

Actavis plc
Form S-8 POS
March 17, 2015

As filed with the Securities and Exchange Commission on March 17, 2015

Registration No. 333-201242

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Post-Effective Amendment No. 1

on

Form S-8 to Form S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ACTAVIS PLC

(Exact name of registrant as specified in its charter)

Ireland
(State or other Jurisdiction of

2834
(Primary Standard Industrial

98-1114402
(I.R.S. Employer

| Incorporation or Organization) | Classification Code Number) | Identification Number) |
|--|--|-------------------------------|
| | 1 Grand Canal Square, Docklands, Dublin 2, Ireland (862) 261-7000 | |
| (Address of Principal Executive Offices) | | |
| Allergan, Inc. 1989 Incentive Compensation Plan Amended and Restated Allergan, Inc. 2011 Incentive Award Plan | | |
| (Full Title of the Plans) | | |
| A. Robert D. Bailey Chief Legal Officer and Corporate Secretary | | |
| Actavis plc Morris Corporate Center III 400 Interpace Parkway Parsippany, New Jersey 07054 (862) 261-7000 | | |
| (Name, Address and Telephone Number, Including Area Code, of Agent for Service) | | |

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, 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.

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

CALCULATION OF REGISTRATION FEE

| Title of Securities | to be Registered | Title of Plan | Amount to be Registered (1) | Proposed Maximum Offering Price (5) | Proposed Maximum Offering Price (5) | Amount of Registration Fee (5) |
|---|------------------|---|--------------------------------|---|---|-----------------------------------|
| Ordinary Shares, par value \$0.0001 per share | | Allergan, Inc. 1989 Incentive Compensation Plan | 338,582(2) | N/A | N/A | N/A |
| Ordinary Shares, par value \$0.0001 per share | | Amended and Restated Allergan, Inc. 2011 Incentive Award Plan | 6,661,293(3) | N/A | N/A | N/A |
| Ordinary Shares, par value \$0.0001 per share | | Amended and Restated Allergan, Inc. 2011 Incentive Award Plan | 358,270(4) | N/A | N/A | N/A |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement (the Registration Statement) also covers an indeterminate number of additional Ordinary Shares, par value \$0.0001 per share (Ordinary Shares), of Actavis plc, a public limited company organized under the laws of Ireland (the Registrant), which may be offered and issued under the Legacy Allergan Plans (as defined below) to prevent dilution resulting from adjustments as a result of stock dividends, stock splits, reverse stock splits, recapitalizations, reclassifications, mergers, split-ups, reorganizations, consolidations and other capital adjustments.
- (2) Represents Ordinary Shares issuable pursuant to outstanding but unexercised non-qualified stock options (Options) previously granted under the Allergan, Inc. 1989 Incentive Compensation Plan, which Options were assumed by the Registrant on March 17, 2015, pursuant to the Agreement and Plan of Merger, dated as of November 16, 2014, by and among the Registrant, Allergan, Inc. (Allergan), and Avocado Acquisition Inc. (the Merger Agreement).
- (3) Represents Ordinary Shares issuable pursuant to outstanding but unexercised Options previously granted under the Amended and Restated Allergan, Inc. 2011 Incentive Award Plan, which options were assumed by the Registrant on March 17, 2015, pursuant to the Merger Agreement.
- (4) Represents Ordinary Shares issuable pursuant to outstanding and unvested restricted stock units (RSUs) previously granted under the Amended and Restated Allergan, Inc. 2011 Incentive Award Plan, which RSUs

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- were assumed by the Registrant on March 17, 2015, pursuant to the Merger Agreement.
- (5) These shares were registered under the Registration Statement on Form S-4 (File No. 333-201242) filed under the Securities Act with the Securities and Exchange Commission (the Commission) on December 23, 2014, as amended by Pre-Effective Amendment No. 1, filed on January 26, 2015. All filing fees payable in connection with the issuance of these shares were previously paid in connection with the filing of the Registration Statement on Form S-4.

EXPLANATORY NOTE

The Registrant hereby amends its Registration Statement on Form S-4 (File No. 333-201242) filed with the Securities and Exchange Commission (the Commission) on December 23, 2014, as amended by Pre-Effective Amendment No. 1, filed on January 26, 2015 (the Form S-4) by filing this Post-Effective Amendment No. 1 on Form S-8 relating to Ordinary Shares of the Registrant, issuable upon the exercise or settlement of outstanding equity awards (the Legacy Allergan Awards) granted under (a) the Allergan, Inc. 1989 Incentive Compensation Plan (Restated November 2000) (the 1989 Plan) and (b) the Amended and Restated Allergan, Inc. 2011 Incentive Award Plan (the 2011 Plan and together with the 1989 Plan, the Legacy Allergan Plans). All such Ordinary Shares were previously registered on the Form S-4 but will be subject to issuance pursuant to this Registration Statement.

Pursuant to the Merger Agreement, on March 17, 2015, Avocado Acquisition Inc., a Delaware corporation and an indirect wholly owned subsidiary of the Company (Merger Sub) merged with and into Allergan (the Merger), with Allergan continuing as the surviving corporation in the Merger (the Surviving Corporation). Actavis plc is referred to herein as we, our, us, Actavis, the Registrant, and the Company.

At the effective time of the Merger, each outstanding Legacy Allergan Award granted pursuant to the applicable Legacy Allergan Plan held by any employee of Allergan or any of its subsidiaries who continues to be employed by us or the Surviving Corporation or any of our subsidiaries following the effective time of the Merger was converted into a corresponding equity award with respect to our Ordinary Shares.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Items 1 and 2 of Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the respective participants in the Legacy Allergan Plans covered by this Registration Statement, as required by Rule 428. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which previously have been filed by the Registrant with the Commission, are incorporated herein by reference and made a part hereof:

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2014, filed with the Commission on February 18, 2015;
- (b) The description of the Registrant's Ordinary Shares contained or incorporated by reference into the Company's Registration Statement on Form 8-A filed on March 16, 2015, including any amendment or report filed for the purpose of updating such description; and
- (c) All documents that the Registrant files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, subsequent to the effective date of this Registration Statement (except for any portions of the Registrant's Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with Commission), but prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or which deregisters all securities than remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing such documents.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant's articles of association confer an indemnity on its directors and Secretary subject to the limitations prescribed by the Irish Companies Acts 1963-2013 (the Irish Companies Acts). Broadly, the relevant provisions in the Registrant's articles of association provide for an indemnity for certain persons, including directors, the Secretary, committee members, persons holding executive or official positions with the Registrant and employees, agents and persons acting in certain other capacities at the request of the Registrant (Indemnified Persons) who are a party to actions, suits or proceedings against expenses and costs in connection with such actions, suits or proceedings if such Indemnified Person acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Registrant. Indemnification is also excluded in circumstances where an Indemnified Person is adjudged liable for willful neglect or default in performance of his duties unless a relevant court determines otherwise. Such indemnification may include expense advancement in certain circumstances.

The Irish Companies Acts prescribe that an advance commitment to indemnify only permits a company to pay the costs or discharge the liability of a director or secretary where judgment is given in favor of the director or secretary in any civil or criminal action in respect of such costs or liability, or where an Irish court grants relief because the director or secretary acted honestly and reasonably and ought fairly to be excused. Any provision whereby an Irish company seeks to commit in advance to indemnify its directors or secretary over and above the limitations imposed by the Irish Companies Acts will be void, whether contained in its articles of association or any contract between the company and the director or secretary. This restriction does not apply to executives who are not directors or the secretary, or other persons who would not be considered officers within the meaning of that term under the Irish Companies Acts, of the Registrant.

Each of the Registrant's current directors, officers and the Secretary are party to individual indemnification agreements that provide for the indemnification of any claims relating to their services to the Registrant or any of its subsidiaries to the fullest extent permitted by applicable law.

The Registrant also maintains directors' and officers' liability insurance and fiduciary liability insurance covering certain liabilities that may be incurred by its directors and officers in the performance of their duties.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

For the list of exhibits, see the Exhibit Index to this Registration Statement, which is incorporated in this item by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

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(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement;

(i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Parsippany, State of New Jersey on the 17th day of March 2015.

ACTAVIS plc

By: /s/ A. Robert D. Bailey
A. Robert D. Bailey
Chief Legal Officer and Corporate
Secretary

Each person whose signature appears below hereby constitutes and appoints A. Robert D. Bailey his attorney-in-fact, with the full power of substitution, for him in any and all capacities, to sign this Registration Statement, and any amendments thereto (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, hereby ratifying and confirming all that said attorney-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|---|---------------|
| /s/ Paul M. Bisaro Paul M. Bisaro | Executive Chairman, Director | March 9, 2015 |
| /s/ Brent L. Saunders Brent L. Saunders | Chief Executive Officer, President, Director (Principal Executive Officer) | March 9, 2015 |
| /s/ Maria Teresa Hilado Maria Teresa Hilado | Chief Financial Officer (Principal Financial Officer) | March 9, 2015 |
| /s/ James D Arecca James D Arecca | Chief Accounting Officer (Principal Accounting Officer) | March 9, 2015 |
| /s/ Nesli Basgoz, M.D. Nesli Basgoz, M.D. | Director | March 9, 2015 |
| /s/ James H. Bloem James H. Bloem | Director | March 9, 2015 |

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/s/ Christopher W. Bodine

Christopher W. Bodine

Director

March 9, 2015

/s/ Christopher J. Coughlin

Christopher J. Coughlin

Director

March 9, 2015

/s/ Tamar D. Howson

Tamar D. Howson

Director

March 9, 2015

/s/ John A. King, Ph.D.

John A. King, Ph.D.

Director

March 9, 2015

/s/ Catherine M. Klema

Catherine M. Klema

Director

March 9, 2015

/s/ Jiri Michal

Jiri Michal

Director

March 9, 2015

/s/ Patrick J. O Sullivan

Patrick J. O Sullivan

Director

March 9, 2015

Ronald R. Taylor

Director

Andrew L. Turner

Director

/s/ Fred G. Weiss

Fred G. Weiss

Director

March 9, 2015

EXHIBIT INDEX

| Exhibit Number | Exhibit Description | Method of Filing |
|-----------------------|--|--|
| 3.1 | Certificate of Incorporation of Actavis plc | Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the Commission on October 2, 2013 |
| 3.2 | Amended and Restated Memorandum and Articles of Association of Actavis plc | Incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K, filed with the Commission on October 2, 2013 |
| 4.1 | Specimen Share Certificate of Actavis plc | Incorporated by reference to Exhibit 4.1 of the Registrant's Registration Statement on Form S-8 (No. 333-191487), filed with the Commission on October 1, 2013 |
| 5.1 | Opinion of Arthur Cox | Filed herewith |
| 23.1 | Consent of Arthur Cox (included as part of Exhibit 5.1) | Filed herewith |
| 23.2 | Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm for Actavis plc | Filed herewith |
| 23.3 | Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm for Warner Chilcott Limited | Filed herewith |
| 23.4 | Consent of Ernst & Young LLP Independent Registered Public Accounting Firm for Allergan, Inc. | Filed herewith |
| 24.1 | Power of Attorney | Included with the signature page to this Registration Statement |
| 99.1 | Allergan, Inc. 1989 Incentive Compensation Plan (Restated November 2000) | Incorporated by reference to Exhibit 10.5 to Allergan, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2000 |
| 99.2 | First Amendment to Allergan, Inc. 1989 Incentive Compensation Plan (Restated November 2000) | Incorporated by reference to Exhibit 10.51 to Allergan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 26, 2003 |
| 99.3 | Second Amendment to Allergan, Inc. 1989 Incentive Compensation Plan (Restated November 2000) | Incorporated by reference to Exhibit 10.7 to Allergan, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2004 |
| 99.4 | Third Amendment to Allergan, Inc. 1989 Incentive Compensation Plan (Restated November 2000) | Incorporated by reference to Exhibit 10.15 to Allergan, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2010 |
| 99.5 | | Filed herewith |

Amended and Restated Allergan, Inc. 2011
Incentive Award Plan