

THERMO FISHER SCIENTIFIC INC.

Form 8-K

September 12, 2016

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): September 12, 2016

Thermo Fisher Scientific Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

168 Third Avenue

1-8002
(Commission

File Number)

04-2209186
(IRS Employer

Identification No.)

02451

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Waltham, Massachusetts

(Address of Principal Executive Offices)

(Zip Code)

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

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 September 12, 2016, Thermo Fisher Scientific Inc., a Delaware corporation (the *Company*), issued 1,000,000,000 aggregate principal amount of 0.750% Senior Notes due 2024 (the *2024 Notes*) and 600,000,000 aggregate principal amount of 1.375% Senior Notes due 2028 (the *2028 Notes* and, together with the 2024 Notes, the *Notes*), in a public offering pursuant to a registration statement on Form S-3, as amended by the Post-Effective Amendment No. 1 thereto (File No. 333-209867), and a preliminary prospectus supplement and prospectus supplement related to the offering of the Notes, each as previously filed with the Securities and Exchange Commission (the *SEC*). The Notes are subject to a Paying Agency Agreement, dated as of September 12, 2016 (the *Paying Agency Agreement*), between the Company and The Bank of New York Mellon, London Branch, as London paying agent. The Notes were issued under an indenture, dated as of November 20, 2009 (the *Base Indenture*), and the Thirteenth Supplemental Indenture, dated as of September 12, 2016 (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, dated September 7, 2016 (the *Underwriting Agreement*), among the Company and J.P. Morgan Securities plc, Barclays Bank PLC, Mizuho International plc, Morgan Stanley & Co. International plc and the several other underwriters named in the Underwriting Agreement. The Underwriting Agreement was separately filed with the SEC on September 7, 2016 as Exhibit 1.1 to the Company's Current Report on Form 8-K.

The 2024 Notes will mature on September 12, 2024, and the 2028 Notes will mature on September 12, 2028. Interest on the 2024 Notes will accrue at the rate of 0.750% per annum, and interest on the 2028 Notes will accrue at the rate of 1.375% per annum. Interest on the Notes will be paid annually in arrears on September 12 of each year, commencing on September 12, 2017, to the persons in whose names the Notes are registered in the security register on the preceding August 28, whether or not a business day, as the case may be.

The Company has applied to list the Notes on the New York Stock Exchange (*NYSE*). The listing application will be subject to approval by the NYSE. Upon such listing, the Company will use commercially reasonable best efforts to maintain such listing and satisfy the requirements for such continued listing as long as the Notes are outstanding.

Prior to June 12, 2024, in the case of the 2024 Notes, and June 12, 2028, in the case of the 2028 Notes, the Company may redeem at its option the 2024 Notes and the 2028 Notes, as applicable, in whole at any time or in part from time to time, at a redemption price equal to the greater of (1) 100% of the principal amount of the Notes to be redeemed and (2) the sum of the present values of the remaining scheduled payments of the Notes being redeemed that would be due if such notes matured on June 12, 2024, in the case of the 2024 Notes, and June 12, 2028, in the case of the 2028 Notes (in each case, three months prior to their maturity) but for the redemption (not including any portion of the payments of interest accrued but unpaid as of the date of redemption) discounted to the date of redemption on an annual basis (ACTUAL/ACTUAL (ICMA)), using a discount rate equal to the Comparable Bond Rate (as defined in the Indenture) plus 20 basis points, in the case of the 2024 Notes, and plus 25 basis points, in the case of the 2028 Notes, plus accrued and unpaid interest on the Notes being redeemed, if any, to, but excluding, the date of redemption.

In addition, on and after June 12, 2024, in the case of the 2024 Notes, and on or after June 12, 2028, in the case of the 2028 Notes, the Company will have the option to redeem such Notes, in whole at any time or in part from time to time, at a redemption price equal to 100% of the principal amount of the 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., S&P Global Ratings, a division of S&P Global, Inc., and Fitch Ratings Limited, the Company will, in certain circumstances, be required to make an offer to purchase the 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. The Notes rank equally in right of payment with existing and any future unsecured and unsubordinated indebtedness of the Company and will rank senior in right of payment to any existing and future indebtedness of the Company that is subordinated to the Notes. The Notes are also effectively subordinated to any existing and future secured indebtedness of the Company to the extent of the assets securing such indebtedness, and are structurally subordinated to all existing and any future indebtedness and any other liabilities and commitments (including trade payables and lease obligations) of its subsidiaries, to the extent of the assets of such subsidiaries.

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 Principal Properties (as defined in the Indenture) or on shares of stock of the Company's Principal Subsidiaries (as defined in the Indenture) and engage in sale and lease-back transactions with respect to any Principal Property. The Indenture also limits the ability of the Company to 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 \$1.58 billion after deducting underwriting discounts and estimated offering expenses. The Company intends to use the net proceeds of the offering to finance a portion of the estimated \$4.2 billion purchase price for the Company's acquisition of FEI Company (the "FEI Acquisition") and to pay certain associated costs. The FEI Acquisition is expected to close by December 31, 2016, subject to the satisfaction of customary closing conditions, including applicable regulatory approvals.

Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Company, has issued an opinion to the Company, dated September 12, 2016, regarding the legality of the Notes. A copy of this opinion is filed as Exhibit 5.1 hereto.

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, the Supplemental Indenture, which is filed with this report as Exhibit 4.2, the Paying Agency Agreement, which is filed with this report as Exhibit 4.3, and the Forms of Note (included in Exhibit 4.2). Each of the foregoing documents is incorporated herein by reference.

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, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THERMO FISHER SCIENTIFIC INC.

Date: September 12, 2016

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

EXHIBIT INDEX

Exhibit No.	Description
4.1	Indenture, dated as of November 20, 2009, between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (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).
4.2	Thirteenth Supplemental Indenture, dated as of September 12, 2016, between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee.
4.3	Paying Agency Agreement, dated as of September 12, 2016, between the Company and The Bank of New York Mellon, London Branch, as paying agent.
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).