

OFFICE DEPOT INC
Form DEFA14A
June 05, 2015

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934
(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the SEC Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

OFFICE DEPOT, INC.

(Name of Registrant as Specified In Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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Supplemental Disclosures

As previously disclosed, on February 4, 2015, Office Depot, Inc. (Office Depot) entered into an Agreement and Plan of Merger (the Merger Agreement) with Staples, Inc. (Staples) and Staples AMS, Inc., a wholly owned subsidiary of Staples (Merger Sub), pursuant to which, upon the terms and subject to the conditions of the Merger Agreement, Merger Sub will merge with and into Office Depot, with Office Depot surviving the merger as a wholly owned subsidiary of Staples.

Office Depot is supplementing its disclosure regarding the merger in connection with litigation brought by stockholders of Office Depot. Nothing in this communication shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the disclosures set forth herein, and Office Depot and the other named defendants continue to deny any wrongdoing alleged in the litigation.

As previously disclosed in the registration statement on Form S-4 of Staples that was declared effective on May 15, 2015, which includes a prospectus of Staples and a proxy statement of Office Depot, which Office Depot filed with the Securities and Exchange Commission on May 18, 2015 (the proxy statement/prospectus), Office Depot, its directors, Staples, Merger Sub, and Starboard Value LP, among others, are named as defendants in a number of putative class action lawsuits brought by purported Office Depot stockholders challenging the merger, seeking, among other things, to enjoin consummation of the merger. To date, nine lawsuits have been filed in the Court of Chancery of the State of Delaware (the Delaware Actions), and two lawsuits have been filed in the Fifteenth Circuit Court of the State of Florida (the Florida Actions and, together with the Delaware Actions, the lawsuits).

Operative amended complaints were designated in the Delaware and Florida Actions on March 31, 2015, and April 7, 2015, respectively. The lawsuits generally allege, among other things, that the directors of Office Depot breached their fiduciary duties to Office Depot stockholders in connection with the merger, by, among other things, failing to fully inform themselves of the market value of Office Depot, maximize stockholder value, obtain the best financial and other terms, disclose material information in the proxy statement/prospectus and act in the best interests of public stockholders, and by seeking to benefit themselves improperly. The lawsuits further allege that Staples, Office Depot, and Starboard Value LP, among others, aided and abetted the Office Depot directors in the breach of their fiduciary duties. The lawsuits seek, in general, (i) injunctive relief enjoining, preliminarily and permanently, the merger, (ii) in the event that the merger is consummated, rescission or an award of rescissory damages, (iii) an award of plaintiffs costs, including fees, expenses of attorneys, fees for experts, and interest, and (iv) additional disclosure related to the transactions in the proxy statement/prospectus, among other relief. In addition to the allegations raised and the relief sought in the Delaware Actions, the Florida Actions seek punitive damages and allege that the forum selection amendment to Office Depot s bylaws was adopted in breach of all defendants fiduciary duties, and seek a declaratory judgment invalidating it.

On March 3, 2015, the plaintiffs in the Florida Actions filed motions to consolidate the Florida Actions, appoint lead counsel, and for expedited proceedings. On March 9, 2015, the defendants filed motions to dismiss the complaints for improper venue, or in the alternative to stay the Florida Actions in favor of the Delaware Actions. On May 15, 2015, the court issued an order granting the defendants motions to dismiss based on Office Depot s exclusive forum bylaw, dismissing the Florida complaint without prejudice to plaintiffs refile their claims in Delaware, and denying the plaintiffs motions for expedited proceedings as moot.

On March 31, 2015, the court consolidated the nine Delaware Actions under the caption *In re Office Depot, Inc. Stockholders Litigation*, Consol. C.A. No. 10655-CB. On May 29, 2015, the Delaware court scheduled a preliminary injunction hearing on plaintiffs motion to enjoin the merger for June 12, 2015.

Office Depot, Staples and the Office Depot board of directors believe that the claims asserted in these suits are without merit and intend to defend against them vigorously, and further believe that no supplemental disclosure is

required under applicable laws. However, Office Depot wishes to make certain supplemental disclosures related to the proposed merger, and on June 4, 2015, in connection with the filing of these supplemental disclosures, the plaintiffs withdrew their motion for a preliminary injunction.

SUPPLEMENT TO PROXY STATEMENT/PROSPECTUS

These supplemental disclosures should be read in conjunction with the proxy statement/prospectus, which should be read in its entirety. Defined terms used but not defined below have the meanings set forth in the proxy statement/prospectus.

1. The section of the proxy statement/prospectus entitled **Proposal I: Adoption of the Merger Agreement Background of the Merger is hereby supplemented as follows:**

- A. *The penultimate sentence in the third full paragraph on page 46 (such paragraph beginning with **On September 23, 2014,**) of the proxy statement/prospectus is hereby amended and restated to read as follows:*

The Office Depot board of directors also determined that Office Depot should retain a financial advisor to assist it with the review of its potential strategic alternatives, including a potential transaction with Staples, and that PJSC and several other investment banks should be considered as potential financial advisors. Following further discussion, the Office Depot board of directors established a committee to meet with, and interview, PJSC and one other investment bank for purposes of potentially assisting Office Depot as financial advisor.

- B. *The following paragraph is hereby inserted immediately before the last paragraph on page 49 (such paragraph beginning with **On December 19, 2014,**) of the proxy statement/prospectus:*

On December 19, 2014, Ms. Elisa Garcia, executive vice president, chief legal officer and corporate secretary of Office Depot, received a call from Mr. Jeffrey Smith, the chief executive officer and chief investment officer of Starboard, who informed her that he had met with representatives of Staples on December 18, 2014 to discuss, among other matters, the merits of a business combination of Staples and Office Depot. Mr. Jeffrey Smith suggested that, should Staples contact Office Depot to discuss such a transaction, Office Depot be open to engage with Staples in such discussions.

- C. *The first sentence in the last paragraph on page 49 (such paragraph beginning with **On December 19, 2014,**) of the proxy statement/prospectus is hereby amended and restated to read as follows:*

In the afternoon of December 19, 2014, the Office Depot board of directors held a telephonic meeting with representatives of Office Depot's senior management, PJSC and Simpson Thacher to review and discuss Staples December 16, 2014 proposal.

- D. *The following sentence is hereby inserted immediately after the second sentence in the last paragraph on page 49 (such paragraph beginning with **On December 19, 2014,**) of the proxy statement/prospectus:*

Ms. Garcia then reported and informed the Office Depot board of directors of her conversation with Mr. Jeffrey Smith of Starboard earlier that day, including that Mr. Jeffrey Smith, during his meeting with representatives of Staples on December 18, 2014, had discussed the merits of a potential business combination of Staples and Office Depot and that, should Staples contact Office Depot to explore the possibility of such a transaction, he suggested that Office Depot be open to engage with Staples in such discussions.

E. The seventh sentence in the second full paragraph on page 54 (such paragraph beginning with "On January 31, 2015,") of the proxy statement/prospectus is hereby amended and restated to read as follows:

The representatives of PJSC then discussed with the Office Depot board of directors, among other matters, certain preliminary financial analyses (which analyses included PJSC's selected publicly traded company analysis, which had been updated to replace Walmart, Costco and Target in the list of selected publicly traded companies used for purposes of this analysis with GameStop and United Stationers, which, in

PJSC's judgment, were of a more reasonably similar size and shared more similar business characteristics to Office Depot and Staples) regarding Staples' revised January 18, 2015 proposal, including that this proposal implied a per share purchase price of \$10.98 based on Staples' closing share price of \$17.05 on January 30, 2015 and represented a premium of approximately 63.2% to Office Depot's closing share price of \$6.73 on December 10, 2014, the last trading day before the Starboard SEC filings disclosing its stakebuilding in Staples and Office Depot. PJSC also noted that, of the implied value of the merger consideration offered by Staples, 66% and 34% would be paid in cash and shares of Staples common stock, respectively, and that the Office Depot stockholders would own approximately 16.2% of the total outstanding Staples common stock upon completion of the proposed transaction.

2. The section of the proxy statement/prospectus entitled "Proposal I: Adoption of the Merger Agreement - Certain Financial Projections Utilized by the Office Depot Board of Directors and Office Depot's Financial Advisor" is hereby supplemented as follows:

A. *The following sentence is hereby inserted immediately after the last sentence in the last paragraph on page 64 (such paragraph beginning with "The financial projections") of the proxy statement/prospectus:*

In addition, the projections in the Office Depot management case and the Office Depot management sensitivity case include capital expenditures, which is defined as additions of property, equipment, and information technology, as well as free cash flow, which is defined as operating cash flow (including interest payments on debt) less capital expenditures.

B. *The table under the heading "Office Depot Management Case" on page 65 of the proxy statement/prospectus is hereby amended and restated as follows:*

| | Year ended December 27, 2014 | Year ended December 26, 2015 | Year ended December 31, 2016 | Year ended December 30, 2017 | Year ended December 29, 2018 |
|--|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| <i>(Amounts in millions, except per share amounts)</i> | | | | | |
| Net Sales | \$ 15,941 | \$ 15,408 | \$ 15,420 | \$ 15,441 | \$ 15,568 |
| EBITDA | \$ 604 | \$ 825 | \$ 1,008 | \$ 1,061 | \$ 1,073 |
| EBIT | \$ 291 | \$ 545 | \$ 732 | \$ 796 | \$ 821 |
| EPS⁽¹⁾ | \$ 0.24 | \$ 0.40 | \$ 0.57 | \$ 0.72 | \$ 0.74 |
| Capital Expenditures | \$ (124) | \$ (252) | \$ (230) | \$ (140) | \$ (140) |
| Free Cash Flow | \$ 47 | \$ 45 | \$ 411 | \$ 577 | \$ 611 |

C. *The table under the heading "Office Depot Management Sensitivity Case" on page 65 of the proxy statement/prospectus is hereby amended and restated as follows:*

| | Year ended December 27, 2014 | Year ended December 26, 2015 | Year ended December 31, 2016 | Year ended December 30, 2017 | Year ended December 29, 2018 |
|--|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| <i>(Amounts in millions, except per share amounts)</i> | | | | | |
| Net Sales | \$ 15,941 | \$ 15,155 | \$ 14,667 | \$ 14,491 | \$ 14,357 |

| | | | | | |
|-----------------------------|----------|----------|----------|----------|----------|
| EBITDA | \$ 604 | \$ 751 | \$ 812 | \$ 788 | \$ 723 |
| EBIT | \$ 291 | \$ 476 | \$ 550 | \$ 539 | \$ 491 |
| EPS⁽¹⁾ | \$ 0.24 | \$ 0.35 | \$ 0.42 | \$ 0.47 | \$ 0.42 |
| Capital Expenditures | \$ (124) | \$ (248) | \$ (219) | \$ (131) | \$ (129) |
| Free Cash Flow | \$ 47 | \$ (33) | \$ 268 | \$ 388 | \$ 357 |

3. The section of the proxy statement/prospectus entitled **Proposal I: Adoption of the Merger Agreement Opinion of Office Depot's Financial Advisor is hereby supplemented as follows:**

A. *The following is hereby inserted immediately before the third full paragraph on page 71 (such paragraph beginning with *Based on this data, as of February 2, 2015,*) of the proxy statement/prospectus:*

As of February 2, 2015, the mean and median trading valuation multiples and ratios for selected publicly traded companies were as follows, with Office Depot omitted from the mean and median calculations for Office Depot and Staples omitted from the mean and median calculations for Staples:

| Enterprise Value as a Ratio of: | Office Depot | | Staples | |
|--------------------------------------|--------------|--------|---------|--------|
| | Mean | Median | Mean | Median |
| 2014E Net Sales | 55.3% | 39.8% | 52.3% | 39.3% |
| 2015P Net Sales | 52.8% | 37.7% | 49.9% | 37.7% |
| 2014E EBITDA | 6.8x | 6.9x | 6.7x | 6.5x |
| 2015P EBITDA | 6.4x | 7.0x | 6.1x | 6.0x |
| 2014E EBIT | 10.8x | 9.3x | 11.3x | 9.3x |
| 2015P EBIT | 10.3x | 8.7x | 9.9x | 7.8x |
| Stock Price as a Multiple of: | | | | |
| 2014E EPS | 12.6x | 13.4x | 15.8x | 13.4x |
| 2015P EPS | 11.7x | 12.5x | 11.7x | 12.5x |

B. The following is hereby inserted immediately after the second full paragraph on page 73 (such paragraph beginning with *PJSC calculated the enterprise value*) of the proxy statement/prospectus:

The mean and median multiples and ratios for the selected precedent transactions are presented below:

| (Amounts in millions) | Selected Office Products Transactions | | Selected Hardlines Retailers Transactions | |
|-----------------------|---------------------------------------|--------|---|--------|
| | Mean | Median | Mean | Median |
| Net Sales | 98.0% | 73.0% | 95.5% | 78.6% |
| EBITDA | 11.8x | 11.2x | 9.7x | 9.1x |
| EBIT | 19.8x | 17.3x | 14.8x | 14.1x |
| EPS | 25.3x | 16.6x | 26.6x | 22.3x |

C. The following is hereby inserted immediately after the first sentence in the second paragraph on page 74 (such paragraph beginning with *PJSC performed an illustrative discounted cash flow analysis*) of the proxy statement/prospectus:

The projections of unlevered free cash flows used for the purposes of this analysis, which were based on the relevant free cash flow projections for Office Depot and Staples, were as follows:

(Dollars in Millions)

Office Depot Unlevered Free Cash Flows

| | 2015 | 2016 | 2017 | 2018 |
|------------------|--------|--------|--------|--------|
| Management Case | \$ 175 | \$ 568 | \$ 692 | \$ 730 |
| Sensitivity Case | \$ 79 | \$ 389 | \$ 473 | \$ 438 |

Staples Unlevered Free Cash Flows

| | 2015 | 2016 | 2017 | 2018 |
|------------------|--------|--------|--------|--------|
| Management Case | \$ 641 | \$ 729 | \$ 728 | \$ 790 |
| Sensitivity Case | \$ 604 | \$ 637 | \$ 617 | \$ 654 |

PJSC treated stock-based compensation as if it were a cash expense in its illustrative discounted cash flow analyses for each of Office Depot and Staples. PJSC did not separately value the tax attributes of each company, rather, for Office Depot, PJSC included tax credits in the calculation of net liabilities and, for Staples, PJSC included tax benefits in the assumed effective tax rates for the years 2015 through 2018.

- D. *The following is hereby inserted immediately after the last sentence in the second paragraph on page 74 (such paragraph beginning with "PJSC performed an illustrative discounted cash flow analysis") of the proxy statement/prospectus:*

Each company's weighted average cost of capital was calculated using (i) its cost of equity, which was derived by application of the Capital Asset Pricing Model, which takes into account certain company-specific metrics, including the company's capital structure and historical beta, as well as certain financial metrics for the United States financial markets generally; (ii) its cost of debt, which takes into account the interest rate of its long-term debt and its marginal tax rate; and (iii) its capital structure.

- E. *The following is hereby inserted immediately before the last sentence of the last paragraph on page 74 (such paragraph beginning with "PJSC performed an illustrative pro forma transaction analysis") of the proxy statement/prospectus:*

The \$1 billion synergy scenario assumed the following achievement of synergies: \$267 million in 2016, \$634 million in 2017 and \$1 billion in 2018. The \$1.5 billion synergy scenario assumed the following achievement of synergies: \$400 million in 2016, \$951 million in 2017 and \$1.5 billion in 2018.

- F. *The table after the first paragraph on page 75 of the proxy statement/prospectus is hereby amended and restated as follows:*

| Scenario | EPS Accretion / (Dilution) to Staples | | | Dollars | | |
|---|---------------------------------------|------------|------------|---------|---------|---------|
| | Percentage | Percentage | Percentage | 2016P | 2017P | 2018P |
| \$1.5 Billion Year Three Synergies | | | | | | |
| Management Cases | 36.9% | 83.2% | 123.3% | \$ 0.38 | \$ 0.91 | \$ 1.39 |
| Sensitivity Cases | 29.7% | 78.4% | 121.7% | \$ 0.28 | \$ 0.74 | \$ 1.15 |
| \$1.0 Billion Year Three Synergies | | | | | | |
| Management Cases | 26.2% | 59.3% | 86.4% | \$ 0.27 | \$ 0.65 | \$ 0.97 |
| Sensitivity Cases | 17.9% | 50.8% | 78.0% | \$ 0.17 | \$ 0.48 | \$ 0.74 |

- G. *The penultimate sentence in the first paragraph on page 77 (such paragraph beginning with "In the past PJSC or its affiliates") of the proxy statement/prospectus is hereby amended and restated to read as follows:*

In the past two years, PJSC has not been engaged by, and is not currently providing investment banking or other services to: Staples or any of its affiliates; or Starboard Value LP or any of its affiliates or principals.

Update on Regulatory Approvals Required for the Merger

On June 5, 2015, the Commerce Commission of New Zealand gave clearance for the proposed acquisition of Office Depot by Staples.

FORWARD LOOKING STATEMENTS

This communication may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements or disclosures may discuss goals, intentions and expectations as to future

trends, plans, events, results of operations or financial condition, or state other information relating to, among other things, Office Depot, Inc., based on current beliefs and assumptions made by, and information currently available to, management. Forward-looking statements generally will be accompanied by words such as anticipate, believe, plan, could, estimate, expect, forecast, guidance, intend, may, possible, potential, predict,

project, propose or other similar words, phrases or expressions, or other variations of such words. These forward-looking statements are subject to various risks and uncertainties, many of which are outside of Office Depot, Inc.'s control. There can be no assurances that Office Depot, Inc. will realize these expectations or that these beliefs will prove correct, and therefore investors and stockholders should not place undue reliance on such statements.

Factors that could cause actual results to differ materially from those in the forward-looking statements include, among other things, risks related to Office Depot, Inc.'s proposed merger with Staples, Inc., including satisfaction of the conditions of the proposed merger on the proposed timeframe or at all, contractual restrictions on the conduct of Office Depot, Inc.'s business included in the merger agreement and the potential for loss of key personnel, disruption in key business activities or any impact on Office Depot, Inc.'s relationships with third parties as a result of the announcement of the proposed merger; adverse regulatory decisions; unanticipated changes in the markets for Office Depot, Inc.'s business segments; the inability to realize expected benefits from Office Depot, Inc.'s European restructuring plan; unanticipated downturns in business relationships with customers; competitive pressures on Office Depot, Inc.'s sales and pricing; increases in the cost of material, energy and other production costs, or unexpected costs that cannot be recouped in product pricing; the introduction of competing technologies; unexpected technical or marketing difficulties; unexpected claims, charges, litigation, dispute resolutions or settlement expenses; and new laws and governmental regulations. The foregoing list of factors is not exhaustive. Investors and stockholders should carefully consider the foregoing factors and the other risks and uncertainties described in Office Depot, Inc.'s Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q filed with the Securities and Exchange Commission. Office Depot, Inc. does not assume any obligation to update or revise any forward-looking statements

ADDITIONAL INFORMATION AND WHERE TO FIND IT

This communication may be deemed to be solicitation material in respect of the proposed transaction involving Office Depot, Inc. and Staples, Inc. In connection with the proposed transaction, Staples, Inc. has filed with the Securities and Exchange Commission (the SEC) a registration statement on Form S-4 that includes a prospectus of Staples, Inc. and a proxy statement of Office Depot, Inc., which Office Depot, Inc. filed with the SEC on May 18, 2015. The registration statement was declared effective by the SEC on May 15, 2015. Office Depot, Inc. mailed the definitive proxy statement/prospectus to stockholders of Office Depot, Inc. on or about May 19, 2015. **INVESTORS AND STOCKHOLDERS ARE URGED TO READ THE DEFINITIVE PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY CONTAIN IMPORTANT INFORMATION ABOUT OFFICE DEPOT, INC., STAPLES, INC., THE PROPOSED TRANSACTION AND RELATED MATTERS.** Investors and stockholders are able to obtain free copies of the proxy statement/prospectus and other documents filed with the SEC by Office Depot, Inc. and Staples, Inc. through the website maintained by the SEC at www.sec.gov. In addition, investors and stockholders are able to obtain free copies of the definitive proxy statement/prospectus and other documents filed by Office Depot, Inc. with the SEC by contacting Office Depot, Inc. Investor Relations at 6600 North Military Trail, Boca Raton, FL 33496 or by calling 561-438-7878.

Office Depot, Inc. and its directors and executive officers and other persons may be deemed to be participants in the solicitation of proxies from Office Depot, Inc.'s stockholders in respect of the proposed transaction that is described in the proxy statement/prospectus. Information regarding the persons who may, under the rules of the SEC, be deemed participants in the solicitation of proxies from Office Depot, Inc.'s stockholders in connection with the proposed transaction, including a description of their direct or indirect interests, by security holdings or otherwise, in Office Depot, Inc. and their interests in the proposed transaction, which may be different than those of Office Depot, Inc.'s stockholders generally, are contained in the proxy statement/prospectus that Office Depot, Inc. filed with the SEC on May 18, 2015.

