

THERMO FISHER SCIENTIFIC INC.

Form 8-K

August 14, 2017

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): August 14, 2017

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.)

168 Third Avenue

Waltham, Massachusetts
(Address of Principal Executive Offices)

02451
(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))

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.

Item 1.01. Entry into a Material Definitive Agreement.

On August 14, 2017, Thermo Fisher Scientific Inc., a Delaware corporation (the *Company*), issued \$750,000,000 aggregate principal amount of 3.200% Senior Notes due 2027 (the *2027 Notes*) and \$750,000,000 aggregate principal amount of 4.100% Senior Notes due 2047 (the *2047 Notes* and, together with the 2027 Notes, the *Notes*), in a public offering pursuant to a registration statement on Form S-3, as amended by 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 were issued under the Indenture, dated as of November 20, 2009 (the *Base Indenture*), as supplemented by the Seventeenth Supplemental Indenture, dated as of August 14, 2017 (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 August 10, 2017 (the *Underwriting Agreement*), among the Company and Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several underwriters named in Schedule A to the Underwriting Agreement. The Underwriting Agreement was separately filed with the SEC on August 11, 2017 as Exhibit 1.2 to the Company's Current Report on Form 8-K.

The 2027 Notes will mature on August 15, 2027, and the 2047 Notes will mature on August 15, 2047. Interest on the 2027 Notes will accrue at the rate of 3.200% per annum, and interest on the 2047 Notes will accrue at the rate of 4.100% per annum. Interest on the Notes will be paid semi-annually in arrears on February 15 and August 15 of each year, commencing on February 15, 2018, to the persons in whose names the Notes are registered in the security register at the close of business on the fifteenth 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 Patheon Acquisition (as defined below) on or prior to February 15, 2018 or the purchase agreement with respect to the Patheon Acquisition is terminated at any time prior to such date, the Company will be required to redeem all of the Notes on a special mandatory redemption date 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.

Prior to May 15, 2027, in the case of the 2027 Notes (three months prior to their maturity), and February 15, 2047, in the case of the 2047 Notes (six months prior to their maturity) (each such date, a *Par Call Date*), the Company will have the option to redeem the applicable series of Notes, 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 principal and interest in respect of the Notes being redeemed that would be due if such Notes matured on their Par Call Date 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 a semi-annual basis (assuming a 360-day year of twelve 30-day months), using a discount rate equal to the Treasury Rate (as defined in the Indenture) plus 20 basis points, in the case of the 2027 Notes, and 25 basis points, in the case of the 2047 Notes, plus, in each case, accrued and unpaid interest on the Notes being redeemed, if any, to, but excluding, the date of redemption.

In addition, on and after the applicable Par Call Date, the Company will have the option to redeem the 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 of such series at a price equal to 101% of the principal amount of such Notes, plus accrued and unpaid interest, if any, 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 to 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 \$1.5 billion, after deducting the underwriting discounts and estimated offering expenses. The Company intends to use all of the net proceeds of the offering to fund a portion of the consideration payable for the acquisition of Patheon N.V. (the Patheon Acquisition), including the repayment of indebtedness of Patheon N.V. to be assumed by the Company. The Patheon Acquisition is expected to close around the end of the third quarter of 2017, subject to the satisfaction of customary closing conditions, including the receipt of applicable regulatory approvals and completion of the Company's tender offer to acquire all of the issued and outstanding shares of Patheon N.V.

Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Company, has issued an opinion to the Company, dated August 14, 2017, 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, and the Form of the Notes (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: August 14, 2017

By: /s/ Seth H. Hoogasian

Name: Seth H. Hoogasian

Title: Senior Vice President and General Counsel

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	Seventeenth Supplemental Indenture, dated as of August 14, 2017, between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee.
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).