

SURMODICS INC
Form 8-K
November 21, 2011

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

November 17, 2011

Date of report (Date of earliest event reported)

SurModics, Inc.

(Exact Name of Registrant as Specified in its Charter)

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(State of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)
9924 West 74 th Street Eden Prairie, Minnesota (Address of Principal Executive Offices)	(952) 500-7000	55344 (Zip Code)
(Registrant's Telephone Number, Including Area Code)		

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 (see General Instruction A.2):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 2.01 Completion of Acquisition or Disposition of Assets.

On November 17, 2011, SurModics, Inc. (the Company) and its wholly-owned subsidiary, SurModics Pharmaceuticals, Inc. (Pharma) completed the previously announced sale of substantially all of the assets of Pharma to Evonik Degussa Corporation (Evonik) pursuant to an Asset Purchase Agreement (the Purchase Agreement) dated as of November 1, 2011 among the Company, Pharma and Evonik.

The total consideration received from the sale was \$30 million in cash, subject to a post-closing adjustment for inventory. Of the total consideration, \$3.275 million was placed in escrow at closing for any inventory shortfall and the payment of certain contingent consideration obligations. Under the terms of the Purchase Agreement, the entire portfolio of products and services of Pharma, including its cGMP development and manufacturing facility located in Birmingham, Alabama, were acquired by Evonik.

The foregoing summary of the Purchase Agreement is qualified in its entirety by reference to the full text of the Purchase Agreement, a copy of which is filed as Exhibit 2.1 hereto and is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On November 17, 2011, the Company issued a press release announcing the completion of the transaction. The press release is furnished as Exhibit 99.2 hereto. The information contained in Exhibit 99.2 is being furnished pursuant to Item 7.01 of this Current Report on Form 8-K, and shall not be deemed to be filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the Exchange Act), or otherwise subject to liabilities under Section 18. Furthermore, the information contained in Exhibit 99.2 shall not be deemed to be incorporated by reference into the filings of the Company under the Securities Act of 1933, as amended, or the Exchange Act.

Item 9.01 Financial Statements and Exhibits.

(b) *Pro Forma Financial Information.*

The pro forma unaudited financial information required to be filed in connection with the disposition described in Item 2.01 above is filed as Exhibit 99.1 to this report and is incorporated herein by reference.

(d) *Exhibits.*

2.1 Asset Purchase Agreement by and among SurModics, Inc., SurModics Pharmaceuticals, Inc., and Evonik Degussa Corporation dated as of November 1, 2011 incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K dated November 7, 2011, SEC File No. 0-23837

99.1 Pro forma financial information

99.2 Press Release dated November 17, 2011

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.

SURMODICS, INC.

Date: November 21, 2011

/s/ Bryan K. Phillips

Bryan K. Phillips

Sr. Vice President, General Counsel and Secretary

EXHIBIT INDEX

Exhibit		Manner of
No.	Description	Filing
2.1	Asset Purchase Agreement by and among SurModics, Inc., SurModics Pharmaceuticals, Inc., and Evonik Degussa Corporation dated as of November 1, 2011 - incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K dated November 7, 2011, SEC File No. 0-23837	Incorporated by Reference
99.1	Pro forma financial information	Filed Electronically
99.2	Press Release dated November 17, 2011	Filed Electronically
	ormal; font-family:serif; padding-top:0; "> (3,067) Net cash used in investing activities (2,299) (2,356) (5) (570) 2,299 (2,931) Financing activities Payment of debt issue costs (41) (298) —(339) Net proceeds from the issuance of common stock 110 —110 Repayments on capital leases —(45) —(45) Repayments on mortgage refinancing (250) —(250) Repayment of intercompany note —(14,436) 14,436 —Proceeds from parent investment in subsidiary —2,299 —(2,299) —Net cash (used in) provided by financing activities (181) 2,001 —(14,481) 12,137 (524) Net increase in cash and cash equivalents —29,484 1,020 523 —31,027 Cash and cash equivalents at beginning of period —1,077 698 949 —2,724 Cash and cash equivalents at end of period \$—30,561 1,718 1,472 —33,751	
	F-46	

CPI Holdco, Inc.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table shows the costs and expenses, other than underwriting discounts, payable in connection with the sale and distribution of the securities being registered. The registrant will pay all of these amounts. All amounts are estimated.

Securities and Exchange Commission Registration Fee	\$13,375.00
National Association of Securities Dealers, Inc. Filing Fee	13,000.00
Quotation fee—The Nasdaq Stock Market's National Market	*
Printing and Engraving Expenses	*
Legal Fees and Expenses	*
Accounting Fees and Expenses	*
Blue Sky Fees and Expenses	*
Transfer Agent and Registrar Agent Fees	*
Miscellaneous	*
Total	\$ *

*To be provided by amendment

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (“DGCL”) authorizes a corporation to indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The DGCL does not permit indemnification in any threatened, pending or completed action or suit by or in the right of the corporation in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper. To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above, or in defense of any claim, issue or matter, such person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection therewith. Section 102 of the DGCL also allows a corporation to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director provided that such provisions shall not eliminate or limit the liability of a director:

- (i) for any breach of the director's duty of loyalty to the corporation or its stockholders;
- (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (iii) for unlawful payments of dividends or unlawful stock purchases or redemptions; or
- (iv) for any transaction from which the director derived an improper personal benefit.

These provisions will not limit the liability of directors or officers under the federal securities laws of the United States.

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The registrant's Amended and Restated Certificate of Incorporation will provide that, to the fullest extent that the DGCL or any other law of the State of Delaware as it exists or as it may be amended permits the limitation or elimination of the liability of directors, no directors of the registrant will be liable to the registrant or its stockholders for monetary damages for breach of fiduciary duty as a director.

The registrant's amended and restated bylaws will provide that, to the fullest extent permitted by law, the registrant shall indemnify any current or former director of the registrant and may, at the discretion of the Board of Directors, indemnify any current or former officer, employee or agent of the registrant against all expenses (including attorneys' fees), judgments, fines and amounts paid in the defense or settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal,

administrative, investigative or otherwise, and whether brought by or in the right of the registrant, to which he or she was or is a party or threatened to be made a party by reason of his or her current or former position with the registrant or by reason of the fact that he or she is or was serving, at the request of the registrant, as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

The registrant maintains officers' and directors' insurance covering certain liabilities that may be incurred by officers and directors in the performance of their duties and will continue to maintain such insurance coverage after the consummation of this offering. In addition, prior to the consummation of this offering, we will enter into indemnification agreements with each of our directors and executive officers that provide for indemnification and expense advancement to the fullest extent permitted under the DGCL.

We expect that the underwriting agreement for this offering will provide for the indemnification of the registrant, its controlling persons, its directors and certain of its officers by the underwriters and for the indemnification of the underwriters by the registrant, in each case against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act").

Item 15. Recent Sales of Unregistered Securities.

Set forth below is a description of the sales of all securities of the registrant sold by the registrant within the past three years that were not registered under the Securities Act.

Floating Rate Senior Notes due 2015 of the Registrant

On February 22, 2005, the registrant issued \$80 million in aggregate principal amount of its Floating Rate Senior Notes due 2015 (the "FLR Notes"). The FLR Notes were sold for cash to the initial purchasers listed in the table below:

Initial Purchasers	Principal Amount
UBS Securities LLC	\$ 48,000,000
Wachovia Capital Markets, LLC	20,000,000
Bear, Stearns & Co. Inc.	12,000,000
Total	\$ 80,000,000

The FLR Notes were sold to the initial purchasers for an aggregate purchase price of \$76,824,000 and were resold by the initial purchasers at a 1% discount. The FLR Notes were sold to the initial purchasers in reliance upon the exemption from registration provided by Regulation D, Rule 506, of the Securities Act, and were subsequently resold by the initial purchasers pursuant to Rule 144A and Regulation S under the Securities Act. The sale of the FLR Notes was made without general solicitation or advertising.

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Registrant's Guarantee of Communications & Power Industries, Inc.'s 8% Senior Subordinated Notes due 2012

On January 23, 2004, Communications & Power Industries, Inc. ("CPI") issued \$125 million in aggregate principal amount of its 8% Senior Subordinated Notes due 2012 (the "8% Notes") and in connection therewith the registrant guaranteed, on a senior subordinated basis, the 8% Notes. The 8% Notes were sold for cash to the initial purchasers

listed in the table below:

Initial Purchasers	Principal Amount
UBS Securities LLC	\$ 50,000,000
Bear, Stearns & Co. Inc.	50,000,000
Wachovia Capital Markets, LLC	25,000,000
Total	\$ 125,000,000

The registrant received none of the gross proceeds from the issuance of the 8% Notes or the guarantee by the registrant of the 8% Notes (the "Guarantee"). The issuance of the 8% Notes and the Guarantee to the initial purchasers was made on reliance on the exemption from registration afforded by the provisions of Section 4(2) under the Securities Act, and the 8% Notes were subsequently resold by the initial purchasers pursuant to Rule 144A and Regulation S under the Securities Act. The sale of the 8% Notes and the issuance of the Guarantee were made without general solicitation or advertising.

Common Stock

In March 2004, Michael Targoff and Chris Toffales, both of which were at such time and currently are directors of the registrant, purchased 21,256 and 3,188 shares of the registrant's common stock, respectively, at a price of \$23.52 per share, for an aggregate purchase price of \$500,000 and \$75,000, respectively. These shares were issued in reliance on the exemption from registration afforded by the provisions of Section 4(2) of the Securities Act, as a transaction by an issuer not involving any public offering.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

See Exhibit Index beginning on page II-6 of this registration statement, which is incorporated herein by reference.

(b) Financial Statement Schedules

All schedules have been omitted because the information required to be set forth in such schedules is not applicable or is shown in the consolidated financial statements, including the notes thereto.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 Act and will be

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	Indenture, dated as of January 23, 2004, by and among CPI, as Issuer, the Guarantors named therein, as Guarantors, and The Bank of New York Trust Company, N.A. (as successor to BNY Western Trust Company), as Trustee (Exhibit 4.1)(8)
4.2*	Form of Management Stockholders Agreement among CPI Holdco, Cypress Merchant Banking Partners II L.P., Cypress Merchant Banking II C.V., 55th Street Partners II L.P., Cypress Side-by-Side LLC, and certain management stockholders named therein, as such agreement will be amended to become effective upon closing of this offering
4.3	Indenture, dated as of February 22, 2005, by and between CPI Holdco, as Issuer, and The Bank of New York Trust Company, N.A., as Trustee (Exhibit 10.2)(12)
4.4*	Form of Registration Rights Agreement, dated as of January 23, 2004, by and among CPI Holdco (then known as CPI Acquisition Corp.), Cypress Merchant Banking Partners II L.P., Cypress Merchant Banking II C.V., 55th Street Partners II L.P. and Cypress Side-by-Side LLC, as such agreement will be amended to become effective upon closing of this offering
4.5*	Specimen common stock certificate
5.1*	Legal Opinion of Irell & Manella LLP

Exhibit No.	Description
10.1	Credit Agreement, dated as of January 23, 2004, amended and restated as of November 29, 2004, by and among CPI, as Borrower, the Guarantors named therein, the Lenders from time to time party thereto, UBS Securities LLC, Bear, Stearns & Co. Inc., UBS Loan Finance LLC, UBS AG, Stamford Branch, Bear Stearns Corporate Lending Inc., Wachovia Bank, National Association, and Wachovia Capital Markets, LLC (Exhibit 10.1)(11)
10.2	Amendment No. 1, dated as of February 16, 2005, to the Credit Agreement (Exhibit 10.1)(12)
10.3	Amendment No. 2, dated as of April 13, 2005, to the Credit Agreement (Exhibit 10.1)(13)
10.4	Amendment No. 3, dated as of December 15, 2005, to the Credit Agreement (Exhibit 10.1)(15)
10.5	Security Agreement, dated as of January 23, 2004, among CPI, the Guarantors party thereto, and UBS AG, Stamford Branch (Exhibit 10.2)(8)
10.6	Cross License Agreement, dated as of August 10, 1995, between CPI and Varian Associates (Exhibit 10.11)(1)
10.7	Agreement of Purchase and Sale (San Carlos Property), dated February 7, 2003, by and between CPI (as successor to Holding) and Palo Alto Medical Foundation; Seventh Amendment, dated November 12, 2003; and Ninth Amendment, dated June 16, 2004 (Exhibit 10.1)(10)
10.8	Agreement re: Environmental Matters, dated June 18, 2004, by and between 301 Holding LLC, CPI, Varian Medical Systems, Inc. and Palo Alto Medical Foundation (Exhibit 10.3)(10)
10.9	Assignment and Assumption of Lessee's Interest in Lease (Units 1-4, Palo Alto) and Covenants, Conditions and Restrictions on Leasehold Interests (Units 1-12, Palo Alto), dated as of August 10, 1995, by and among Varian

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10.10	Realty Inc., Varian Associates and CPI (Exhibit 10.13)(1) Fourth Amendment of Lease, dated December 15, 2000, by and between The Board of Trustees of the Leland Stanford Junior University and CPI (Exhibit 10.10)(3)
10.11	Sublease (Unit 8, Palo Alto), dated as of August 10, 1995, by and between Varian Realty Inc. and CPI (Exhibit 10.15)(1)
10.12	Sublease (Building 4, Palo Alto), dated as of August 10, 1995, by and between CPI, as Sublessee, Varian, as Sublessor, and Varian Realty Inc., as Adjacent Property Sublessor (Exhibit 10.16)(1)
10.13	First Amendment to Sublease, Subordination, Non-Disturbance and Attornment Agreement, dated as of April 2, 1999, by and among Varian, Inc., CPI, Varian, and Varian Realty Inc. (Exhibit 10.15)(14)
10.14	Second Amendment to Sublease, dated as of April 28, 2000, by and between Varian, Inc. and CPI (Exhibit 10.16) (14)
10.15	Communications & Power Industries 2000 Stock Option Plan (Exhibit 10.32)(2)
10.16	First Amendment to Communications and Power Industries 2000 Stock Option Plan (Exhibit 10.32.1)(5)
10.17	Form of Stock Option Agreement 2000 Stock Option Plan (Exhibit 10.33)(2)

Exhibit No.	Description
10.18	Form of Option Rollover Agreement (U.S. Employees) (Exhibit 10.3)(8)
10.19	Form of Option Rollover Agreement (Canadian Employees) (Exhibit 10.5)(14)
10.20	The 2004 Stock Incentive Plan (Exhibit 10.1)(9)
10.21	Amendment to the 2004 Stock Incentive Plan (Exhibit 10.27)(11)
10.22	Form of Option Agreement (Employees) (Exhibit 10.2)(9)
10.23	Form of Option Agreement (Directors) (Exhibit 10.3)(9)
10.24*	2006 Equity and Performance Incentive Plan
10.25	Pension Plan for Executive Employees of CPI Canada, Inc. (as applicable to O. Joe Caldarelli) effective January 1, 2002 (Exhibit 10.43)(7)
10.26	Employment Agreement for O. Joe Caldarelli, dated March 19, 2002 (Exhibit 10.37)(6)
10.27	Employment Agreement for Robert A. Fickett, dated September 30, 2002 (Exhibit 10.38)(6)
10.28	Employment Agreement for Joel A. Littman, dated September 30, 2002 (Exhibit 10.39)(6)
10.29	Employment Agreement for Mike Cheng, dated November 2, 2002 (Exhibit 10.40)(7)
10.30	Employment Agreement for Don C. Coleman, dated November 2, 2002 (Exhibit 10.41)(7)
10.31	Legal and Ethical Conduct Policy (Exhibit 10.30)(16)
12†	Statement re: Computation of Ratio of Earnings to Fixed Charges
21	Subsidiaries of CPI Holdco (Exhibit 21)(14)
23.1†	Consent of KPMG LLP
23.2*	Consent of Irell & Manella LLP
24.1†	Power of Attorney

†Filed herewith.

*To be filed by amendment.

- (1) Incorporated by reference to CPI's Registration Statement on Form S-1 (Registration No. 33-96858) filed on September 12, 1995
- (2) Incorporated by reference to CPI's Annual Report on Form 10-K for the fiscal year ended September 29, 2000 (File No. 033-96858)
- (3) Incorporated by reference to CPI's Quarterly Report on Form 10-Q for the quarter ended December 29, 2000 (File No. 033-96858)
- (4) Incorporated by reference to CPI's Quarterly Report on Form 10-Q for the quarter ended March 29, 2002
- (5) Incorporated by reference to CPI's Quarterly Report on Form 10-Q for the quarter ended April 4, 2003
- (6) Incorporated by reference to CPI's Annual Report on Form 10-K for the fiscal year ended September 27, 2002

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- (7) Incorporated by reference to CPI's Annual Report on Form 10-K for the fiscal year ended October 3, 2003
 - (8) Incorporated by reference to CPI's Quarterly Report on Form 10-Q for the quarter ended January 2, 2004
 - (9) Incorporated by reference to CPI Holdco's Quarterly Report on Form 10-Q for the quarter ended April 2, 2004
 - (10) Incorporated by reference to CPI Holdco's Quarterly Report on Form 10-Q for the quarter ended July 2, 2004
 - (11) Incorporated by reference to CPI Holdco's Annual Report on Form 10-K for the fiscal year ended October 1, 2004
 - (12) Incorporated by reference to CPI Holdco's Form 8-K filed on February 23, 2005
 - (13) Incorporated by reference to CPI Holdco's Form 8-K filed on April 19, 2005
 - (14) Incorporated by reference to CPI Holdco's Registration Statement on Form S-4 (Registration No. 333-123917) filed on April 7, 2005
 - (15) Incorporated by reference to CPI Holdco's Form 8-K filed on December 16, 2005
 - (16) Incorporated by reference to CPI Holdco's Annual Report on Form 10-K for the fiscal year ended September 30, 2005
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