
**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): June 14, 2023

Mallinckrodt plc
(Exact name of registrant as specified in its charter)

Ireland
(State or other jurisdiction
of incorporation)

001-35803
(Commission
File Number)

98-1088325
(IRS Employer
Identification No.)

College Business & Technology Park, Cruiserath,
Blanchardstown, Dublin 15, Ireland
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **+353 1 696 0000**

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))

Securities registered pursuant to Section 12(b) of the Act:

(Title of each class)

(Trading Symbol(s))

(Name of each exchange on which registered)

Ordinary shares, par value \$0.01 per share

MNK

NYSE American LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

As previously disclosed, the Board of Directors (the “Board”) of Mallinckrodt plc (the “Company”) is engaged in discussions with various stakeholders, including parties holding substantial positions across the Company’s capital structure and representatives of the Opioid Master Disbursement Trust II (the “Trust”). The Board is actively evaluating the Company’s capital needs in light of its obligations under its opioid settlement and its long-term debt, and is considering options, including transactions that have been proposed by holders of various series of the Company’s indebtedness and other Company stakeholders, as well as the viewpoints of various parties in interest.

On June 14, 2023, the Board approved a variety of actions and programs focused on executive retention and incentive matters. The Board took these actions in light of the Company’s ongoing evaluation of its financial situation and consideration of strategic alternatives and after consideration by the Human Resources and Compensation Committee of the Board, which received advice from its external compensation consultant, and based on the recommendation of the independent directors of the Board.

Retention Arrangements

On June 14, 2023, the Board approved a Key Employee Retention Plan (the “KERP”) for certain of its key officers, including the Company named executive officers who are set forth in the table below. Under the KERP, each participating named executive officer has received a retention bonus (the “Retention Bonus”) equal to 150% of such participant’s current base salary, with the Retention Bonus advanced and prepaid subject to the terms and conditions set forth in such participant’s retention letter (each, a “Retention Letter”), including repayment of the net after-tax value of the Retention Bonus if it is not earned on the terms and conditions described below. Each such participant will earn (and not have to repay) his or her Retention Bonus if the participant is employed by a Company entity on the earlier of (a) June 14, 2024 and (b) if the Company files for protection under Chapter 11, or any other provision, of the U.S. Bankruptcy Code, either the effective date of the Company’s plan of reorganization or liquidation or the date on which such Chapter 11 case is dismissed or converted to a case under Chapter 7 of the U.S. Bankruptcy Code, as applicable (such earlier date, the “Vesting Date”). Each such participant will also earn (and not have to repay) the applicable Retention Bonus in full if the participant’s employment is terminated by the Company without Cause (as defined in the Retention Letter) or by reason of disability or death prior to the Vesting Date, and the participating named executive officer timely signs and does not revoke the Company’s standard general release of claims.

The table below shows the Retention Bonus that each participating named executive officer is entitled to receive under the KERP:

| Name | Title | Current Base Salary (in thousands) | Retention Bonus (in thousands) |
|--------------------------|--|---|---|
| Bryan Reasons | EVP & Chief Financial Officer | \$ 630 | \$ 945 |
| Henriette Nielsen | EVP & Chief Transformation Officer | \$ 620 | \$ 930 |
| Mark Tyndall | EVP, Chief Legal Officer & Corporate Secretary | \$ 575 | \$ 862.5 |
| Stephen Welch | EVP & Head of Specialty Generics | \$ 450 | \$ 675 |

Incentive Arrangements

On June 14, 2023, the Board also approved a cash-based Key Employee Incentive Plan (the “KEIP”) that replaces the Company’s existing 2023 short-term incentive (“STI”) and 2023 long-term incentive (“LTI”) programs for certain of its key officers, including the named executive officers who are set forth in the table below. Pursuant to the KEIP, each participating named executive officer is entitled to a target award under the KEIP equal to the sum of 100% of such participant’s 2023 STI target bonus opportunity and 70% (the “LTI Equivalent Percentage”) of the applicable participant’s target 2023 LTI award value. The level of actual payout under the KEIP is subject to (i) the achievement of the performance measures approved by the Board, consisting of Adjusted EBITDA and Adjusted Free Cash Flow, with a weighting of 50% of each, and (ii) a maximum achievement of 200% of the respective bonus targets (the “Maximum Amount”).

The KEIP has two performance periods: December 31, 2022 to June 30, 2023 and July 1 to December 29, 2023. The table below shows the target award payout amounts for each participating named executive officer under the KEIP.

| Name | Title | Annualized Target KEIP (in thousands) |
|--------------------------|--|--|
| Bryan Reasons | EVP & Chief Financial Officer | \$ 2,223 |
| Henriette Nielsen | EVP & Chief Transformation Officer | \$ 2,005 |
| Mark Tyndall | EVP, Chief Legal Officer & Corporate Secretary | \$ 1,621 |
| Stephen Welch | EVP & Head of Specialty Generics | \$ 1,110 |

In the event that the Company files for bankruptcy under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Filing”), the LTI Equivalent Percentage will be reduced to 60% instead of 70%, and the Maximum Amount shall be reduced to 150% instead of 200%. The table below shows the revised target award payout amounts for each participating named executive officer under the KEIP in the event of a Bankruptcy Filing.

| Name | Title | Annualized Target KEIP (in thousands) |
|--------------------------|--|--|
| Bryan Reasons | EVP & Chief Financial Officer | \$ 1,973 |
| Henriette Nielsen | EVP & Chief Transformation Officer | \$ 1,785 |
| Mark Tyndall | EVP, Chief Legal Officer & Corporate Secretary | \$ 1,451 |
| Stephen Welch | EVP & Head of Specialty Generics | \$ 990 |

As the KEIP replaces the Company’s 2023 STI and 2023 LTI programs, participation in the KEIP is subject to the cancellation of the applicable participating named executive officer’s prior 2023 LTI program grants, which were made on April 3, 2023 and are set forth below:

| Name | Title | Restricted Stock Units | Performance Stock Units |
|--------------------------|--|-------------------------------|--------------------------------|
| Bryan Reasons | EVP & Chief Financial Officer | 168,237 | 132,884 |
| Henriette Nielsen | EVP & Chief Transformation Officer | 148,049 | 116,938 |
| Mark Tyndall | EVP, Chief Legal Officer & Corporate Secretary | 114,402 | 90,361 |
| Stephen Welch | EVP & Head of Specialty Generics | 80,754 | 63,784 |

Sigurdur Olafsson, the Company’s chief executive officer, has elected not to participate in the KERP or the KEIP, except that his STI participation and payment eligibility schedule for 2023 will be on the semi-annual schedule set forth in the KEIP. His annualized STI target of 135% of base salary remains unchanged.

The Board also approved amendments to the employment agreements of Mr. Olafsson and each other named executive officer identified above (the “Employment Agreement Amendments”) to provide that in the event of a severance-qualifying termination, the non-competition covenant in the applicable executive’s current employment agreement will apply only if the applicable severance benefits are paid in full.

The foregoing descriptions of the Retention Letter and the Employment Agreement Amendments are not complete and are qualified in their entirety by reference to the form of Retention Letter and form of Employment Agreement Amendment, respectively, copies of which are filed as Exhibit 10.1 and Exhibit 10.2 to this Current Report on Form 8-K, which are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

| Exhibit No. | Description of Exhibit |
|----------------------|--|
| 10.1 | Form of Retention Letter. |
| 10.2 | Form of Employment Agreement Amendment. |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document). |

Cautionary Statements Related to Forward-Looking Statements

Statements in this Current Report that are not strictly historical, including statements regarding the Board's ongoing evaluation and consideration of alternatives and related actions and discussions, are "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995, and involve a number of risks and uncertainties.

There are a number of important factors that could cause actual events to differ materially from those suggested or indicated by such forward-looking statements and you should not place undue reliance on any such forward-looking statements. These factors include risks and uncertainties related to, among other things: changes in the Company's business strategy and performance; the Company's ability to access the capital markets now or in the future; the liquidity, results of operations and businesses of the Company and its subsidiaries; the effects of the Company's determination not to make certain interest payments due to certain of its creditors; the possibility that the Company and/or certain of its subsidiaries voluntarily initiate proceedings under Chapter 11 of the U.S. Bankruptcy Code or foreign bankruptcy or insolvency laws and the potential effects of the initiation of such proceedings and the resulting bankruptcy or insolvency process on the Company's liquidity, results of operations and business; governmental investigations and inquiries, regulatory actions and lawsuits; actions taken by third parties, including the Company's creditors, the Trust and other stakeholders; court actions; the Company's ability to achieve expected benefits from its prior restructuring activities; the Company's substantial indebtedness, its ability to generate sufficient cash to reduce its indebtedness and its potential need and ability to incur further indebtedness; the Company's ability to generate sufficient cash to service indebtedness; restrictions on the Company's operations contained in the agreements governing the Company's indebtedness; the impact of Irish laws; and the risks, uncertainties and factors described in the "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" sections of the Company's Annual Report on Form 10-K for the fiscal year ended December 30, 2022 and the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, as filed with the SEC and available on the Company's website at <http://www.mallinckrodt.com> and <http://www.sec.gov>.

The forward-looking statements made herein speak only as of the date hereof and the Company does not assume any obligation to update or revise any forward-looking statement, whether as a result of new information, future events and developments or otherwise, except as required by law.

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.

MALLINCKRODT PLC
(registrant)

Date: June 21, 2023

By: /s/ Mark Tyndall
Mark Tyndall
Executive Vice President, Chief Legal Officer & Corporate Secretary

[MNK Letterhead]

[DATE]

[Employee Name]
[Employee Address]

RE: 2023/2024 Retention Bonus

Dear _____:

To incentivize you to remain with and committed to Mallinckrodt plc (the “**Company**” or “**we**”) and its subsidiaries (collectively “**Mallinckrodt**”) we are offering you a 2023/2024 Retention Bonus of \$[1] (the “**2023/2024 Retention Bonus**”) upon the terms set forth in this letter agreement (the “**Agreement**”). In order to be eligible for the 2023/2024 Retention Bonus you must sign and return this letter agreement to me by [DATE] acknowledging your agreement to the terms specified in this letter agreement. Please refer to Appendix A for certain definitions applicable to terms used in this Agreement.

If you accept this offer, we will advance and pre-pay to you as soon as administratively possible following your acknowledgment of this letter agreement the full amount of the 2023/2024 Retention Bonus (less required and elected withholdings), subject to your agreement to repay the Net After-Tax Value (as defined below) of the 2023/2024 Retention Bonus to the Company if it is not earned on the terms and conditions set forth below.

You will earn the 2023/2024 Retention Bonus and will not have to repay it if (i) you are employed by a Mallinckrodt entity on June 14, 2024, or, if applicable, the date of an Emergence Event, if earlier (such date, the “**Vesting Date**”). You will also earn the 2023/2024 Retention Bonus in full and will not have to repay it if your employment is terminated in a Qualifying Termination prior to the Vesting Date and you (or your estate in case of death) sign and do not revoke the Company’s standard general release of claims (the “**Release**”) within 45 days of your termination. If you retire or resign or you are terminated for Cause prior to the Vesting Date, then you will not earn the 2023/2024 Retention Bonus and you will be required to repay the Net After-Tax Value of the 2023/2024 Retention Bonus to the Company promptly, but in no event more than thirty (30) days following your termination of employment. If your employment is terminated in a Qualifying Termination prior to the Vesting Date and you (or your estate) fail to return the Release within 45 days of your termination or revoke the Release, then you also will not have earned the 2023/2024 Retention Bonus and will be required to repay the Net After-Tax Value of the 2023/2024 Retention Bonus promptly, but in no event more than fifty (50) days following your termination of employment.

If you are required to repay the Net After-Tax Value of the 2023/2024 Retention Bonus under this Agreement, Mallinckrodt may offset and reduce any other compensation owed you, such as unpaid wages, unreimbursed business expenses and deferred compensation payments, by the amount of the Net After-Tax Value you are required to repay. However, no compensation will be reduced if doing so would violate applicable law, or would result in penalty taxes under Section 409A of the Internal Revenue Code. We reserve all other rights and remedies available to recoup the Net After-Tax Value of the 2023/2024 Retention Bonus advanced under this Agreement, including the right to file a legal claim in court.

You agree not to disclose the existence of this Agreement or any of its terms to anyone other than your spouse or domestic partner and any financial or legal advisor who agrees to be bound not to make any such disclosure; provided that nothing in this Agreement shall prevent you from (i) communicating directly with, cooperating with, or providing information to, or receiving financial awards from, any federal, state or local government agency, including without limitation the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, or the U.S. National Labor Relations Board, without notifying or seeking permission from the Company, (ii) exercising any rights you may have under Section 7 of the U.S. National Labor Relations Act, or (iii) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that you have reason to believe is unlawful.

This Agreement does not confer upon you any right to continue in the employment of Mallinckrodt for any period or interfere with or otherwise restrict in any way the rights of your employer or you to terminate your employment at any time for any reason whatsoever, with or without Cause.

This Agreement will in all respects be governed by and construed in accordance with, the laws of the State of [1], without reference to conflicts of law principles thereunder. Any litigation arising out of this Agreement shall be brought exclusively in the federal or state courts of New Jersey, to which jurisdiction you and the Company hereby submit with respect to litigation arising out of this Agreement, and both you and the Company hereby knowingly and willingly waive their rights to a jury trial in any such litigation.

Please indicate your acceptance of the provisions of this letter agreement by signing the enclosed copy of this letter agreement and returning it to Natalie Dietz, Senior Director Compensation – Total Awards, at Natalie.Dietz@mnk.com by [DATE].

Very truly yours,

Agreed and Accepted.

Date

Appendix A – Agreement Definitions

For purposes of this Agreement:

“**Cause**” means your: (i) substantial failure or refusal to perform the duties and responsibilities of your job at a satisfactory level, other than due to your disability; (ii) material violation of any fiduciary duty or duty of loyalty you owe to any Mallinckrodt entity; (iii) conviction of a misdemeanor (other than a traffic offense) or felony; (iv) fraud, embezzlement or theft; (v) violation of a material Mallinckrodt rule or policy; (vi) unauthorized disclosure of any trade secret or confidential information of any Mallinckrodt entity; or (vii) other egregious conduct, that has or could have a serious and detrimental impact on any Mallinckrodt entity or its employees. The Human Resources and Compensation Committee of the Board of Directors of the Company has the sole authority and discretion to determine whether any termination is for Cause and such determination will be final and binding on you and the Company.

“**Disability**” means your total and permanent incapacity from engaging in any employment for Mallinckrodt for physical or mental reasons and you are eligible for disability benefits under Mallinckrodt’s long-term disability plan or under Social Security, as then in effect.

“**Emergence Event**” means, should the Company file for protection under Chapter 11, or any other provision, of the U.S. Bankruptcy Code, (i) the effective date of the Company’s plan of reorganization or liquidation, or (ii) the date on which such Chapter 11 case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

“**Net After-Tax Value**” means an amount equal to (i) the 2023/2024 Retention Bonus amount *less* (ii) the product of (x) the 2023/2024 Retention Bonus amount *multiplied by* (y) the highest effective marginal combined federal, state and local income tax rate applicable to individual taxpayers residing in your city and state (and if applicable, any other city and/or state in which you are subject to income taxes) for the year in which the repayment event occurs.

“**Qualifying Termination**” means termination of your employment for any of the following reasons (i) by Mallinckrodt without Cause, or (ii) by reason of Disability or death.

**AMENDMENT NO. 1 TO
[AMENDED AND RESTATED] EMPLOYMENT AGREEMENT**

This **AMENDMENT NO. 1 TO [AMENDED AND RESTATED] EMPLOYMENT AGREEMENT** (this “*Amendment*”), is entered into on [1], 2023 (the “*Amendment Date*”) by and between [ST Shared Services LLC] [Mallinckrodt Enterprises, LLC], a Delaware limited liability company, or any successor thereto (the “*Company*”), and [1] (the “*Executive*”).

WHEREAS, the Company and Executive are party to that certain [Amended and Restated] Employment Agreement, dated as of [January 12, 2023] [February 22, 2023] (the “*Agreement*”);

WHEREAS, the Company and Executive desire to amend certain terms of the non-competition covenant contained in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Executive agree as follows:

Section 1. The following sentence shall be added to the end of Section 9.02:

“Notwithstanding anything to the contrary in this Agreement, in the event that the Company terminates the Executive’s employment without Cause pursuant to Section 6.04 or the Executive terminates the Executive’s employment with Good Reason pursuant to Section 6.06 and the Company is unable to or fails to make payment within 14 days of the date payment is due under Section 7.0[2] [3] or 7.0[3] or [4], then the Restricted Period solely for purposes of the non-competition covenant in Section 9.02(a) shall be revised to be the period of the Executive’s employment with the Company.”

Section 2. This Amendment shall be and is hereby incorporated in and forms a part of the Agreement.

Section 3. All other terms and provisions of the Agreement shall remain unchanged except as specifically modified herein.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

**[ST SHARED SERVICES LLC]
[MALLINCKRODT ENTERPRISES, LLC]**

By: _____
Name:
Title:

EXECUTIVE

[1]

[Signature Page to Amendment No. 1 to [Amended and Restated] Employment Agreement]
