

MERIT MEDICAL SYSTEMS INC

Form 8-K

February 08, 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): February 5, 2016

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  
(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:

- ☐ 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 Execution of Material Definitive Agreement.

On February 3, 2016, Merit Medical Systems, Inc. (“Merit”) entered into a Third Amendment to Amended and Restated Credit Agreement, dated as of February 3, 2016 (the “Amendment”), by and among Merit, certain subsidiaries of Merit, the lenders who are party to the Amendment (collectively, the “Lenders”) and Wells Fargo Bank, National Association (“Wells Fargo”), as administrative agent for the Lenders. The Amendment sets forth the terms and conditions upon which Merit, Wells Fargo and the other parties to the Amendment have agreed to amend Merit’s Amended and Restated Credit Agreement, dated December 19, 2012, by and among Merit, the Lenders and Wells Fargo, as previously amended (the “Credit Agreement”). Among other provisions, the Amendment provides for an increase in Merit’s borrowing capacity under the Credit Agreement by \$50,000,000. The Credit Agreement, after giving effect to the Amendment (the “Amended Credit Agreement”), sets forth the agreement of the Lenders to make revolving credit loans to Merit in an aggregate amount of \$225,000,000 on the terms and subject to the conditions set forth in the Amended Credit Agreement. The Lenders have previously made a term loan to Merit in the amount of \$100,000,000, repayable in quarterly installments in the amounts provided in the Credit Agreement until the maturity date of December 19, 2017, at which time the term loan, together with accrued interest thereon, is required to be paid in full. In addition, certain mandatory prepayments are required to be made upon the occurrence of certain events described in the Amended Credit Agreement. Wells Fargo has agreed to make “Swingline” loans from time to time through the maturity date of December 19, 2017 in amounts equal to the difference between the amounts actually loaned by the Lenders and the aggregate revolving credit commitment, on the terms and subject to the conditions set forth in the Amended Credit Agreement.

On December 19, 2017, all principal, interest and other amounts outstanding under the Amended Credit Agreement are payable in full. At any time prior to the maturity date, Merit may repay any amounts owing under all revolving credit loans, term loans, and all Swingline loans in whole or in part, subject to certain minimum thresholds, without premium or penalty, other than breakage costs.

The term loan and any revolving credit loans made under the Credit Agreement bear interest at adjustable interest rates, based upon Merit’s Consolidated Total Leverage Ratio (as defined in the Amended Credit Agreement) for the applicable period. Merit may elect to have interest on term loans and revolving credit loans computed based on the base rate (described below), the LIBOR Rate (as defined in the Amended Credit Agreement or the LIBOR Market Index Rate (as defined in the Amended Credit Agreement). Base rate loans bear interest at a rate equal to the base rate plus not less than 0.25% nor more than 2.50%, based upon the Consolidated Total Leverage Ratio for the applicable period. LIBOR Rate and LIBOR Market Index loans bear interest at a rate equal to the LIBOR Rate or LIBOR Market Index Rate, as applicable, plus not less than 1.25% nor more than 3.50%, based upon the Consolidated Total Leverage Ratio for the applicable period. As of February 1, 2016, term loans and revolving credit loans under the Amended Credit Agreement bore interest, at the election of Merit, at either (y) the base rate plus 1.50%, or (z) the LIBOR Rate or LIBOR Market Index Rate plus 1.50%. Swingline loans bear interest at the LIBOR Market Index Rate plus not less than 1.25% nor more than 3.50%. As of February 1, 2016, Swingline loans bore interest at the LIBOR Market Index Rate plus 1.50%. Interest on each loan featuring the base rate or the LIBOR Market Index Rate is due and payable on the last business day of each calendar month; interest on each loan featuring the LIBOR Rate is due and payable on the last day of each interest period selected by Merit when selecting the LIBOR Rate as the benchmark for interest calculation. For purposes of the Amended Credit Agreement, the base rate means the highest of (i) the prime rate (as announced by Wells Fargo), (ii) the federal funds rate plus 0.50%, or (iii) LIBOR for an interest period of one month plus 1.0%. Merit’s obligations under the Amended Credit Agreement and all loans made thereunder are secured by a security interest in the assets of Merit and certain of its subsidiaries (including the HeRO® Graft device and related assets referenced in Item 7.01 below) pursuant to a separate collateral agreement entered into in conjunction with the Amended Credit Agreement.

The Amended Credit Agreement contains covenants, representations and warranties and other terms customary for revolving credit loans of this nature. In this regard, the Amended Credit Agreement requires Merit to not, among other things, (a) permit the Consolidated Total Leverage Ratio (as defined in the Amended Credit Agreement) to be greater than 3.25x as of any fiscal quarter ending after the effective date of the Amendment; (b) for any period of four

consecutive fiscal quarters, permit the ratio of Consolidated EBITDA (as defined in the Credit Agreement and subject to certain adjustments) to Consolidated Fixed Charges to be less than 1.75 to 1; or (c) subject to certain adjustments, permit Consolidated Net Income for certain periods to be less than \$0. Additionally, the Amended Credit Agreement contains various negative covenants with which Merit must comply, including, but not limited to, limitations respecting: the incurrence of indebtedness, the creation of liens on its property, mergers or similar combinations or liquidations, asset dispositions, and other provisions customary in similar types of agreements.

Under the Amended Credit Agreement, upon the occurrence of an Event of Default, Merit may be required to repay all outstanding indebtedness immediately. An Event of Default includes (a) a default in the payment of principal of loans and reimbursement obligations under the Amended Credit Agreement, (b) a determination that any representation, warranty, certification or statement of fact in the Amended Credit Agreement or any other loan document associated therewith was materially incorrect or misleading when made, (c) the default by any Credit Party in the performance of any covenant or agreement set forth in the Amended Credit Agreement, (d) the default by any Credit Party in the payment of other indebtedness that exceeds \$10,000,000, (e) the occurrence of any Change in Control (as defined in the Amended Credit Agreement, (f) the

entry of any Credit Party into a bankruptcy proceeding, subject to certain conditions, and other default provisions that are customary in similar type agreements.

If an Event of Default occurs, then, to the extent permitted in the Amended Credit Agreement, the Lenders may direct the Administrative Agent to, or the Administrative Agent may, with the consent of Lenders holding more than 50% of the aggregate outstanding principal amount of the loans, as applicable, terminate the Revolving Credit Commitment, accelerate the repayment of any outstanding loans and exercise all rights and remedies available to such Lenders under the Amended Credit Agreement and applicable law. In the case of an Event of Default that exists due to the occurrence of certain involuntary or voluntary bankruptcy, insolvency or reorganization events of Merit, the Credit Facility will automatically terminate and the repayment of any outstanding loans shall be automatically accelerated. The foregoing summary of the principal terms of the Amended Credit Agreement is not complete and is qualified in its entirety by the actual terms and conditions of the Amended Credit Agreement, a copy of which Merit intends to file as an exhibit to its Quarterly Report on Form 10-Q for the period ended March 31, 2016. The representations, warranties, and other terms contained in the Amended Credit Agreement were made only for the purposes of such agreement and as of specified dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the Amended Credit Agreement 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. Investors are not third-party beneficiaries under the Amended Credit Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of Merit or any of its subsidiaries or affiliates. Accordingly, investors should not rely on the representations and warranties as characterizations of the actual state of facts, since (i) they were made only as of the date of such Amended Credit Agreement or a prior, specified date, (ii) in some cases they are subject to qualifications with respect to materiality, knowledge and/or other matters, and (iii) they may be modified in important part by the underlying exhibits and schedules.

#### Item 7.01 Regulation FD Disclosure.

On February 3, 2016, Merit issued a press release entitled "Merit Medical Acquires the HeRO® Graft from Cyrolife, Inc." A copy of the press release is included as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

#### Safe Harbor for Forward-Looking Statements.

Statements contained in this release which are not purely historical, including, without limitation, statements regarding Merit's future performance, 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, 2014. Such risks and uncertainties include risks relating to Merit's efforts to transition, integrate, manufacture and commercialize the HeRO®Graft assets, product recalls and product liability claims; potential restrictions on Merit's liquidity or Merit's ability to operate its business by its current credit agreement, and the consequences of any default under that agreement; possible infringement of Merit's technology or the assertion that Merit's technology infringes the rights of other parties; the potential imposition of fines, penalties, or other adverse consequences if Merit's employees or agents violate the U.S. Foreign Corrupt Practices Act or other laws or regulations; expenditures relating to research, development, testing and regulatory approval or clearance of Merit's products and the risk that such products may not be developed successfully or approved for commercial use; greater governmental scrutiny and regulation of the medical device industry; reforms to the 510(k) process administered by the U.S. Food and Drug Administration (the "FDA"); laws targeting fraud and abuse in the healthcare industry; potential for significant adverse changes in, or Merit's failure to comply with, governing regulations; increases in the price of commodity components; negative changes in economic and industry conditions in the United States and other countries; termination or interruption of relationships with Merit's suppliers, or failure of such suppliers to perform;

Merit's potential inability to successfully manage growth through acquisitions, including the inability to commercialize technology acquired through recent, proposed or future acquisitions; costs and expenses associated with Merit's pursuit of a strategic plan to grow through acquisitions; fluctuations in Euro and GBP exchange rates; Merit's need to generate sufficient cash flow to fund its debt obligations, capital expenditures, and ongoing operations; concentration of Merit's revenues among a few products and procedures; development of new products and technology that could render Merit's existing products obsolete; market acceptance of new products; volatility in the market price of Merit's common stock; modification or limitation of governmental or private insurance reimbursement policies; changes in health care markets related to health care reform initiatives; failures to comply with applicable environmental laws; changes in key personnel; work stoppage or transportation risks; uncertainties associated with potential healthcare policy changes which may have a material adverse effect on Merit; introduction of products in a timely fashion; price and product competition; availability of labor and materials; cost increases; fluctuations in and obsolescence of inventory; and other factors referred to in Merit's Annual Report on Form 10-K for the year ended December 31, 2014 and other materials 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 likely 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.

Exhibit No.	Description
99.1	Press Release, dated February 4, 2016, entitled “Merit Medical Acquires the HeRO® Graft from Cyrolife, Inc.”

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: February 5, 2016

By: /s/ Bernard Birkett  
Bernard Birkett  
Chief Financial Officer

EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
99.1	Press Release, dated February 4, 2016, entitled “Merit Medical Acquires the HeRO® Graft from Cyrolife, Inc.”