

COTT CORP /CN/
Form 10-K/A
April 18, 2016

United States

Securities and Exchange Commission

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

x **Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the fiscal year ended January 2, 2016

.. **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the transition period from _____ to _____

Commission file number 001-31410

COTT CORPORATION

(Exact name of registrant as specified in its charter)

CANADA
(State or Other Jurisdiction of

98-0154711
(IRS Employer

Incorporation or Organization)

Identification No.)

6525 VISCOUNT ROAD

MISSISSAUGA, ONTARIO, CANADA

L4V 1H6

5519 WEST IDLEWILD AVENUE

TAMPA, FLORIDA, UNITED STATES

33634

(Address of principal executive offices)

(Zip Code)

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

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

Title of each class
COMMON SHARES WITHOUT NOMINAL

Name of each exchange on which registered
NEW YORK STOCK EXCHANGE

OR PAR VALUE

TORONTO STOCK EXCHANGE

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller

reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12-12 of the Act). Yes No

The aggregate market value of the common equity held by non-affiliates of the registrant as of July 4, 2015 (based on the closing sale price of \$9.82 for the registrant's common stock as reported on the New York Stock Exchange on July 2, 2015) was \$1,057.0 million.

(Reference is made to the last paragraph of Part II, Item 5 of Annual Report on Form 10-K filed for the fiscal year ended January 2, 2016 for a statement of assumptions upon which the calculation is made).

The number of shares outstanding of the registrant's common stock as of February 19, 2016 was 109,907,005.

Documents incorporated by reference

None.

EXPLANATORY NOTE

No modifications or changes are being made to the original Annual Report on Form 10-K for the fiscal year ended January 2, 2016, or the financial statements included therein. We are filing this amendment solely to re-file Exhibit 10.26.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The documents filed as part of this report are as follows:

3. Exhibits

Exhibits required by Item 601 of Regulation S-K set forth on the Exhibit Index.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

COTT CORPORATION
(Registrant)

Date: April 15, 2016

/s/ Jerry Fowden
Jerry Fowden
Chief Executive Officer

Cott Corporation

Exhibit Index

Number	Description
2.1	Share Purchase Agreement, dated as of May 30, 2014, by and among Robert Unsworth and the shareholders of Aimia Foods Holdings Limited identified therein, Cott Ventures Limited, Cott Corporation, and Cott Beverages Limited (incorporated by reference to Exhibit 2.1 to our Form 8-K filed June 2, 2014).
2.2	Agreement and Plan of Merger, dated as of November 6, 2014, by and among DSS Group, Inc., Cott Corporation, Delivery Acquisition, Inc., and Crestview DSW Investors, L.P., as the Sellers representative (incorporated by reference to Exhibit 2.1 to our Form 8-K filed November 7, 2014).
3.1	Articles of Amalgamation of Cott Corporation (incorporated by reference to Exhibit 3.1 to our Form 10-K filed February 28, 2007) (file no. 001-31410).
3.2	Articles of Amendment to Articles of Amalgamation of Cott Corporation (incorporated by reference to Exhibit 3.1 to our Form 8-K filed December 15, 2014).
3.3	Second Amended and Restated By-laws of Cott Corporation, as amended (incorporated by reference to Exhibit 3.2 to our Form 10-Q filed May 8, 2014).
4.1	Indenture, dated as of June 24, 2014, governing the 5.375% Senior Notes due 2022, by and among the Cott Beverages Inc., Cott Corporation, the guarantors identified therein and Wells Fargo Bank, National Association, as trustee, paying agent, registrar, transfer agent and authenticating agent (incorporated by reference to Exhibit 4.1 to our Form 8-K filed June 25, 2014).
4.2	Form of 5.375% Senior Notes due 2022 (incorporated by reference to Exhibit 4.2 to our Form 8-K filed June 25, 2014).
4.3	Registration Rights Agreement, dated as of June 24, 2014, by and among Cott Beverages Inc., Cott Corporation, the guarantors identified therein and the certain Initial Purchasers of the 5.375% Senior Notes due 2022 (incorporated by reference to Exhibit 4.3 to our Form 8-K filed June 25, 2014).
4.4	Supplemental Indenture, dated as of July 24, 2014, governing the 5.375% Senior Notes due 2022, by and among Cott Beverages Inc. and certain of its subsidiaries, including Aimia Foods EBT Company Limited, Aimia Foods Group Limited, Aimia Foods Holdings Limited, Aimia Foods Limited and Stockpack Limited, and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.4 to our Form 10-K filed March 4, 2015).
4.5	Second Supplemental Indenture, dated as of December 12, 2014, governing the 5.375% Senior Notes due 2022, by and among Cott Beverages Inc. and certain of its subsidiaries, including DSS Group, Inc., DS Services of America, Inc., DS Services Holdings, Inc. and Crystal Springs of Alabama, LLC, and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.5 to our Form 10-K filed March 4, 2015).
4.6	Third Supplemental Indenture, dated as of June 25, 2015, by and among Cott Beverages, Inc., the guarantors party thereto and Wells Fargo Bank, National Association, as trustee, in connection with the 5.375% Senior Notes due 2022 (incorporated by reference to Exhibit 4.1 to our Form 8-K filed June 25, 2015).
4.7	Supplemental Indenture, dated as of January 13, 2016, by and among Cott Beverages, Inc., the guarantors

party thereto, including Cott Beverages Luxembourg, S.a.r.l., and Wells Fargo Bank, National Association, as trustee, in connection with the 5.375% Senior Notes due 2022 (incorporated by reference to Exhibit 4.7 to our Form 10-K filed February 29, 2016).

Number	Description
4.8	Indenture, dated as of December 12, 2014, governing the 6.75% Senior Notes due 2020, by and among Cott Beverages Inc., Cott Corporation, the guarantors identified therein and Wells Fargo Bank, National Association, as trustee, paying agent, registrar, transfer agent and authenticating agent (incorporated by reference to Exhibit 4.3 to our Form 8-K filed December 15, 2014).
4.9	Form of 6.75% Senior Notes due 2020 (incorporated by reference to Exhibit A to Exhibit 4.3 to our Form 8-K filed December 15, 2014).
4.10	Registration Rights Agreement, dated as of December 12, 2014, by and among Cott Beverages Inc., Cott Corporation, the guarantors identified therein and the Initial Purchasers of the 6.75% Senior Notes due 2020 (incorporated by reference to Exhibit 4.5 to our Form 8-K filed December 15, 2014).
4.11	Supplemental Indenture, dated as of June 25, 2015, by and among Cott Beverages, Inc., the guarantors party thereto and Wells Fargo Bank, National Association, as trustee, in connection with the 6.75% Senior Notes due 2020 (incorporated by reference to Exhibit 4.1 to our Form 8-K filed June 26, 2015).
4.12	Supplemental Indenture, dated as of January 13, 2016, by and among Cott Beverages, Inc., the guarantors party thereto, including Cott Beverages Luxembourg, S.a.r.l., and Wells Fargo Bank, National Association, as trustee, in connection with the 6.75% Senior Notes due 2020 (incorporated by reference to Exhibit 4.12 to our Form 10-K filed February 29, 2016).
4.13	Form of Amended and Restated Indenture, dated as of December 12, 2014, governing the 10.000% Second-Priority Senior Secured Notes due 2021, by and among Cott Corporation, DS Services of America, Inc., DS Services Holdings, Inc., the other guarantors party thereto from time to time, and Wilmington Trust, National Association, as Trustee and Collateral Agent (incorporated by reference to Exhibit 4.6 to our Form 8-K filed December 15, 2014).
4.14	Third Supplemental Indenture, dated as of December 12, 2014, governing the 10.000% Second-Priority Senior Secured Notes due 2021, by and among DS Services of America, Inc., Cott Corporation and certain of its subsidiaries, including Cott Beverages Inc., DSS Group, Inc. and Wilmington Trust, National Association, as Trustee and as Collateral Agent (incorporated by reference to Exhibit 4.7 to our Form 8-K filed December 15, 2014).
4.15	Form of 10.000% Second-Priority Senior Secured Notes due 2021 (incorporated by reference to Exhibit A to Exhibit 4.6 to our Form 8-K filed December 15, 2014).
4.16	Registration Rights Agreement for Series A Convertible First Preferred Shares and Common Shares, dated as of December 12, 2014, by and among Cott Corporation and the designated holders named therein (incorporated by reference to Exhibit 4.1 to our Form 8-K filed December 15, 2014).
4.17	Registration Rights Agreement for Series B Non-Convertible First Preferred Shares and Common Shares, dated as of December 12, 2014, by and among Cott Corporation and the designated holders named therein (incorporated by reference to Exhibit 4.2 to our Form 8-K filed December 15, 2014).
10.1 ²	Credit Agreement dated as of August 17, 2010 among Cott Corporation, Cott Beverages Inc., Cott Beverages Limited, Cliffstar LLC and the other Loan Parties party thereto, the Lenders party thereto, JPMorgan Chase Bank, N.A., London Branch as UK Security Trustee, JPMorgan Chase Bank, N.A., as Administrative Agent and Administrative Collateral Agent, General Electric Capital Corporation, as Co-Collateral Agent and Bank of America, N.A., as Documentation Agent (incorporated by reference to Exhibit 10.2 to our Form 10-K filed March 4, 2015).
10.2	Amendment No. 1 to Credit Agreement, dated as of April 19, 2012, by and among Cott Corporation, Cott Beverages Inc., Cliffstar LLC, and Cott Beverages Limited, as Borrowers, the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent

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(incorporated by reference to Exhibit 10.2 to our Form 10-Q filed May 7, 2012).

Number	Description
10.3	Amendment No. 2 to Credit Agreement, dated as of July 19, 2012, by and among Cott Corporation, Cott Beverages Inc., Cliffstar LLC, and Cott Beverages Limited, as Borrowers, the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.1 to our Form 10-Q filed November 1, 2012).
10.4	Amendment No. 3 to Credit Agreement, dated as of October 22, 2013, by and among Cott Corporation, Cott Beverages Inc., Cliffstar LLC, and Cott Beverages Limited, as Borrowers, the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.22 to our Form 10-K filed February 24, 2014).
10.5	Amendment No. 4 to Credit Agreement, dated as of May 28, 2014, by and among Cott Corporation, Cott Beverages Inc., Cliffstar LLC, and Cott Beverages Limited, as Borrowers, the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.1 to our Form 10-Q filed August 7, 2014).
10.6	Amendment No. 5 to Credit Agreement, dated as of December 12, 2014, by and among Cott Corporation, Cott Beverages Inc., Cliffstar LLC, Cott Beverages Limited and DS Services of America, Inc., as Borrowers, the other Loan Parties party thereto, the Lenders party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.7 to our Form 10-K filed March 4, 2015).
10.7	Amendment No. 6 to Credit Agreement, dated as of May 26, 2015, by and among Cott Corporation, Cott Beverages Inc., Cliffstar LLC, Cott Beverages Limited and DS Services of America, Inc., as Borrowers, the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.1 to our Form 10-Q filed August 5, 2015).
10.8 ³	Employment Offer Letter to Jason Ausher dated May 6, 2015 (incorporated by reference to Exhibit 10.2 to our Form 10-Q filed August 5, 2015).
10.9 ³	Amended and Restated Employment Offer Letter to Steven Kitching dated May 18, 2015 (incorporated by reference to Exhibit 10.3 to our Form 10-Q filed August 5, 2015).
10.10 ³	Employment Offer Letter to Michael Creamer dated April 16, 2007 (incorporated by reference to Exhibit 10.19 to our Form 10-K filed March 11, 2009) (file no. 001- 31410).
10.11 ³	Employment Agreement between Cott Corporation and Jerry Fowden dated February 18, 2009 (incorporated by reference to Exhibit 10.1 to our Form 8-K filed February 24, 2009) (file no. 001-31410).
10.12 ³	Employment Offer Letter to Marni Morgan Poe dated January 14, 2010 (incorporated by reference to Exhibit 10.1 to our Form 10-Q filed May 12, 2010) (file no. 001- 31410).
10.13 ³	Employment Offer Letter to Jay Wells dated January 14, 2012 (incorporated by reference to Exhibit 10.1 to our Form 10-Q filed May 7, 2012).
10.14 ³	Employment Offer Letter to Carlos Baila dated September 17, 2012 (incorporated by reference to Exhibit 10.24 to our Form 10-K filed February 27, 2013).
10.15 ³	First Amended and Restated Employment Agreement, dated as of December 16, 2014, between DS Services of America, Inc. and Thomas J. Harrington (incorporated by reference to Exhibit 10.23 to our Form 10-K filed March 4, 2015).
10.16 ³	Cott Corporation Severance and Non-Competition Plan, dated February 18, 2009 (incorporated by reference to Exhibit 10.2 to our Form 8-K filed February 24, 2009) (file no. 001-31410).

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- 10.17³ Amended and Restated Retention, Severance and Non-Competition Plan (incorporated by reference to Exhibit 10.6 to our Form 10-Q filed August 9, 2007) (file no. 001- 31410).
- 10.18³ 2010 Equity Incentive Plan (incorporated by reference to Appendix B of our Definitive Proxy Statement on Schedule 14A filed April 1, 2010) (file no. 001-31410).

Number	Description
10.19 ³	Amendment to 2010 Equity Incentive Plan (incorporated by reference to Exhibit 4.2 to our Form S-8 filed May 4, 2010) (file no. 333-166507).
10.20 ³	Amended and Restated Cott Corporation Equity Incentive Plan (incorporated by reference to Appendix B of our Definitive Proxy Statement on Schedule 14A filed March 28, 2013).
10.21 ³	Amendment to Amended and Restated Cott Corporation Equity Incentive Plan (incorporated by reference to Appendix B of our Definitive Proxy Statement on Schedule 14A filed March 26, 2015).
10.22 ³	Form of Restricted Share Unit Award Agreement with Time-Based Vesting under the Amended and Restated Cott Corporation Equity Incentive Plan (incorporated by reference to Exhibit 10.22 to our Form 10-K filed February 29, 2016).
10.23 ³	Form of Restricted Share Unit Award Agreement with Performance-Based Vesting under the Amended and Restated Cott Corporation Equity Incentive Plan (incorporated by reference to Exhibit 10.23 to our Form 10-K filed February 29, 2016).
10.24 ³	Form of Nonqualified Stock Option Agreement under the Amended and Restated Cott Corporation Equity Incentive Plan (incorporated by reference to Exhibit 10.24 to our Form 10-K filed February 29, 2016).
10.25 ²	Supply Agreement executed December 21, 2010, effective January 1, 2011 between Crown Cork & Seal USA, Inc. and Cott Corporation (incorporated by reference to Exhibit 10.34 of our Form 10-K/A filed January 1, 2012).
10.26 ¹	Amendments, dated November 20, 2015, to Supply Agreement between Crown Cork & Seal USA, Inc. and Cott Corporation (filed herewith).
21.1	List of Subsidiaries of Cott Corporation (incorporated by reference to Exhibit 21.1 to our Form 10-K filed February 29, 2016).
23.1	Consent of Independent Registered Certified Public Accounting Firm (incorporated by reference to Exhibit 23.1 to our Form 10-K filed February 29, 2016).
31.1	Certification of the Chief Executive Officer pursuant to section 302 of the Sarbanes- Oxley Act of 2002 for the year ended January 2, 2016 (previously filed with our Form 10-K filed February 29, 2016).
31.2	Certification of the Chief Financial Officer pursuant to section 302 of the Sarbanes- Oxley Act of 2002 for the year ended January 2, 2016 (previously filed with our Form 10-K filed February 29, 2016).
31.3	Certification of the Chief Executive Officer pursuant to section 302 of the Sarbanes- Oxley Act of 2002 for the year ended January 2, 2016 (filed herewith).
31.4	Certification of the Chief Financial Officer pursuant to section 302 of the Sarbanes- Oxley Act of 2002 for the year ended January 2, 2016 (filed herewith).
32.1	Certification of the Chief Executive Officer pursuant to section 906 of the Sarbanes- Oxley Act of 2002 for the year ended January 2, 2016 (previously furnished with our Form 10-K filed February 29, 2016).
32.2	Certification of the Chief Financial Officer pursuant to section 906 of the Sarbanes- Oxley Act of 2002 for the year ended January 2, 2016 (previously furnished with our Form 10-K filed February 29, 2016).
101	The following financial statements from Cott Corporation s Annual Report on Form 10-K for the year ended January 2, 2016, filed February 29, 2016, formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Statements of Operations, (ii) Consolidated Balance Sheets, (iii) Consolidated Statements of Cash Flows, (iv) Consolidated Statements of Equity (v) Consolidated Statements of Comprehensive (Loss) Income (vi) Notes to the Consolidated Financial Statements

(incorporated by reference to Exhibit 101 to our Form 10-K filed February 29, 2016).

- ¹ Document is subject to request for confidential treatment.
- ² Confidential treatment has been granted for portions of this exhibit.
- ³ Indicates a management contract or compensatory plan.