
**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: March 4, 2013

Commission file number 1-10948

OFFICE DEPOT, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

6600 North Military Trail, Boca Raton, FL

(Address of principal executive offices)

59-2663954

(I.R.S. Employer
Identification No.)

33496

(Zip Code)

(561) 438-4800

(Registrant's telephone number, including area code)

Former name or former address, if changed since last report: N/A

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))
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ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On March 4, 2013, Office Depot, Inc. (the “Company”), together with certain of its European subsidiaries, as borrowers (the “European Borrowers”), entered into a Second Amendment (the “Amendment”) to the Amended and Restated Credit Agreement (the “Amended Credit Agreement”) dated as of May 25, 2011 with the lenders party thereto, JPMorgan Chase Bank, N.A., London Branch, as European Administrative Agent and European Collateral Agent, JPMorgan Chase Bank, N.A., as Administrative Agent and US Collateral Agent, Bank of America, N.A., as Syndication Agent and Citibank, N.A. and Wells Fargo Bank, N.A., as Documentation Agents.

The Amendment amends the Amended Credit Agreement to provide the Company the ability to make payments to holders of the Company’s preferred stock (the “Preferred Stockholders”) to redeem all of the Company’s preferred stock and to repurchase certain amounts of common stock held by the Preferred Stockholders, in each case as required pursuant to the merger transaction contemplated by the Company’s Agreement and Plan of Merger with OfficeMax Incorporated and documents related thereto.

The foregoing description of the Amendment, which describes the primary changes to the Amended Credit Agreement, does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed as Exhibit 10.1 hereto.

ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT

The information contained above in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference and made a part hereof.

NO OFFER OR SOLICITATION

This communication is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of any vote or approval in any jurisdiction in connection with the transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

IMPORTANT ADDITIONAL INFORMATION WILL BE FILED WITH THE SEC

Office Depot, Inc. (“Office Depot”) will file with the SEC a registration statement on Form S-4 that will include the Joint Proxy Statement of Office Depot and OfficeMax Incorporated (“OfficeMax”) that also constitutes a prospectus of Office Depot. Office Depot and OfficeMax plan to mail the Joint Proxy Statement/Prospectus to their respective shareholders in connection with the transaction. INVESTORS AND SHAREHOLDERS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC CAREFULLY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT OFFICE DEPOT, OFFICEMAX, THE TRANSACTION AND RELATED MATTERS. Investors and shareholders will be able to obtain free copies of the Joint Proxy Statement/Prospectus and other documents filed with the SEC by Office Depot and OfficeMax through the website maintained by the SEC at www.sec.gov. In addition, investors and shareholders will be able to obtain free copies of the Joint Proxy Statement/Prospectus and other documents filed by Office Depot with the SEC by contacting Office Depot Investor Relations at 6600 North Military Trail, Boca Raton, FL 33496 or by calling 561-438-3657, and will be able to obtain free copies of the Joint Proxy Statement/Prospectus and other documents filed by OfficeMax by contacting OfficeMax Investor Relations at 263 Shuman Blvd., Naperville, Illinois 60563 or by calling 630-864-6800.

PARTICIPANTS IN THE SOLICITATION

Office Depot and OfficeMax and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the respective shareholders of Office Depot and OfficeMax in respect of the transaction described the Joint Proxy Statement/Prospectus. Information regarding the persons who may, under the rules of the SEC, be deemed participants in the solicitation of the respective shareholders of Office Depot and OfficeMax in connection with the proposed transaction, including a description of their direct or indirect interests, by security holdings or otherwise, will be set forth in the Joint Proxy Statement/Prospectus when it is filed with the SEC. Information regarding Office Depot’s directors and executive officers is contained in Office Depot’s Annual Report on Form 10-K for the year ended December 29, 2012 and its Proxy Statement on Schedule 14A, dated March 15, 2012, which are filed with the SEC. Information regarding OfficeMax’s directors and executive officers is contained in OfficeMax’s Annual Report on Form 10-K for the year ended December 29, 2012 and its Proxy Statement on Schedule 14A, dated March 20, 2012, which are filed with the SEC.

OFFICE DEPOT SAFE HARBOR STATEMENT

This communication may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 concerning Office Depot, the merger and other transactions contemplated by the merger agreement, Office Depot’s long-term credit rating and its revenues and operating earnings. 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 Office Depot, based on current beliefs of management as well as 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” or other similar words, phrases or expressions. These forward-looking statements are subject to various risks and uncertainties, many of which are outside of Office Depot’s control. Therefore, investors and shareholders 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 adverse regulatory decisions; failure to satisfy other closing conditions with respect to the merger; the risks that the new businesses will not be integrated successfully or that Office Depot will not realize estimated cost savings and synergies; Office Depot’s ability to maintain its current long-term credit rating; unanticipated changes in the markets for its business segments; unanticipated downturns in business relationships with customers or their purchases from Office Depot; competitive pressures on Office Depot’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 or dispute resolutions; new laws and governmental regulations. The foregoing list of factors is not exhaustive. Investors and shareholders should carefully consider the foregoing factors and the other risks and uncertainties that affect Office Depot’s business described in its Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other documents filed from time to time with the SEC. Office Depot does not assume any obligation to update these forward-looking statements.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

Exhibit 10.1. Form of Second Amendment dated as of March 4, 2013, to the Amended and Restated Credit Agreement dated as of May 25, 2011.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

OFFICE DEPOT, INC.

Date: March 6, 2013

By: /s/ Elisa D. Garcia C.
Elisa D. Garcia C.
Executive Vice President, General Counsel &
Corporate Secretary

Exhibit Index

Exhibit
Number

Description

Exhibit 10.1 Form of Second Amendment dated as of March 4, 2013, to the Amended and Restated Credit Agreement dated as of May 25, 2011.

SECOND AMENDMENT

SECOND AMENDMENT (this "Amendment"), dated as of March 4, 2013, to the Amended and Restated Credit Agreement dated as of May 25, 2011, as amended by the First Amendment to the Amended and Restated Credit Agreement, dated as of February 24, 2012 (the "Credit Agreement"), among Office Depot, Inc., Office Depot International (UK) Ltd., Office Depot UK Ltd., Office Depot International B.V., Office Depot B.V., Office Depot Finance B.V., OD International (Luxembourg) Finance S.À R.L. and Viking Finance (Ireland) Ltd. (collectively, the "Borrowers"), certain subsidiaries of Office Depot, Inc. from time to time parties thereto, the several banks and other institutions from time to time parties thereto (the "Lenders"), JPMorgan Chase Bank N.A., London Branch, as European administrative agent and European collateral agent, JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent") and US collateral agent, Bank of America, N.A., as syndication agent, and Citibank, N.A., and Wells Fargo Bank, National Association, as documentation agents.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, the Lenders have agreed to make, and have made, certain loans and other extensions of credit to the Borrowers;

WHEREAS, the Borrowers have requested that certain provisions of the Credit Agreement be amended as set forth herein; and

WHEREAS, the Lenders are willing to agree to such amendment on the terms set forth herein;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the undersigned hereby agree as follows:

I. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

II. Amendments to Section 1.01 (Defined Terms). Section 1.01 of the Credit Agreement is hereby amended as follows:

(i) The following defined terms are hereby inserted in appropriate alphabetical order:

"OfficeMax" means OfficeMax Incorporated.

"OfficeMax Merger" means the merger transaction pursuant to the OfficeMax Merger Agreement such that, after giving effect thereto, OfficeMax shall be a wholly owned Subsidiary of the Company.

"OfficeMax Merger Agreement" means, collectively, the Agreement and Plan of Merger, dated as of February 20, 2013 (as amended, modified or supplemented from time to time), among the Company, Dogwood Merger Sub Inc., Dogwood Merger Sub LLC, Mapleby Holdings Merger Corporation, Mapleby Merger Corporation and OfficeMax, and all schedules, exhibits and annexes thereto and all material side letters and agreements affecting the terms thereof or entered into in connection therewith.

III. Amendments to Section 6.09 (Restricted Payments; Certain payments of Indebtedness). Section 6.09(a) of the Credit Agreement is hereby amended by (a) deleting the word “and” immediately prior to clause (viii) thereof and (b) inserting the following immediately prior to the “.” at the end thereof:

“; (ix) upon receipt of requisite approval by the Company’s shareholders of the OfficeMax Merger, Restricted Payments to the holders of preferred stock of the Company (the “Preferred Stockholders”) to redeem up to and including 175,000 shares of preferred stock; and (x) immediately prior to consummation of the OfficeMax Merger, Restricted Payments (A) to the Preferred Stockholders to redeem any outstanding preferred shares of the Company and (B) to repurchase any outstanding common shares of the Preferred Stockholders such that immediately following consummation of the OfficeMax Merger, the Preferred Stockholders hold less than 5% of the undiluted common stock of the Company”

IV. Effectiveness of Amendment. This Amendment shall become effective as of the date (the “Amendment Effective Date”) upon which the following conditions are satisfied:

(i) receipt by the Administrative Agent of duly executed counterparts to this Amendment from the Borrowers, the Collateral Agents and the Required Lenders; and

(ii) receipt by the Administrative Agent of payment or reimbursement of its reasonable out-of-pocket expenses in connection with this Amendment required to be paid or reimbursed pursuant to the Credit Agreement, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent.

V. Representations and Warranties. The Borrowers hereby represent and warrant that (a) each of the representations and warranties in the Credit Agreement shall be, after giving effect to this Amendment, true and correct in all material respects as if made on and as of the Amendment Effective Date (unless such representations and warranties are stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date) and (b) after giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing.

VI. No Other Amendments; Confirmation. Except as expressly amended hereby, the provisions of the Credit Agreement, as amended and restated, are and shall remain in full force and effect.

VII. Governing Law. This Amendment and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

VIII. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Amendment may be delivered by facsimile transmission of the relevant signature pages hereof.

[signature pages follow]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed and delivered by their duly authorized officers as of the date first above written.

OFFICE DEPOT, INC.

By: _____
Name:
Title:

OFFICE DEPOT INTERNATIONAL (UK) LTD.

By: _____
Name:
Title:

OFFICE DEPOT UK LTD.

By: _____
Name:
Title:

OFFICE DEPOT INTERNATIONAL B.V.

By: _____
Name:
Title:

OFFICE DEPOT B.V.

By: _____
Name:
Title:

OFFICE DEPOT FINANCE B.V.

By: _____
Name:
Title:

OD INTERNATIONAL (LUXEMBOURG) FINANCE S.À
R.L.

By: _____
Name:
Title:

By: _____

Name:

Title:

Second Amendment Signature Page

JPMORGAN CHASE BANK, N.A., as Administrative Agent,
US Collateral Agent and as a Lender

By: _____

Name:

Title:

JPMORGAN CHASE BANK, N.A., LONDON BRANCH, as
European Collateral Agent

By: _____

Name:

Title:

Second Amendment Signature Page

[INSERT LENDER NAME], as a Lender

By: _____
Name:
Title:

Second Amendment Signature Page