

ORTHOFIX INTERNATIONAL N V

Form 10-K/A

May 01, 2012

[Table of Contents](#)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 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 December 31, 2011

or

o 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: 0-19961

ORTHOFIX INTERNATIONAL N.V.

(Exact name of registrant as specified in its charter)

Curaçao
(State or other jurisdiction of
incorporation or organization)

N/A
(I.R.S. Employer
Identification No.)

7 Abraham de Veerstraat

Curaçao
(Address of principal executive offices)

N/A
(Zip Code)

599-9-4658525

(Registrant's telephone number, including area code)

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

Common Stock, \$0.10 par value
(Title of Class)

Nasdaq Global Select Market
(Name of Exchange on Which Registered)

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 ☐

Edgar Filing: ORTHOFIX INTERNATIONAL N V - Form 10-K/A

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of 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, 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 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of registrant's common stock held by non-affiliates, based upon the closing price of the common stock on the last business day of the registrant's most recently completed second fiscal quarter, June 30, 2011, as reported by the Nasdaq Global Select Market, was approximately \$774.7 million.

As of February 21, 2012, 18,700,474 shares of common stock were issued and outstanding

Table of Contents

EXPLANATORY NOTE

This Amendment No. 1 (this Amendment) to Orthofix International N.V.'s Annual Report on Form 10-K for the year ended December 31, 2011 (the Original Form 10-K) is being filed solely to correct certain section numbering in the text of Exhibit 10.5, which is refiled herewith. A new Exhibit Index has been included herewith under Section 3 of Item 15(a), together with new certifications by our principal executive officer and principal financial officer as required by Rule 12b-15 under the Securities and Exchange Act of 1934, as amended. This Amendment does not reflect events occurring after the filing of the Original Form 10-K and no attempt has been made in this Amendment to modify or update other disclosures as presented in the Original Form 10-K.

Table of Contents

Table of Contents

	Page
<u>PART IV</u>	4
<u>Item 15. Exhibits and Financial Statement Schedules</u>	4
<u>SIGNATURES</u>	8

Table of Contents

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) Documents filed as part of report on Form 10-K

(Section 1 (Financial Statements) and Section 2 (Financial Statement Schedules) were included with the Original Form 10-K and are not amended herewith.)

3. Exhibits

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated as of August 4, 2006, among Orthofix International N.V., Orthofix Holdings, Inc., New Era Medical Limited, Blackstone Medical, Inc. and William G. Lyons, III, as Equityholders Representative (filed as an exhibit to the Company's current report on Form 8-K filed August 7, 2006 and incorporated herein by reference).
2.2	Asset Purchase Agreement, dated as of March 8, 2010, by and between Tyco Healthcare Group LP d/b/a Covidien, Covidien AG, Mallinckrodt do Brasil Ltda, Kendall de Mexico S.A. de C.V., Novamedix Limited, Novamedix Distribution Limited, Novamedix Services Limited, Promeca S.A. de C.V., Orthofix do Brasil, Orthofix S.r.l., Orthofix S.A., Intavent Orthofix Limited, Breg Mexico S. de R.I. de CV, and Implantes y Sistemas Medicos, Inc. (filed as an exhibit to the Company's current report on Form 8-K filed March 9, 2010 and incorporated herein by reference).
3.1	Certificate of Incorporation of the Company (filed as an exhibit to the Company's annual report on Form 20-F dated June 29, 2001 and incorporated herein by reference).
3.2**	Articles of Association of the Company as amended.
10.1	Credit Agreement, dated as of August 30, 2010, among Orthofix Holdings, Inc., Orthofix International N.V. and certain domestic subsidiaries of Orthofix International N.V., the several banks and other financial institutions as may from time to time become parties thereunder, and JPMorgan Chase, N.A. (filed as an exhibit to the Company's current report on Form 8-K filed August 31, 2010 and incorporated herein by reference).
10.2	First Amendment to Credit Agreement, dated May 4, 2011, among Orthofix Holdings, Inc., a Delaware corporation, Orthofix International N.V. (Orthofix International), a Netherlands Antilles corporation, certain domestic direct and indirect subsidiaries of Orthofix International, JPMorgan Chase Bank, N.A., as Administrative Agent, and certain lender parties thereto (filed as an exhibit to the Company's current report on Form 8-K filed May 5, 2011 and incorporated herein by reference).
10.3+	Matrix Commercialization Collaboration Agreement, entered into July 24, 2008, by and between Orthofix Holdings, Inc. and Musculoskeletal Transplant Foundation (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2009 and incorporated herein by reference).
10.4	

Edgar Filing: ORTHOFIX INTERNATIONAL N V - Form 10-K/A

Amendment No. 1 to Matrix Commercialization Collaboration Agreement, dated as of December 15, 2010, by and between Musculoskeletal Transplant Foundation, Inc. and Orthofix Holdings, Inc. (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2010 and incorporated herein by reference).

- 10.5*+ Amendment No. 2 to Matrix Commercialization Collaboration Agreement, dated as of January 9, 2012, by and between Musculoskeletal Transplant Foundation, Inc. and Orthofix Holdings, Inc.
- 10.6 Orthofix International N.V. Amended and Restated Stock Purchase Plan, as amended (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2011 and incorporated herein by reference).

Edgar Filing: ORTHOFIX INTERNATIONAL N V - Form 10-K/A

Table of Contents

- 10.7 Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended June 30, 2009 and incorporated herein by reference).
- 10.8 Orthofix International N.V. Staff Share Option Plan, as amended through April 22, 2003 (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2007 and incorporated herein by reference).
- 10.9 Amended and Restated Orthofix Deferred Compensation Plan (filed as an exhibit to the Company's current report on Form 8-K filed January 7, 2009, and incorporated herein by reference).
- 10.10 Form of Employee Non-Qualified Stock Option Agreement (post-2008 grants) (filed as an exhibit to the Company's current report on Form 8-K filed July 7, 2009 and incorporated herein by reference).
- 10.11 Form of Non-Employee Director Non-Qualified Stock Option Agreement (post-2008 grants) (filed as an exhibit to the Company's current report on Form 8-K filed July 7, 2009 and incorporated herein by reference).
- 10.12 Form of Nonqualified Stock Option Agreement under the Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (pre-2009 grants vesting over 3 years) (filed as an exhibit to the Company's current report on Form 8-K filed June 20, 2008 and incorporated herein by reference).
- 10.13 Form of Nonqualified Stock Option Agreement under the Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (pre-2009 grants 3 year cliff vesting) (filed as an exhibit to the Company's current report on Form 8-K filed June 20, 2008 and incorporated herein by reference).
- 10.14 Form of Restricted Stock Grant Agreement under the Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (pre-2011 grants vesting over 3 years) (filed as an exhibit to the Company's current report on Form 8-K filed June 20, 2008 and incorporated herein by reference).
- 10.15 Form of Restricted Stock Grant Agreement under the Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (post-2010 grants vesting over 3 years) (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2010 and incorporated herein by reference).
- 10.16 Form of Restricted Stock Grant Agreement under the Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (3 year cliff vesting) (filed as an exhibit to the Company's current report on Form 8-K filed June 20, 2008 and incorporated herein by reference).
- 10.17 Inducement Grant Nonqualified Stock Option Agreement between Orthofix International N.V. and Robert S. Vaters (filed as an exhibit to the current report on Form 8-K of Orthofix International N.V. dated September 10, 2008 and incorporated herein by reference).
- 10.18 Inducement Grant Nonqualified Stock Option Agreement, dated April 1, 2011, between Orthofix International N.V. and Vicente Trelles (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2011 and incorporated herein by reference).
- 10.19 Second Amended and Restated Performance Accelerated Stock Options Agreement between Orthofix International N.V. and Bradley R. Mason dated October 14, 2008 (filed as an exhibit to the Company's current report on Form 8-K filed October 15, 2008 and incorporated herein by reference).
- 10.20 Nonqualified Stock Option Agreement between Orthofix International N.V. and Bradley R. Mason dated October 14, 2008 (filed as an exhibit to the Company's current report on Form 8-K filed October 15, 2008 and incorporated herein by reference).

Edgar Filing: ORTHOFIX INTERNATIONAL N V - Form 10-K/A

Table of Contents

- 10.21 Form of Award Letter Regarding Special Retention Cash Bonus Award (filed as an exhibit to the Company's current report on Form 8-K/A filed on February 23, 2011 and incorporated herein by reference).
- 10.22 Description of Director Compensation Policy (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2011 and incorporated herein by reference).
- 10.23 Form of Indemnity Agreement (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2008 and incorporated herein by reference).
- 10.24 Amended and Restated Employment Agreement, entered into and effective as of July 1, 2009, by and between Orthofix Inc. and Alan W. Milinazzo (filed as an exhibit to the Company's current report on Form 8-K filed July 7, 2009 and incorporated herein by reference).
- 10.25 Amendment No. 1 to Amended and Restated Employment Agreement, dated July 30, 2009, by and between Orthofix Inc. and Alan W. Milinazzo (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended September 30, 2009 and incorporated herein by reference).
- 10.26 Letter Agreement, dated June 15, 2011, between Orthofix Inc., Orthofix International N.V. and Alan W. Milinazzo (filed as an exhibit to the Company's quarterly report on current report on Form 8-K filed June 16, 2011 and incorporated herein by reference).
- 10.27 Amended and Restated Employment Agreement, entered into and effective as of July 28, 2010, by and between Orthofix Inc. and Robert S. Vaters (filed as an exhibit to the Company's current report on Form 8-K filed August 3, 2010 and incorporated herein by reference).
- 10.28 Addendum to Amended and Restated Employment Agreement, entered into as of March 9, 2011, by and between Orthofix Inc. and Robert S. Vaters (filed as an exhibit to the Company's quarterly report on current report on Form 8-K filed March 15, 2011 and incorporated herein by reference).
- 10.29 Amended and Restated Employment Agreement, dated as of June 15, 2011 and effective as of August 1, 2011, by and between Orthofix Inc., Orthofix International N.V. and Robert S. Vaters (filed as an exhibit to the Company's quarterly report on current report on Form 8-K filed June 16, 2011 and incorporated herein by reference).
- 10.30 Amended and Restated Employment Agreement, entered into and effective as of July 1, 2009, by and between Orthofix Inc. and Michael M. Finegan (filed as an exhibit to the Company's current report on Form 8-K filed July 7, 2009 and incorporated herein by reference).
- 10.31 Amendment No. 1 to Amended and Restated Employment Agreement, dated August 4, 2009, by and between Orthofix Inc. and Michael M. Finegan (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended September 30, 2009 and incorporated herein by reference).
- 10.32 Amendment No. 2 to Amended and Restated Employment Agreement, dated as of October 1, 2011, by and between Orthofix Inc. and Michael M. Finegan (filed as an exhibit to the Company's current report on Form 8-K filed October 4, 2011 and incorporated herein by reference).
- 10.33 Amended and Restate Employment Agreement, entered into on February 11, 2011, by and between Breg, Inc. and Brad Lee (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2010 and incorporated herein by reference).
- 10.34 Employment Agreement, entered into on December 9, 2010, by and between Orthofix Inc. and Jeffrey M. Schumm (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2010 and incorporated herein by reference).

Edgar Filing: ORTHOFIX INTERNATIONAL N V - Form 10-K/A

Table of Contents

10.35	Employment Agreement, entered into as of March 2, 2011, by and between Orthofix Inc. and Brian McCollum (filed as an exhibit to the Company's current report on Form 8-K filed March 7, 2011 and incorporated herein by reference).
10.36	Employment Agreement, entered into as of April 1, 2011, by and between Orthofix Inc. and Vicente Trelles (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2011 and incorporated herein by reference).
10.37	Employment Agreement, entered into as of October 1, 2011, by and between Orthofix Inc. and Bryan McMillan (filed as an exhibit to the Company's quarterly report on Form 10-Q for the quarter ended September 30, 2011 and incorporated herein by reference).
10.38	Amended and Restated Employment Agreement, entered into on July 28, 2010, by and between Orthofix Inc. and Michael Simpson (filed as an exhibit to the Company's current report on Form 8-K filed August 3, 2010 and incorporated herein by reference).
10.39	Separation Letter Agreement, dated February 7, 2011, between Orthofix Inc. and Michael Simpson (filed as an exhibit to the Company's current report on Form 8-K filed on February 10, 2011 and incorporated herein by reference).
10.40	Amended and Restated Employment Agreement, entered into on July 1, 2009, by and between Orthofix Inc. and Eric Brown (filed as an exhibit to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2009 and incorporated herein by reference).
10.41	Separation Letter Agreement, dated January 10, 2011, between Orthofix Inc. and Eric Brown (filed as an exhibit to the Company's current report on Form 8-K filed January 14, 2011 and incorporated herein by reference).
10.42	Form of Amendment to Stock Option Agreements (for Alan W. Milinazzo, Robert S. Vaters, Bradley R. Mason, Michael M. Finegan and Michael Simpson) (filed as an exhibit to the Company's current report on Form 8-K filed July 7, 2009 and incorporated herein by reference).
21.1**	List of Subsidiaries
23.1**	Consent of Independent Registered Public Accounting Firm
31.1**	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer (with respect to Original Form 10-K).
31.2**	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer (with respect to Original Form 10-K).
31.3*	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer (with respect to the Amendment).
31.4*	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer (with respect to the Amendment).
32.1**	Section 1350 Certification of Chief Executive Officer.
32.2**	Section 1350 Certification of Chief Financial Officer.
101^**	The following financial statements from Orthofix International N.V. on Form 10-K for the year ended December 31, 2011 filed on February 29, 2012, formatted in XBRL: (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations, (iii) Consolidated Statements of Changes in Shareholders' Equity and Comprehensive Income (Loss), (iv) Consolidated Statements of Cash Flows, and (v) the Notes to the Consolidated Financial Statements.

* Filed herewith.

** Previously filed with Original Form 10-K.

+ Certain confidential portions of this exhibit were omitted by means of redacting a portion of the text. This exhibit has been filed separately with the Secretary of the Commission without redactions pursuant to our Application Requesting Confidential Treatment under the Securities Exchange Act of 1934.

[Table of Contents](#)

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.

ORTHOFIX INTERNATIONAL N.V.

Dated: May 1, 2012

By:	/s/ Robert S. Vaters	
	Name:	Robert S. Vaters
	Title:	President and Chief Executive Officer