

MERIT MEDICAL SYSTEMS INC
Form 8-K
March 16, 2009

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): **March 10, 2009**

Merit Medical Systems, Inc.

(Exact name of registrant as specified in its charter)

Utah
(State or other jurisdiction of
incorporation or organization)

0-18592
(Commission
File Number)

87-0447695
(I.R.S. Employer
Identification No.)

1600 West Merit Parkway
South Jordan, Utah
(Address of principal executive offices)

84095
(Zip Code)

(801) 253-1600

(Registrant's telephone number, including area code)

N/A

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(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:

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

 - o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

 - o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

 - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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ITEM 1.01 Entry into a Material Definitive Agreement.

In connection with the closing of the Alveolus asset acquisition referenced in Item 2.01 below, on March 10, 2009, Merit Medical Systems, Inc. (Merit) entered into Amendment No. 1 to Loan Agreement (the Amendment) with Bank of America, N.A. (Bank of America), a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by this reference. The Amendment amends the Loan Agreement, dated December 7, 2006, between Merit and Bank of America, a copy of which was filed by Merit as an exhibit to a Current Report on Form 8-K on December 7, 2006. The Amendment modifies certain agreements and covenants between the parties, primarily relating to (i) the sizes of acquisitions that Merit may make in 2009 and during the term of the Loan Agreement and (ii) the interest rates applicable to amounts borrowed under the Loan Agreement.

ITEM 2.01 Completion of Acquisition or Disposition of Assets.

On March 10, 2009, Merit completed its acquisition of substantially all of the assets of Alveolus, Inc. (Alveolus). The assets acquired relate to Alveolus non-vascular interventional stent business for esophageal, tracheobronchial and biliary stenting procedures. Merit previously announced on February 19, 2009 that it had entered into an agreement to acquire assets from Alveolus. A copy of the Asset Purchase Agreement (the Purchase Agreement), dated as of February 18, 2009, between Merit and Alveolus is attached hereto as Exhibit 2.1 and incorporated herein by this reference.

Pursuant to the terms of the Purchase Agreement, Merit paid approximately \$16 million to Alveolus at the closing. Merit placed an additional \$3 million in escrow at closing, which is payable in portions to Alveolus over the two years following closing, subject to certain adjustments for working capital and to the satisfaction of Alveolus indemnification obligations under the Purchase Agreement. At closing, the parties entered into various other agreements related to the transaction, including an agreement addressing services to be provided by existing Alveolus employees during a transition period following closing.

Under the terms of the Purchase Agreement, Alveolus agreed to indemnify Merit, and Merit agreed to indemnify Alveolus from damages suffered due to breaches of representations, warranties or covenants made in the Purchase Agreement. Recoveries under the indemnification provisions of the Purchase Agreement are subject to a certain aggregate minimum for all losses. Recoveries are also subject to an aggregate cap on all losses.

The foregoing paragraphs provide a brief summary of the provisions of the Purchase Agreement, in order to provide a basic understanding of the Purchase Agreement and the acquisition transaction. The foregoing summary is not complete and is qualified in its entirety by the copy of the Purchase Agreement that is attached hereto. The foregoing summary, and the attached copy of the Purchase Agreement, provide information regarding the terms of the Purchase Agreement, and are not intended to provide investors with factual information about the current state of affairs of Merit, Alveolus or the assets acquired. The Purchase Agreement contains representations and warranties and other statements that are solely for the benefit of the parties to that agreement and are designed to allocate business, legal and other risks among the parties and not as a means of establishing, representing or warranting any facts. Additionally, such representations and warranties and other statements (i) speak only as to the date on which they were made, and may be modified or qualified by confidential disclosure schedules and other documents, agreements or understandings among the parties, which Merit believes are not required by the securities laws to be publicly disclosed, and (ii) may be subject to different materiality standards than the standards applicable to disclosures to investors under applicable securities laws. Moreover, information concerning the subject matter of the representations and warranties and other statements made in the Purchase Agreement itself, or the above summary thereof, will likely change after the execution date of the Purchase Agreement, and subsequent information may or may not be fully reflected in Merit's public disclosures. Additionally, only parties to the Purchase Agreement, or other limited third-party beneficiaries that may be set forth therein, may enforce or rely upon the provisions of the Purchase Agreement. Investors

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should not, therefore, rely upon representations and warranties and other statements in the Purchase Agreement or the above summary as factual characterizations of the actual state of affairs of Merit, Alveolus or the assets acquired. Investors should instead look to disclosures contained in Merit's reports under the Securities Exchange Act of 1934, as amended.

Merit also completed the acquisition of certain assets from Hydromer, Inc. and Biosearch Medical Products, Inc. (Biosearch). Merit previously announced it had entered into an agreement to acquire the Biosearch assets.

Item 7.01 Regulation FD Disclosure

On March 16, 2009, Merit issued a press release, entitled "Merit Medical Announces Closing of Alveolus and Biosearch Deals" relating to the Alveolus transaction closing described above, a copy of which is filed as Exhibit 99.1 to this Current Report, and is incorporated herein by this reference.

Safe Harbor for Forward-Looking Statements

Statements contained in this release which are not purely historical, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and are subject to risks and uncertainties such as those described in Merit's Annual Report on Form 10-K for the year ended December 31, 2008. Such risks and uncertainties include risks relating to unanticipated consequences of Merit's acquisition of the Alveolus and Biosearch assets; challenges associated with Merit's efforts to pursue new market opportunities, including opportunities in the gastroenterology and pulmonary markets; infringement of Merit's technology or the assertion that Merit's technology infringes the rights of other parties; product recalls and product liability claims; downturn of the national economy and its affect on Merit's revenues, collections and supplier relations; termination of supplier relationships, or failure of suppliers to perform; inability to successfully manage growth through acquisitions; delays in obtaining regulatory approvals, or the failure to maintain such approvals; concentration of Merit's revenues among a few products and procedures; development of new products and technology that could render Merit's products obsolete; market acceptance of new products; introduction of products in a timely fashion; price and product competition; availability of labor and materials; cost increases; and fluctuations in and obsolescence of inventory; volatility of the market price of Merit's common stock; foreign currency fluctuations; changes in key personnel; work stoppage or transportation risks; modification or limitation of governmental or private insurance reimbursement; changes in health care markets related to health care reform initiatives; and other factors referred to in Merit's Annual Report on Form 10-K for the year ended December 31, 2008, and other reports filed with the Securities and Exchange Commission. All subsequent forward-looking statements attributable to Merit or persons acting on its behalf are expressly qualified in their entirety by these cautionary statements. Actual results will differ, and may differ materially, from anticipated results. Financial estimates are subject to change and are not intended to be relied upon as predictions of future operating results, and Merit assumes no obligation to update or disclose revisions to those estimates.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit Number	Title of Document	Location
2.1	Asset Purchase Agreement, dated as of February 18, 2009, between Merit Medical Systems, Inc. and Alveolus, Inc.	Attached
10.1	Amendment No. 1 to Loan Agreement, dated March 10, 2009, between Bank of America, N.A. and Merit Medical Systems, Inc.	Attached

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99.1 Press Release, dated March 16, 2009, entitled Merit Medical Announces Closing of Attached Alveolus and Biosearch Deals

SIGNATURES

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.

MERIT MEDICAL SYSTEMS, INC.

Date: March 16, 2009

By:

/s/ Kent W. Stanger
Chief Financial Officer, Secretary and Treasurer