

Mallinckrodt plc
Form 8-K
February 13, 2018

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): February 13, 2018

Mallinckrodt public limited company

(Exact name of registrant as specified in its charter)

Ireland
(State or other jurisdiction of
incorporation or organization)

001-35803
(Commission
File Number)

98-1088325
(I.R.S. Employer
Identification No.)

3 Lotus Park, The Causeway, Staines-Upon-Thames,

Surrey TW18 3AG, United Kingdom

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(Address of principal executive offices)

+44 017 8463 6700

(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))

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.

Introductory Note

As previously disclosed in the Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission (SEC) by Mallinckrodt plc, an Irish public limited company (Mallinckrodt), on December 26, 2017, Mallinckrodt entered into an Agreement and Plan of Merger (the Merger Agreement) with Sun Acquisition Co., a Delaware corporation and a wholly owned subsidiary of Mallinckrodt (Purchaser), and Sucampo Pharmaceuticals, Inc., a Delaware corporation (Sucampo). Pursuant to the Merger Agreement, on January 16, 2018, Purchaser commenced a tender offer to acquire all of the outstanding shares of Class A common stock, par value \$0.01 per share, of Sucampo (the Sucampo Shares), at a purchase price of \$18.00 per Sucampo Share, net to the seller in cash, without interest thereon (the Offer Price) and less any applicable withholding of taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated January 16, 2018 (as amended or supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (which, together with the Offer to Purchase, as each may be amended or supplemented from time to time, constitute the Offer), filed as Exhibits (a)(1)(A) and (a)(1)(B), respectively, to the Tender Offer Statement on Schedule TO filed by Mallinckrodt and Purchaser with the SEC on January 16, 2018 (as amended or supplemented from time to time).

Item 1.01. Entry into a Material Definitive Agreement.

On February 13, 2018, in connection with the Merger (as defined below), Mallinckrodt International Finance S.A. (MIFSA) and Mallinckrodt CB LLC (MCB), each of which is a subsidiary of Mallinckrodt, entered into a \$600 million senior secured term loan facility (the New Term Loan). The New Term Loan is an incremental facility under the Credit Agreement, dated as of March 19, 2014 (as amended, supplemented or otherwise modified from time to time, the Credit Agreement), among Mallinckrodt, MIFSA, MCB, the lenders party thereto from time to time and Deutsche Bank AG New York, as administrative agent. The New Term Loan is governed by the Credit Agreement and an Incremental Assumption Agreement No. 4 (the IAA), dated as of February 13, 2018, among Mallinckrodt, MIFSA, MCB, the other subsidiaries of Mallinckrodt party thereto, the lenders party thereto and Deutsche Bank AG New York Branch, as administrative agent.

The New Term Loan bears interest, at the option of the borrowers thereunder, at a rate equal to adjusted LIBOR, subject to a floor of 0.75%, plus a spread equal to 3.00%, or an alternate base rate, subject to a floor of 1.75%, plus a spread equal to 2.00%. Interest on the New Term Loan is payable at the end of each interest period, but in no event less frequently than quarterly.

The New Term Loan has similar terms to the term loans incurred under the Credit Agreement on February 28, 2017 (the 2017 Term Loans) (other than with respect to the maturity date, the applicable interest rate, and prepayment premiums in respect of certain voluntary prepayments). The New Term Loan will be guaranteed by, and secured by the assets of, Mallinckrodt and the same subsidiaries of Mallinckrodt which guarantee the 2017 Term Loans.

The New Term Loan matures on February 24, 2025. Amounts outstanding under the New Term Loan may be prepaid at any time, subject, under certain circumstances, to a 1.00% prepayment premium.

The foregoing summary of the New Term Loan is not complete and is qualified in its entirety by reference to the IAA and the Credit Agreement, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

Completion of the Offer and the Merger

The disclosure under the Introductory Note is incorporated herein by reference. The Offer and all withdrawal rights thereunder expired at 8:00 a.m., Eastern time, on February 13, 2018. American Stock Transfer & Trust Company, LLC, the depositary for the Offer (the Depositary), has advised Mallinckrodt and Purchaser that, as of the expiration of the Offer, an aggregate of 39,158,848 Sucampo Shares were validly tendered and not validly withdrawn pursuant to the Offer, representing approximately 83% of the Sucampo Shares then outstanding. Purchaser accepted for payment all Sucampo Shares that were validly tendered and not validly withdrawn pursuant to the Offer, and payment of the Offer Price for such Sucampo Shares will be promptly made by the Depositary.

Following the completion of the Offer, on February 13, 2018, pursuant to the terms of the Merger Agreement and in accordance with Section 251(h) of the General Corporation Law of the State of Delaware, Purchaser merged with and into Sucampo (the Merger) with Sucampo continuing as the surviving corporation (the Surviving Corporation). Upon completion of the Merger, Sucampo became a wholly owned subsidiary of Mallinckrodt.

Pursuant to the Merger Agreement, at the effective time of the Merger (the Effective Time), each outstanding Sucampo Share (other than Sucampo Shares held (i) by Sucampo (including any held in Sucampo's treasury) or by Mallinckrodt or Purchaser, which Sucampo Shares were canceled and have ceased to exist, (ii) by any wholly owned subsidiary of Sucampo or any wholly owned subsidiary of Mallinckrodt (other than Purchaser), which Sucampo Shares were converted into such number of shares of common stock of the Surviving Corporation so as to maintain relative ownership percentages or (iii) by any Sucampo stockholders who validly exercise appraisal rights under Delaware law with respect to such Sucampo Shares) was automatically canceled and converted into the right to receive an amount in cash equal to the Offer Price, without interest thereon and less any applicable withholding taxes.

Pursuant to the terms of the Merger Agreement, at the Effective Time, each Sucampo stock option that was outstanding as of immediately prior to the Effective Time became fully vested and exercisable and was cancelled and converted into the right to receive cash in an amount, less any applicable withholding taxes, equal to the product of (i) the total number of Sucampo Shares subject to such Sucampo stock option immediately prior to the Effective Time and (ii) the excess, if any, of the Offer Price, without interest (Merger Consideration), over the exercise price payable per Sucampo Share underlying such Sucampo stock option. If the exercise price of any Sucampo stock option was equal to or greater than the Merger Consideration, such stock option was canceled for no consideration at the Effective Time. In addition, at the Effective Time, each Sucampo restricted stock unit (RSU) that was outstanding as of immediately prior to the Effective Time, whether vested or unvested, was cancelled and converted into the right to receive cash in an amount, less any applicable withholding taxes, equal to the product of (A) the total number of Sucampo Shares underlying such RSU immediately prior to the Effective Time (in the case of performance stock awards, determined based on target levels) and (B) the Merger Consideration.

The aggregate consideration paid by Purchaser in the Offer and the Merger, together with the amount of cash required for the expected settlement of the Sucampo Notes as described below, equals approximately \$1.2 billion, net of cash acquired and without giving effect to Mallinckrodt's related transaction fees and expenses. Mallinckrodt and Purchaser funded the payment of the aggregate consideration (and expect to fund the settlement of the Sucampo Notes) from Mallinckrodt's cash on hand (including, without limitation, proceeds of a recent draw on an existing revolving credit facility) and the proceeds of the New Term Loan.

The foregoing description of the Offer, the Merger and the Merger Agreement and the transactions contemplated thereby is not complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference.

The Merger Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about Mallinckrodt, Purchaser or Sucampo, their respective businesses, or the actual conduct of their respective businesses during the period prior to the consummation of the Offer or the Merger. The Merger Agreement contains representations and warranties that are the product of negotiations among the parties thereto and the parties made to, and solely for the benefit of, each other as of specified dates. The assertions embodied in those representations and warranties are subject to qualifications and limitations agreed to by the respective parties and are also qualified in important part by a confidential disclosure schedule delivered by Sucampo to Mallinckrodt in connection with the Merger Agreement. The representations and warranties may have been made for the purpose of allocating contractual risk between the parties to the agreements instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors.

Expected Settlement of the Sucampo Notes

In addition, as previously disclosed, as of December 31, 2017 \$300,000,000 in aggregate principal amount of Sucampo's 3.25% Convertible Senior Notes due 2021 (the "Sucampo Notes") issued under that certain Indenture, dated as of December 27, 2016 (the "Sucampo Indenture"), between Sucampo and U.S. Bank National Association, were outstanding. Concurrently with the consummation of the Offer and the Merger, Sucampo entered into a supplemental indenture (the "Supplemental Indenture") providing that at and after the Effective Time, the right to convert each \$1,000 principal amount of Sucampo Notes shall be changed into a right to convert such principal amount of Sucampo Notes into the transaction consideration that a holder of a number of Sucampo Shares equal to the conversion rate would have received upon completion of the Merger.

As the consummation of the Offer and the Merger constitutes a make-whole fundamental change pursuant to the terms of the Sucampo Indenture, any holder of Sucampo Notes that converts its Sucampo Notes during a period of time following consummation of the Merger, will convert their Sucampo Notes at an increased conversion rate in accordance with the terms of the Sucampo Indenture. As the consummation of the Merger constitutes a fundamental change under the terms of the Sucampo Indenture, Sucampo also will be required to offer to repurchase the Sucampo Notes at a price equal to 100% of the principal amount of the Sucampo Notes to be repurchased plus any accrued and unpaid interest to, but excluding, the repurchase date.

The foregoing description of the Sucampo Indenture, the Supplemental Indenture and the Sucampo Notes is not complete and is qualified in its entirety by reference to the Sucampo Indenture and the Supplemental Indenture, which are filed as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 and Item 2.01 is hereby incorporated by reference into this Item 2.03.

Item 7.01. Regulation FD Disclosure.

On February 13, 2018, Mallinckrodt issued a press release announcing the completion of the Offer and the Merger. A copy of the press release is attached as Exhibit 99.1 hereto and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.* See Exhibit Index.

Exhibit Index

| Exhibit No. | Description |
|--------------------|---|
| 2.1* | <u>Agreement and Plan of Merger, dated as of December 23, 2017, by and among Mallinckrodt plc, Sun Acquisition Co. and Sucampo Pharmaceuticals, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC by Mallinckrodt plc on December 26, 2017).</u> |
| 4.1 | <u>Indenture, dated as of December 27, 2016, between Sucampo Pharmaceuticals, Inc. and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed with the SEC by Sucampo Pharmaceuticals, Inc. on December 27, 2016).</u> |
| 4.2 | <u>Supplemental Indenture, dated as of February 13, 2018, between Sucampo Pharmaceuticals, Inc. and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.2 to Sucampo's Current Report on Form 8-K filed with the SEC on February 13, 2018).</u> |
| 10.1 | <u>Incremental Assumption Agreement No. 4, dated as of February 13, 2018, by and among Mallinckrodt plc, Mallinckrodt International Finance, S.A., Mallinckrodt CB LLC, the other subsidiaries of Mallinckrodt plc party thereto and Deutsche Bank AG New York Branch, as administrative agent (incorporated by reference to Exhibit (b)(3) of the Schedule TO/A filed with the SEC by Mallinckrodt plc and Sun Acquisition Co. on February 13, 2018).</u> |
| 10.2 | <u>Credit Agreement, dated as of March 19, 2014, by and among Mallinckrodt plc, Mallinckrodt International Finance, S.A., Mallinckrodt CB LLC, the lenders party thereto from time to time and Deutsche Bank AG New York, as administrative agent, as amended by the Incremental Assumption Agreement No. 1, dated as of August 14, 2014, the Refinancing Amendment No. 1 and Incremental Assumption Agreement No. 2, dated as of August 28, 2015, and the Refinancing Amendment No. 2 and Incremental Assumption Agreement No. 3, dated as of February 28, 2017 (incorporated by reference to Annex A to Exhibit 10.1 to Mallinckrodt plc's Current Report on Form 8-K filed with the SEC on March 1, 2017).</u> |
| 99.1 | <u>Press Release, dated February 13, 2018 (incorporated by reference to Exhibit (a)(1)(I) of the Schedule TO/A filed with the SEC by Mallinckrodt plc and Sun Acquisition Co. on February 13, 2018).</u> |

* Schedules omitted pursuant to Item 601(b)(2) of Regulation S-K. Mallinckrodt plc agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this current report to be signed on its behalf by the undersigned officer hereunto duly authorized.

MALLINCKRODT PUBLIC LIMITED
COMPANY

By: /s/ Stephanie D. Miller
Name: Stephanie D. Miller
Title: Vice President, Corporate
Secretary and International Legal

Date: February 13, 2018