

ORRSTOWN FINANCIAL SERVICES INC
Form 8-K
September 27, 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)
September 27, 2016

ORRSTOWN FINANCIAL SERVICES, INC.
(Exact name of registrant as specified in its charter)

Pennsylvania 001-34292 23-2530374
(State or other jurisdiction of incorporation) (SEC File Number) (IRS Employer Identification No.)

77 East King Street, P.O. Box 250, Shippensburg, Pennsylvania 17257
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (717) 532-6114

Not Applicable
(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)).

ORRSTOWN FINANCIAL SERVICES, INC.

INFORMATION TO BE INCLUDED IN THE REPORT

Section 1 – Registrant's Business and Operations

Item 1.01 Entry into a Material Definitive Agreement.

On September 27, 2016, Orrstown Financial Services, Inc. (the "Company") entered into a settlement agreement with the U.S. Securities and Exchange Commission ("SEC") resolving the previously disclosed investigation by the SEC of accounting and related matters at the Company for the periods ended June 30, 2010, to December 31, 2011. As part of the settlement of the SEC's administrative proceedings and pursuant to the cease-and-desist order, without admitting or denying the SEC's findings, the Company, its Chief Executive Officer, its former Chief Financial Officer, its Chief Accounting Officer and a former Executive Vice President and Chief Commercial Officer, have agreed to pay civil money penalties to the SEC. The Company agreed to pay a civil money penalty of \$1 million. This civil money penalty has no current period financial impact on the Company's results, as a reserve for this amount was established and expensed in the second fiscal quarter of 2016. In the settlement agreement with the SEC, the Company also agreed to cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B), and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder.

Joel R. Zullinger, Chairman of the Board of Directors, commented: "The Company is pleased that the SEC investigation is now concluded. The Board of Directors has determined that entering into this settlement with the SEC is in the best interests of the Company and its shareholders. Settling in this matter will allow the Company and its leadership team to continue to focus on serving our local communities and our customers."

A copy of the SEC's Order detailing the settlement is attached hereto as Exhibit 99.1 and is incorporated herein by this reference.

Section 9 – Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number Description

Order Instituting Public Administrative Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 and Rule 240(a) of the Rules of Practice of the Securities and Exchange Commission.

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.

ORRSTOWN FINANCIAL SERVICES, INC.

Date: September 27, 2016 By: /s/ David P. Boyle

David P. Boyle

Executive Vice President and Chief Financial Officer

(Duly Authorized Representative)

opinion, we had not fully remediated issues cited by the State and it had determined that we were in default of the contract and that it had exercised its right to terminate the contract. The State contended that it had the right under the contract to recoup costs incurred by the State in

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conjunction with the implementation of the network, and as a result of this contention, in January 2009, the State drew down \$50 million against an irrevocable standby letter of credit funded by us.

In February 2009, we filed a claim in the New York Court of Claims, seeking over \$100 million in damages, and alleging a number of causes of action, including breach of contract, unjust enrichment, defamation, conversion, breach of the covenant of good faith and fair dealing, the imposition of a constructive trust, and seeking a declaration that the State terminated the contract "for convenience." In September 2009, the Court granted the State's motion to dismiss all counts of the complaint, with the exception of the breach of contract claim and a claim for breach of warranty in connection with the State's drawdown on the \$50 million letter of credit. In November 2009, the State filed an answer to the complaint and counterclaim asserting breach of contract and alleging that the State has incurred damages in excess of \$275 million. We moved to dismiss the counterclaim in February 2010, and in June 2010 the Court denied our motion. We filed our answer to the State's counterclaim in July 2010. On December 27, 2011, the Court of Claims entered judgment in our favor in the amount of \$25 million, payment of which is expected to be made in the third quarter of fiscal 2012. The Court also dismissed the State's counterclaim against us with prejudice. The Court's judgment resolves all outstanding issues between the parties in this matter. The \$25 million judgment is reflected in income from discontinued operations on the Condensed Consolidated Statement of Operations for the quarter ended December 30, 2011.

Com-Net

At December 30, 2011, we had a contingent purchase price commitment of \$80 million related to our fiscal 2001 acquisition of Com-Net. This represents the maximum amount payable to the former shareholders of Com-Net only after the construction and installation of a communications system for the State of Florida was completed and approved by the State of Florida in accordance with guidelines set forth in the contract. Under the terms of the purchase and sale agreement, we do not believe we have any obligation to the sellers. However, the sellers have contested our position and initiated a lawsuit in June 2006 in the Court of Common Pleas in Allegheny County, Pennsylvania, which is in the discovery phase. A liability for this contingency has not been recorded on the Condensed Consolidated Financial Statements as we do not believe that any payment is probable or reasonably estimable at this time.

Off-Balance Sheet Arrangements

Certain of our segments have guaranteed the performance of third parties and provided financial guarantees for uncompleted work and financial commitments. The terms of these guarantees vary with end dates ranging from fiscal 2012 through the completion of such transactions. The guarantees would be triggered in the event of nonperformance, and the potential exposure for nonperformance under the guarantees would not have a material effect on our results of operations, financial position, or cash flows.

In disposing of assets or businesses, we often provide representations, warranties, and/or indemnities to cover various risks including unknown damage to assets, environmental risks involved in the sale of real estate, liability for investigation and remediation of environmental contamination at waste disposal sites and manufacturing facilities, and unidentified tax liabilities and legal fees related to periods prior to disposition. We have no reason to believe that these uncertainties would have a material adverse effect on our results of operations, financial position, or cash flows.

At December 30, 2011, we had outstanding letters of credit and letters of guarantee in the amount of \$425 million.

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We have recorded liabilities for known indemnifications included as part of environmental liabilities. See Note 11 to the Condensed Consolidated Financial Statements for a discussion of these liabilities.

In the normal course of business, we are liable for contract completion and product performance. In the opinion of management, such obligations will not significantly affect our results of operations, financial position, or cash flows.

Pursuant to the Separation and Distribution Agreement and Tax Sharing Agreement, upon separation, we entered into certain guarantee commitments and indemnifications with Tyco International and Covidien. Under these agreements, principally the Tax Sharing Agreement, we, Tyco International, and Covidien share 31%, 27%, and 42%, respectively, of certain contingent liabilities relating to unresolved pre-separation tax matters of Tyco International. The effect of the Tax Sharing Agreement is to indemnify us for 69% of certain liabilities settled in cash by us with respect to unresolved pre-separation tax matters. Pursuant to that indemnification, we have made similar indemnifications to Tyco International and Covidien with respect to 31% of certain liabilities settled in cash by the companies relating to unresolved pre-separation tax matters. If any of the companies responsible for all or a portion of such liabilities were to default in its payment of costs or expenses related to any such liability, we would be responsible for a portion of the defaulting party or parties' obligation. These arrangements have been valued upon our separation from Tyco International in accordance with Accounting Standards Codification ("ASC") 460, *Guarantees*, and, accordingly, liabilities amounting to \$250 million were recorded on the Condensed Consolidated Balance Sheet at December 30, 2011. See Notes 10 and 11 to the Condensed Consolidated Financial Statements for additional information.

Critical Accounting Policies and Estimates

The preparation of the Condensed Consolidated Financial Statements in conformity with GAAP requires management to use judgment in making estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported amounts of revenue and expenses.

Our accounting policies for revenue recognition, goodwill and other intangible assets, income taxes, pension and postretirement benefits, share-based compensation, and acquisitions are based on, among other things, judgments and assumptions made by management. During the quarter ended December 30, 2011, there were no significant changes to these policies or to the underlying accounting assumptions and estimates used in these policies from those disclosed in the Consolidated Financial Statements and accompanying notes contained in our Annual Report on Form 10-K for the fiscal year ended September 30, 2011.

Accounting Pronouncements

Recently Issued Accounting Pronouncements

In December 2011 and June 2011, the Financial Accounting Standards Board ("FASB") issued updates to guidance in ASC 220, *Comprehensive Income*, that change the presentation and disclosure requirements of comprehensive income in interim and annual financial statements. These updates to ASC 220 are effective for us in the first quarter of fiscal 2013 with early adoption permitted. Adoption is not expected to have a material impact on our Condensed Consolidated Financial Statements.

In December 2011, the FASB issued an update to guidance in ASC 210, *Balance Sheet*, that enhances the disclosure requirements related to offsetting assets and liabilities. This update to ASC 210 is effective for us in the first quarter of fiscal 2014. Adoption is not expected to have a material impact on our Condensed Consolidated Financial Statements.

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Non-GAAP Financial Measures

Organic Net Sales Growth

Organic net sales growth is a non-GAAP financial measure. The difference between reported net sales growth (the most comparable GAAP measure) and organic net sales growth (the non-GAAP measure) consists of the impact from foreign currency exchange rates, acquisitions, divestitures, and an additional week in the fourth quarter of the fiscal year for fiscal years which are 53 weeks in length. Organic net sales growth is a useful measure of the underlying results and trends in our business. It excludes items that are not completely under management's control, such as the impact of changes in foreign currency exchange rates, and items that do not reflect the underlying growth of the company, such as acquisition and divestiture activity and the impact of an additional week in the fourth quarter of the fiscal year for fiscal years which are 53 weeks in length.

We believe organic net sales growth provides useful information to investors because it reflects the underlying growth from the ongoing activities of our business. Furthermore, it provides investors with a view of our operations from management's perspective. We use organic net sales growth to monitor and evaluate performance, as it is an important measure of the underlying results of our operations. Management uses organic net sales growth together with GAAP measures such as net sales growth and operating income in its decision making processes related to the operations of our reporting segments and our overall company. We believe that investors benefit from having access to the same financial measures that management uses in evaluating operations. The discussion and analysis of organic net sales growth in Results of Operations above utilizes organic net sales growth as management does internally. Because organic net sales growth calculations may vary among other companies, organic net sales growth amounts presented above may not be comparable with similarly titled measures of other companies. Organic net sales growth is a non-GAAP financial measure that is not meant to be considered in isolation or as a substitute for GAAP measures. The primary limitation of this measure is that it excludes items that have an impact on our net sales. This limitation is best addressed by evaluating organic net sales growth in combination with our GAAP net sales. The tables presented in Results of Operations above provide reconciliations of organic net sales growth to net sales growth calculated under GAAP.

Free Cash Flow

Free cash flow is a non-GAAP financial measure. The difference between net cash provided by continuing operating activities (the most comparable GAAP measure) and free cash flow (the non-GAAP measure) consists mainly of significant cash outflows and inflows that we believe are useful to identify. Free cash flow is a useful measure of our cash generation which is free from any significant existing obligation. It also is a significant component in our incentive compensation plans. Free cash flow permits management and investors to gain insight into the amount that management employs to measure cash that is free from any significant existing obligation.

Free cash flow excludes net capital expenditures, voluntary pension contributions, and the cash impact of special items. Net capital expenditures are subtracted because they represent long-term commitments. Voluntary pension contributions are subtracted from the GAAP measure because this activity is driven by economic financing decisions rather than operating activity. Certain special items, including net payments related to pre-separation tax matters, are also considered by management in evaluating free cash flow. We believe investors should also consider these items in evaluating our free cash flow.

Free cash flow as presented herein may not be comparable to similarly-titled measures reported by other companies. The primary limitation of this measure is that it excludes items that have an impact on our GAAP cash flow. Also, it subtracts certain cash items that are ultimately within management's and the board of directors' discretion to direct and may imply that there is less or more cash available

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for our programs than the most comparable GAAP measure indicates. This limitation is best addressed by using free cash flow in combination with the GAAP cash flow results.

The tables presented in Liquidity and Capital Resources above provide reconciliations of free cash flow to cash flows from continuing operating activities calculated under GAAP.

Forward-Looking Information

Certain statements in this quarterly report on Form 10-Q are "forward-looking statements" within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. These statements are based on our management's beliefs and assumptions and on information currently available to our management. Forward-looking statements include, among others, the information concerning our possible or assumed future results of operations, business strategies, financing plans, competitive position, potential growth opportunities, potential operating performance improvements, acquisitions, the effects of competition, and the effects of future legislation or regulations. Forward-looking statements include all statements that are not historical facts and can be identified by the use of forward-looking terminology such as the words "believe," "expect," "plan," "intend," "anticipate," "estimate," "predict," "potential," "continue," "may," "should," or the negative of these terms or similar expressions.

Forward-looking statements involve risks, uncertainties, and assumptions. Actual results may differ materially from those expressed in these forward-looking statements. You should not put undue reliance on any forward-looking statements. We do not have any intention or obligation to update forward-looking statements after we file this report except as required by law.

The following and other risks, which are described in greater detail in "Part II. Item 1A. Risk Factors" of this report and "Part I. Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2011, could also cause our results to differ materially from those expressed in forward-looking statements:

Conditions in the global or regional economies and global capital markets, and cyclical industry conditions;

Conditions affecting demand for products in the industries we serve, particularly the automotive industry and the telecommunications, computer, and consumer electronics industries;

Competition and pricing pressure;

Market acceptance of new product introductions and product innovations and product life cycles;

Raw material availability, quality, and cost;

Fluctuations in foreign currency exchange rates;

Financial condition and consolidation of customers and vendors;

Reliance on third-party suppliers;

Our ability to attract and retain highly qualified personnel;

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Risks associated with our proposed acquisition of Deutsch;

Risks associated with future acquisitions and divestitures;

Global risks of business interruptions such as natural disasters and political, economic, and military instability;

Risks related to compliance with current and future environmental and other laws and regulations;

Our ability to protect our intellectual property rights;

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Risks of litigation;

Our ability to operate within the limitations imposed by our debt instruments;

Risks relating to our separation on June 29, 2007 from Tyco International Ltd.;

The possible effects on us of various U.S. and non-U.S. legislative proposals and other initiatives that, if adopted, could materially increase our worldwide corporate effective tax rate and negatively impact our U.S. government contracts business;

Various risks associated with being a Swiss corporation;

The impact of fluctuations in the market price of our shares; and

The impact of certain provisions of our articles of association on unsolicited takeover proposals.

There may be other risks and uncertainties that we are unable to predict at this time or that we currently do not expect to have a material adverse effect on our business.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no significant changes in our exposures to market risk during the first three months of fiscal 2012, except for the items discussed below. For further discussion of our exposures to market risk, refer to "Part II. Item 7A. Quantitative and Qualitative Disclosures About Market Risk" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2011.

Foreign Currency Exposures

As part of managing the exposure to changes in foreign currency exchange rates, we utilize foreign currency forward and swap contracts, a portion of which are designated as cash flow hedges. The objective of these contracts is to minimize impacts to cash flows and profitability due to changes in foreign currency exchange rates on intercompany transactions, accounts receivable, accounts payable, and other cash transactions. In the first quarter of fiscal 2012, in connection with the planned acquisition of Deutsch, a transaction that is expected to be denominated in Euros, we have employed foreign currency forward contracts to manage variability between the Euro and U.S. Dollar and to accumulate Euros for the purpose of the acquisition. A 10% appreciation of the underlying currency in a foreign currency forward or swap contract from the December 30, 2011 market rates would have decreased the unrealized value of our forward contracts by \$99 million, while a 10% depreciation would have increased the unrealized value by \$99 million. A 10% appreciation of the underlying currency in a foreign currency forward or swap contract from the September 30, 2011 market rates would have decreased the unrealized value of our forward contracts by \$20 million, while a 10% depreciation would have increased the unrealized value by \$20 million. Such gains or losses on contracts not associated with the planned acquisition of Deutsch would be generally offset by the gains or losses on the revaluation or settlement of the underlying transactions, or, for contracts associated with the planned acquisition of Deutsch, such gains or losses would be generally offset by gains or losses on the revaluation of intercompany non-derivative financial instruments.

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ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of December 30, 2011. Based on that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective as of December 30, 2011.

Changes in Internal Control Over Financial Reporting

During the quarter ended December 30, 2011, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

There have been no material developments in our legal proceedings since we filed our Annual Report on Form 10-K for the fiscal year ended September 30, 2011, except the development described under "Part I. Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations - Commitments and Contingencies - Matters Related to Our Former Wireless Systems Business - State of New York Contract" of this report. For a description of our previously reported legal proceedings, refer to "Part I. Item 3. Legal Proceedings" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2011.

ITEM 1A. RISK FACTORS

There have been no material changes in our risk factors from those disclosed in "Part I. Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2011 except as otherwise described below. The risk factors disclosed in our Annual Report on Form 10-K, in addition to other information set forth below and in this report, could materially affect our business operations, financial condition, or liquidity. Additional risks and uncertainties not currently known to us or that we currently believe are immaterial also may impair our business operations, financial condition, and liquidity.

The Deutsch acquisition may not be successful.

We recently announced our entry into a sale and purchase agreement to acquire Deutsch. Risks associated with the acquisition of Deutsch include the risk that the acquisition may not be consummated, the risk that regulatory approval that may be required for the acquisition is not obtained or is obtained subject to conditions that are not anticipated, the risk that Deutsch's operations will not be integrated successfully into ours, and the risk that revenue opportunities, cost savings, and other anticipated synergies from the acquisition may not be fully realized or may take longer to realize than expected, the occurrence of which could adversely affect our results of operations, financial position, and cash flows.

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None.

Issuer Purchases of Equity Securities

The following table presents information about our purchases of our common shares during the quarter ended December 30, 2011:

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs ⁽²⁾	Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs ⁽²⁾
October 1- October 28, 2011	2,729	\$ 29.61		\$ 1,500,631,148
October 29 - December 2, 2011	187,256	34.16		1,500,631,148
December 3 - December 30, 2011				1,500,631,148
Total	189,985	\$ 34.09		

(1) This column includes the acquisition of 189,985 common shares from individuals in order to satisfy tax withholding requirements in connection with the vesting of restricted share awards issued under equity compensation plans during the quarter ended December 30, 2011.

(2) Our share repurchase program authorizes us to purchase a portion of our outstanding common shares from time to time through open market or private transactions, depending on business and market conditions. The share repurchase program does not have an expiration date.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. RESERVED**ITEM 5. OTHER INFORMATION**

None.

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ITEM 6. EXHIBITS

Exhibit Number	Exhibit
10.1	Sale and Purchase Agreement among TE Connectivity Ltd. and the Sellers named therein with respect to Deutsch Group SAS, dated as of December 14, 2011*
10.2	364-Day Credit Agreement among Tyco Electronics Group S.A., as borrower, TE Connectivity Ltd., as guarantor, the lenders parties thereto and JPMorgan Chase Bank, N.A., as administrative agent, dated as of December 20, 2011 (Incorporated by reference to Exhibit 10.1 to TE Connectivity Ltd.'s Current Report on Form 8-K, filed December 21, 2011)
31.1	Certification by the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
31.2	Certification by the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
32.1	Certification by the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**
101	Financial statements from the Quarterly Report on Form 10-Q of TE Connectivity Ltd. for the quarterly period ended December 30, 2011, filed on January 27, 2012, formatted in XBRL: (i) the Condensed Consolidated Statements of Operations, (ii) the Condensed Consolidated Balance Sheets, (iii) the Condensed Consolidated Statements of Cash Flows, and (iv) the Notes to Condensed Consolidated Financial Statements*

*
Filed herewith

**
Furnished herewith

Neither TE Connectivity Ltd. nor any of its consolidated subsidiaries has outstanding any instrument with respect to its long-term debt, other than those filed as an exhibit to TE Connectivity Ltd.'s Annual Report on Form 10-K for the fiscal year ended September 30, 2011 or to this Quarterly Report, under which the total amount of securities authorized exceeds 10% of the total assets of TE Connectivity Ltd. and its subsidiaries on a consolidated basis. TE Connectivity Ltd. hereby agrees to furnish to the U.S. Securities and Exchange Commission, upon request, a copy of each instrument that defines the rights of holders of such long-term debt that is not filed or incorporated by reference as an exhibit to our annual and quarterly reports.

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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, thereunto duly authorized.

TE CONNECTIVITY LTD.

By: _____ /s/ TERRENCE R. CURTIN

Terrence R. Curtin
*Executive Vice President and
Chief Financial Officer
(Duly Authorized Officer and
Principal Financial Officer)*

Date: January 27, 2012