announcement pursuant to Rule 2.5 of the Irish Takeover Rules on June 15, 2014. The full text of the Rule 2.5 Announcement is attached hereto as Exhibit 99.1 and incorporated by reference herein.

As provided in General Instruction B.2 of Form 8-K, the information in this Item 7.01 and Exhibit 99.1 incorporated herein shall not be deemed to be filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be deemed to be incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

- 2.1 Transaction Agreement, dated as of June 15, 2014, by and among Covidien plc, Medtronic, Inc., Kalani I Limited, Makani II Limited, Aviation Acquisition Co., Inc. and Aviation Merger Sub, LLC.
- 2.2 Appendix III to the Rule 2.5 Announcement, dated as of June 15, 2014 (Conditions Appendix).
- 2.3 Expenses Reimbursement Agreement, dated as of June 15, 2014, by and between Covidien plc and Medtronic, Inc.

99.1 Rule 2.5 Announcement, dated as of June 15, 2014.

NO OFFER OR SOLICITATION

This communication is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of any vote or approval in any jurisdiction pursuant to the acquisition, the merger or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

IMPORTANT ADDITIONAL INFORMATION WILL BE FILED WITH THE SEC

New Medtronic will file with the Securities and Exchange Commission (the SEC) a registration statement on Form S-4 that will include the Joint Proxy Statement of Medtronic and Covidien that also constitutes a Prospectus of New Medtronic. Medtronic and Covidien plan to mail to their respective shareholders the Joint Proxy Statement/Prospectus (including the Scheme) in connection with the transactions. INVESTORS AND SHAREHOLDERS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS (INCLUDING THE SCHEME) AND OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC CAREFULLY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT MEDTRONIC, COVIDIEN, NEW MEDTRONIC, THE TRANSACTIONS AND RELATED MATTERS. Investors and security holders will be able to obtain free copies of the Joint Proxy Statement/Prospectus (including the

Scheme) and other documents filed with the SEC by New Medtronic, Medtronic and Covidien through the website maintained by the SEC at www.sec.gov. In addition, investors and shareholders will be able to obtain free copies of the Joint Proxy Statement/Prospectus (including the Scheme) and other documents filed by Medtronic and New Medtronic with the SEC by contacting Medtronic Investor Relations at investor.relations@medtronic.com or by calling 763-505-2692, and will be able to obtain free copies of the Joint Proxy Statement/Prospectus (including the Scheme) and other documents filed by Covidien by contacting Covidien Investor Relations at cole.lannum@covidien.com or by calling 508-452-4343.

PARTICIPANTS IN THE SOLICITATION

Medtronic, New Medtronic and Covidien and certain of their respective directors and executive officers and employees may be considered participants in the solicitation of proxies from the respective shareholders of Medtronic and Covidien in respect of the transactions contemplated by the Joint Proxy Statement/Prospectus. Information regarding the persons who may, under the rules of the SEC, be deemed participants in the solicitation of the respective shareholders of Medtronic and Covidien in connection with the proposed transactions, including a description of their direct or indirect interests, by security holdings or otherwise, will be set forth in the Joint Proxy Statement/Prospectus when it is filed with the SEC. Information regarding Medtronic's directors and executive officers is contained in Medtronic's Annual Report on Form 10-K for the fiscal year ended April 26, 2013 and its Proxy Statement on Schedule 14A, dated July 12, 2013, which are filed with the SEC. Information regarding Covidien's directors and executive officers is contained in Covidien's Annual Report on Form 10-K for the fiscal year ended September 27, 2013 and its Proxy Statement on Schedule 14A, dated January 24, 2014, which are filed with the SEC.

Covidien Cautionary Statement Regarding Forward-Looking Statements

Statements contained in this communication that refer to Covidien's estimated or anticipated future results, including estimated synergies, or other non-historical facts are forward-looking statements that reflect Covidien's current perspective of existing trends and information as of the date of this communication. Forward-looking statements generally will be accompanied by words such as anticipate, believe, plan, could, should, estimate, expect, outlook, guidance, intend, may, might, will, possible, potential, predict, project, or other similar expressions. It is important to note that Covidien's goals and expectations are not predictions of actual performance. Actual results may differ materially from Covidien's current expectations depending upon a number of factors affecting Covidien's business, Medtronic's business and risks associated with the proposed transactions. These factors include, among others, the inherent uncertainty associated with financial projections; the timing to consummate the proposed transactions; the risk that a condition to closing of the proposed transactions may not be satisfied; the risk that the required regulatory approvals for the proposed transactions are not obtained, are delayed or are subject to conditions that are not anticipated; New Medtronic's ability to achieve the synergies and value creation contemplated by the proposed transactions; the anticipated size of the markets and continued demand for Medtronic's and Covidien's products; New Medtronic's ability to promptly and effectively integrate Medtronic's and Covidien's businesses; the diversion of management time on transaction-related issues; competitive factors and market conditions in the

industry in which Covidien operates; Covidien's ability to obtain regulatory approval and customer acceptance of new products, and continued customer acceptance of its existing products; and the other risks identified in Covidien's periodic filings including its Annual Report on Form 10-K for the fiscal year ended September 27, 2013, and from time to time in Covidien's other investor communications. We caution you that the foregoing list of important factors is not exclusive. In addition, in light of these risks and uncertainties, the matters referred to in Covidien's forward-looking statements may not occur. Covidien undertakes no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as may be required by law.

STATEMENT REQUIRED BY THE IRISH TAKEOVER RULES

The directors of Covidien accept responsibility for the information contained in this announcement. To the best of the knowledge and belief of the directors of Covidien (who have taken all reasonable care to ensure such is the case), the information contained in this announcement is in accordance with the facts and does not omit anything likely to affect the import of such information.

No statement in this announcement is intended to constitute a profit forecast for any period, nor should any statements be interpreted to mean that earnings or earnings per share will necessarily be greater or lesser than those for the relevant preceding financial periods for Medtronic or Covidien or New Medtronic as appropriate. No statement in this announcement constitutes an asset valuation.

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: June 16, 2014

**COVIDIEN PUBLIC LIMITED
COMPANY**

By: /s/ John W. Kapples
Name: John W. Kapples
Title: Vice President and Corporate
Secretary

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EXHIBIT INDEX

Exhibit Number	Description
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