

COTT CORP /CN/
Form 8-K
November 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): November 13, 2009

Cott Corporation

(Exact name of registrant as specified in its charter)

Canada
(State or other jurisdiction
of incorporation)

001-31410
(Commission
File Number)

98-0154711
(IRS Employer
Identification No.)

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6525 Viscount Road

Mississauga, Ontario, Canada

L4V1H6

5519 West Idlewild Avenue

Tampa, Florida, United States
(Address of Principal Executive Offices)

33634
(Zip Code)

Registrant's telephone number, including area code: (905) 672-1900
(813) 313-1800

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 Entry into a Material Definitive Agreement

On November 3, 2009, Cott Corporation (the **Company**), its wholly owned subsidiary, Cott Beverages Inc. (the **Issuer**), and certain subsidiaries of the Company, as guarantors (the **Guarantors**), entered into a purchase agreement with certain initial purchasers named in Schedule I therein (the **Initial Purchasers**) for a private placement offering of \$215 million in aggregate principal amount of the Issuer's 8.375% senior notes due 2017 (the **New Notes**), as previously reported in the Company's Current Report on Form 8-K filed on November 4, 2009. On November 13, 2009, the Issuer closed the private offering of the New Notes. The net proceeds from the offering, after deducting the offering discount, Initial Purchasers' commissions and the estimated offering expenses payable by the Issuer, were approximately \$206.6 million.

The New Notes are governed by an Indenture dated as of November 13, 2009 (the **Indenture**), between the Company, the Issuer, certain subsidiary guarantors identified therein and HSBC Bank USA, National Association, as trustee. A copy of the Indenture is attached hereto as Exhibit 4.1 and is incorporated herein by reference. A form of New Note (which is included in Exhibit A to the Indenture) is attached hereto as Exhibit 4.2 and is incorporated herein by reference. The descriptions of the Indenture and of the New Notes in this Current Report on Form 8-K are summaries and are qualified in their entirety by the Indenture and the form of New Note, respectively.

The New Notes bear interest at a rate of 8.375% per year, payable semi-annually in arrears in cash on May 15 and November 15 of each year, beginning May 15, 2010. The New Notes will mature on November 15, 2017. Prior to November 15, 2012, the Issuer may redeem up to 35% of the aggregate principal amount of the New Notes with the proceeds of certain equity offerings at a redemption price of 108.375% of the principal amount thereof, plus accrued and unpaid interest and additional interest, if any, to the redemption date. At any time prior to November 15, 2013, the Issuer may redeem some or all of the New Notes at a redemption price equal to the principal amount of the New Notes redeemed, plus any accrued and unpaid interest and additional interest, if any, to the date of redemption, plus a make-whole premium. The Issuer may redeem the New Notes at its option, in whole or in part, on or after November 15, 2013, at redemption prices of 104.188% and 102.094% of the principal amount thereof if the redemption occurs during the 12-month periods beginning on November 15, 2013 and November 15, 2014, respectively, and at a redemption price of 100% of the principal amount thereof on and after November 15, 2015, in each case plus accrued and unpaid interest and additional interest, if any, to the redemption date. If a change of control of the Company occurs, each holder shall have the right to require that the Issuer repurchase all or a portion of such holder's New Notes at a purchase price of 101% of the principal amount thereof, plus accrued and unpaid interest and additional interest, if any, to the date of repurchase.

The New Notes and the subsidiary guarantees are senior to all of the Issuer's, the Company's and its guarantor subsidiaries' existing and future subordinated indebtedness. The New Notes rank equal in right of payment to all of the Issuer's and the Company's and its guarantor subsidiaries' other existing and future unsubordinated indebtedness, including indebtedness under the Company's credit facilities. The New Notes are effectively subordinated in right of payment to all of the Issuer's, the Company's and its guarantor subsidiaries' secured indebtedness to the extent of the value of the assets securing such indebtedness, including obligations under the Company's existing asset based lending facility (the **ABL Facility**), which are secured by substantially all of the assets of the Issuer, the Company and its guarantor subsidiaries.

The Indenture contains covenants that limit the Company's and certain of its subsidiaries' ability, subject to certain exceptions and qualifications, to (i) pay dividends or make distributions, repurchase equity securities, prepay subordinated debt or make certain investments, (ii) incur additional debt or issue certain disqualified stock or preferred stock, (iii) create or incur liens on assets, (iv) merge or consolidate with another company (applies to the Company and the Issuer only) or sell all or substantially all assets taken as a whole, (v) enter into transactions with affiliates and (vi) sell assets.

In addition, the Indenture provides for customary events of default which include (subject in certain cases to customary grace and cure periods), among other things: failure to make payments on the New Notes when due, failure to comply with covenants under the Indenture, failure to pay certain other indebtedness or acceleration of maturity of certain other indebtedness, failure to satisfy or discharge certain final judgments and occurrence of certain bankruptcy events. If an event of default occurs, the trustee or holders of at least 25% of the aggregate principal amount of the then outstanding New Notes may, among other things, declare the entire outstanding balance of principal of and interest on all outstanding New Notes to be immediately due and payable. If an event of default involving certain bankruptcy events occurs, payment of principal of and interest on the New Notes will be accelerated without the necessity of notice or any other any action on the part of any person.

The Issuer used all of the net proceeds from the offering of the New Notes, together with cash on hand and borrowings under its ABL Facility, to pay for the \$236.7 million aggregate principal amount of the 8.0% senior subordinated notes due 2011 (the "8.0% Notes") that have been validly tendered, and accepted for purchase, pursuant to the Issuer's previously announced cash tender offer and consent solicitation (the "Tender Offer"), along with the early tender premium, accrued interest and associated fees and expenses.

In connection with the sale of the New Notes, the Issuer, the Company and its subsidiary guarantors entered into a registration rights agreement, dated as of November 13, 2009, with the Initial Purchasers (the "Registration Rights Agreement"). Under the Registration Rights Agreement, the Issuer, the Company and its subsidiary guarantors have agreed to file a registration statement with respect to an offer to exchange the New Notes for a new issue of substantially identical notes registered under the Securities Act of 1933, as amended, to cause the exchange offer registration statement to be declared effective and to consummate the exchange offer no later than November 15, 2010. The Issuer, the Company and its subsidiary guarantors may be required to provide a shelf registration statement to cover resales of the New Notes under certain circumstances. If the foregoing obligations are not satisfied, the Issuer may be required to pay holders of the New Notes additional interest at a rate of 0.25% per annum of the principal amount thereof for 90 days immediately following the occurrence of any registration default. The amount of additional interest will increase by an additional 0.25% per annum of the principal amount thereof with respect to each subsequent 90-day period until all registration defaults have been cured, up to a maximum amount of additional interest of 0.50% per annum of the principal amount thereof.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, which is attached hereto as Exhibit 4.3 and is incorporated herein by reference.

On November 13, 2009, the Issuer entered into a supplemental indenture (the "Supplemental Indenture") to the indenture governing the 8.0% Notes, dated as of December 21, 2001, between the Company, the Issuer, certain subsidiary guarantors identified therein and HSBC Bank USA, National Association, as trustee (the "8.0% Indenture"). The Supplemental Indenture amends the 8.0% Indenture to eliminate or modify substantially all of the restrictive covenants and related provisions in the 8.0% Indenture, as well as certain events of default (the "Amendments"). The Amendments include eliminating the following covenants: (i) requirements to pay taxes, (ii) limitations on the Company to use defenses against usury; (iii) limitation on restricted payments, (iv) limitation on payment of dividends and other payment restrictions affecting subsidiaries, (v) limitations on incurrence of indebtedness and issuance of preferred stock, (vi) limitations on affiliate transactions, (vii) limitations on liens, (viii) limitations on the businesses in which the Company and its subsidiaries may engage, (ix) requirements to preserve corporate existence, (x) limitations on ability to incur subordinated debt that is senior to the notes, (xi) requirements relating to the addition of acquired or created domestic subsidiaries, (xii) limitations on payments for consent from holders of Notes, (xiii) limitations on sale and leaseback transactions, (xiv) certain requirements relating to mergers, consolidation and sale of assets with respect to the Company, (xv) limitations on asset sales and requirements to repurchase the 8.0% Notes with excess proceeds thereof; and (xvi) requirements to purchase the 8.0% Notes upon a change of control.

The foregoing description of the Supplement Indenture does not purport to be complete and is qualified in its entirety by reference to the Supplemental Indenture, which is attached hereto as Exhibit 4.4 and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information included in Item 1.01 of this Current Report is incorporated by reference into this Item 2.03.

Item 8.01 Other Events

On November 13, 2009, the Company issued a press release announcing the closing of the offering of the New Notes and the results to date of the Tender Offer. A copy of the press release is filed and attached hereto as Exhibit 99.1, and incorporated by reference into this Item 8.01.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are filed herewith:

Exhibit No.	Description
4.1	Indenture dated as of November 13, 2009, governing the 8.375% New Notes due 2017, by and among the Issuer, the Company, the guarantors identified therein and HSBC Bank USA, National Association, as trustee.
4.2	Form of 8.375% Senior Note due 2017 (included as Exhibit A to Exhibit 4.1).
4.3	Registration Rights Agreement, dated as of November 13, 2009, among the Issuer, the Company, the guarantors identified therein and Barclays Capital Inc., J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc.
4.4	Supplemental Indenture, dated as of November 13, 2009, governing the 8.0% Notes due 2011, by and among the Issuer, the Company, the guarantors identified therein and HSBC Bank USA, National Association, as trustee.
99.1	Press release, dated November 13, 2009, issued by the Company regarding the closing of the New Notes and results to date of the Tender Offer.

SIGNATURES

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.

Cott Corporation
(Registrant)

November 16, 2009

By: **/s/ MATTHEW A. KANE**
Matthew A. Kane, Jr.
Vice President, Secretary and General Counsel

EXHIBIT INDEX

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