

SIRIUS SATELLITE RADIO INC

Form S-4

July 25, 2007

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As filed with the Securities and Exchange Commission on July 25, 2007

Registration No. 333-

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

Form S-4

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
SIRIUS SATELLITE RADIO INC.**

(Exact name of registrant as specified in its charter)

Delaware

*(State or other jurisdiction of
incorporation or organization)*

4832

*(Primary Standard Industrial
Classification Code Number)*

52-1700207

*(I.R.S. Employer
Identification Number)*

**1221 Avenue of the Americas, 36th Floor
New York, New York 10020
(212) 584-5100**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Patrick L. Donnelly

**Executive Vice President, General Counsel & Secretary
Sirius Satellite Radio Inc.**

**1221 Avenue of the Americas, 36th Floor
New York, New York 10020
(212) 584-5100**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Gary L. Sellers, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
(212) 455-2000**

**Joseph M. Titlebaum
General Counsel and Secretary
XM Satellite Radio Holdings Inc.
1500 Eckington Place, NE
Washington, DC 20002
(202) 380-4000**

**Thomas H. Kennedy, Esq.
Skadden, Arps, Slate, Meagher
& Flom LLP
Four Times Square
New York, New York 10036
(212) 735-3000**

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this registration statement becomes effective and all other conditions to the proposed merger described herein have been satisfied or waived.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share	1,701,908,350(1)	N/A	\$4,510,057,126(2)	\$138,458.75

- (1) The number of shares of common stock of the registrant being registered is based upon (x) an estimate of the maximum number of shares of Class A common stock, par value \$0.01 per share, of XM Satellite Radio Holdings Inc. (XM) presently outstanding or issuable or expected to be issued in connection with the merger of XM with a wholly-owned subsidiary of the registrant multiplied by (y) the exchange ratio of 4.6 shares of common stock, par value \$0.001 per share, of the registrant, for each such share of Class A common stock of XM.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(f) under the Securities Act of 1933, as amended. The proposed maximum aggregate offering price for the common stock is the product of (x) \$12.19, the average of the high and low sales prices of XM Class A common stock, as quoted on the NASDAQ Global Select Market, on July 24, 2007, and (y) 369,980,076, the estimated maximum number of shares of XM Class A common stock that may be exchanged for the shares of common stock of the registrant being registered.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further Amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this joint proxy statement/prospectus is not complete and may be changed. We may not sell the securities offered by this joint proxy statement/prospectus until the registration statement filed with the Securities and Exchange Commission is effective. This joint proxy statement/prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities in any jurisdiction where an offer, solicitation or sale is not permitted.

PRELIMINARY SUBJECT TO COMPLETION DATED JULY 25, 2007

PROPOSED MERGER YOUR VOTE IS VERY IMPORTANT

Each of the boards of directors of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. has approved a strategic merger, combining SIRIUS and XM in what we intend to be a merger of equals. We believe that the proposed merger will allow XM and SIRIUS to provide more choices for their respective subscribers and that the combined company will be better positioned to compete in the rapidly evolving audio entertainment marketplace.

XM and SIRIUS have entered into an agreement and plan of merger pursuant to which XM and SIRIUS will combine their businesses through the merger of XM with a newly formed, wholly-owned subsidiary of SIRIUS, with XM thereupon becoming a wholly-owned subsidiary of SIRIUS.

In the proposed merger, XM stockholders will receive 4.6 shares of SIRIUS common stock for each share of XM Class A common stock, referred to as XM common stock. This exchange ratio is fixed and will not be adjusted to reflect stock price changes prior to the closing. SIRIUS stockholders will continue to own their existing shares, which will not be affected by the merger. Upon completion of the merger, XM's former stockholders will own approximately % of the then outstanding SIRIUS common stock, based on the number of shares of SIRIUS and XM outstanding on , 2007. The value of the merger consideration to be received in exchange for each share of XM common stock will fluctuate with the market price of SIRIUS common stock.

Based on the closing sale price for SIRIUS common stock on February 16, 2007, the last trading day before public announcement of the merger, the 4.6 exchange ratio represented approximately \$17.02 in value for each share of XM common stock. Based on the closing sale price for SIRIUS common stock on , 2007, the last trading day before the printing of this joint proxy statement/prospectus, which we refer to as this Proxy Statement, the 4.6 exchange ratio represented approximately \$ in value for each share of XM common stock.

SIRIUS common stock is listed on the NASDAQ Global Select Market under the symbol SIRI. XM common stock is listed on the NASDAQ Global Select Market under the symbol XMSR. We urge you to obtain current market quotations for the shares of SIRIUS and XM.

Your vote is very important. The merger cannot be completed unless SIRIUS stockholders approve the amendment to SIRIUS certificate of incorporation and the issuance of SIRIUS capital stock in the merger and XM stockholders adopt the merger agreement. Each of XM and SIRIUS is holding a special meeting of its stockholders to vote on the proposals necessary to complete the merger. Information about these meetings, the merger and the other business to be considered by stockholders is contained in this Proxy Statement. We urge you to read this Proxy Statement carefully. **You should also carefully consider the risk factors beginning on page 15.**

Whether or not you plan to attend your respective company's special meeting of stockholders, please submit your proxy as soon as possible to make sure that your shares are represented at that meeting.

The SIRIUS board of directors recommends that SIRIUS stockholders vote FOR the proposals to approve the amendment to SIRIUS certificate of incorporation and the issuance of SIRIUS capital stock in the merger, both of which are necessary to effect the merger.

The XM board of directors recommends that XM stockholders vote FOR the proposal to adopt the merger agreement.

Mel Karmazin
Chief Executive Officer
Sirius Satellite Radio Inc.

Gary M. Parsons
Chairman of the Board of Directors
XM Satellite Radio Holdings Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities to be issued in connection with the merger or determined if this Proxy Statement is accurate or complete. Any representation to the contrary is a criminal offense.

This Proxy Statement is dated _____, 2007, and is first being mailed to stockholders of XM and SIRIUS on or about _____, 2007.

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ADDITIONAL INFORMATION

This Proxy Statement incorporates by reference important business and financial information about SIRIUS and XM from other documents that are not included in or delivered with this Proxy Statement. For a listing of the documents incorporated by reference into this Proxy Statement, see Where You Can Find More Information . This information is available to you without charge upon your written or oral request. You can obtain the documents incorporated by reference into this document through the Securities and Exchange Commission website at <http://www.sec.gov> or by requesting them in writing or by telephone at the appropriate address below:

By Mail: Sirius Satellite Radio Inc.
1221 Avenue of the Americas
36th Floor
New York, New York 10020
Attention: Investor Relations

By Telephone: (212) 584-5180

By Mail: XM Satellite Radio Holdings Inc.
1500 Eckington Place, NE
Washington, DC 20002
Attention: Investor Relations

By Telephone: (202) 380-4000

You may also obtain documents incorporated by reference into this Proxy Statement by requesting them in writing or by telephone from _____, SIRIUS proxy solicitor, or _____, XM's proxy solicitor, at the following addresses and telephone numbers:

To receive timely delivery of the documents in advance of the meetings, you should make your request no later than _____, 2007.

**VOTING ELECTRONICALLY OR
BY TELEPHONE**

SIRIUS stockholders of record on the close of business on _____, 2007, the record date for the SIRIUS special meeting, may submit their proxies by telephone or Internet by following the instructions on their proxy card or voting form. If you have any questions regarding whether you are eligible to submit your proxy by telephone or by Internet, please contact _____ by telephone at _____ (toll free) or via the Internet at _____.

XM stockholders of record on the close of business on _____, 2007, the record date for the XM special meeting, may submit their proxies by telephone or Internet by following the instructions on their proxy card or voting form. If you have any questions regarding whether you are eligible to submit your proxy by telephone or by Internet, please contact _____ by telephone at (toll free) or via the Internet at _____.

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**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON _____, 2007**

To the Stockholders of Sirius Satellite Radio Inc.:

A special meeting of stockholders of Sirius Satellite Radio Inc. will be held at _____, on _____, 2007 at _____ a.m., local time, for the following purposes:

1. To amend SIRIUS certificate of incorporation to increase the number of authorized shares of SIRIUS common stock (the Charter Amendment).
2. To approve the issuance of SIRIUS common stock, par value \$0.001 per share, and SIRIUS Series A convertible preferred stock, par value \$0.001 per share, a new series of SIRIUS preferred stock, pursuant to the Merger Agreement, dated as of February 19, 2007, by and among Sirius Satellite Radio Inc., Vernon Merger Corporation and XM Satellite Radio Holdings Inc., as the same may be amended from time to time (the Share Issuance).
3. To approve any motion to adjourn or postpone the special meeting to a later date or dates, if necessary, to solicit additional proxies if there are insufficient votes at the time of the special meeting.
4. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

Proposals 1 and 2 are conditioned on each other and approval of each is required for completion of the merger.

The accompanying Proxy Statement further describes the matters to be considered at the meeting. A copy of the merger agreement has been included as Annex A to the Proxy Statement.

The SIRIUS board of directors has set _____, 2007 as the record date for the special meeting. Only holders of record of SIRIUS common stock at the close of business on _____, 2007 will be entitled to notice of and to vote at the special meeting and any adjournments or postponements thereof. Any stockholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote on such stockholder's behalf. Such proxy need not be a holder of SIRIUS common stock. **To ensure your representation at the special meeting, please complete and return the enclosed proxy card or submit your proxy by telephone or through the Internet.** Please vote promptly whether or not you expect to attend the special meeting. Submitting a proxy now will not prevent you from being able to vote at the special meeting by attending in person and casting a vote.

The SIRIUS board of directors recommends that you vote FOR the proposal to amend SIRIUS certificate of incorporation to increase the number of authorized shares of common stock, FOR the proposal to approve the issuance of SIRIUS common stock and SIRIUS Series A convertible preferred stock in the merger and FOR the proposal to approve any motion to adjourn or postpone the special meeting to a later date or dates if necessary to solicit additional proxies.

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By Order of the Board of Directors,

PATRICK L. DONNELLY

Executive Vice President, General Counsel and Secretary

New York, New York

, 2007

PLEASE VOTE YOUR SHARES PROMPTLY. YOU CAN FIND INSTRUCTIONS FOR VOTING ON THE ENCLOSED PROXY CARD. IF YOU HAVE QUESTIONS ABOUT THE PROPOSALS OR ABOUT VOTING YOUR SHARES, PLEASE CALL AT (TOLL FREE) OR VIA THE INTERNET AT .

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**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON _____, 2007**

To the Stockholders of XM Satellite Radio Holdings Inc.:

A special meeting of stockholders of XM Satellite Radio Holdings Inc. will be held at _____, on _____, 2007 at _____ a.m., local time, for the following purposes:

1. To adopt the Merger Agreement, dated as of February 19, 2007, by and among Sirius Satellite Radio Inc., Vernon Merger Corporation and XM Satellite Radio Holdings Inc. as the same may be amended from time to time.
2. To approve any motion to adjourn or postpone the special meeting to a later date or dates, if necessary, to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.
3. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

The accompanying Proxy Statement further describes the matters to be considered at the special meeting. A copy of the merger agreement has been included as Annex A to this Proxy Statement.

The XM board of directors has set _____, 2007 as the record date for the special meeting. Only holders of record of shares of XM common stock at the close of business on _____, 2007 will be entitled to notice of and to vote at the special meeting and any adjournments or postponements thereof. **To ensure your representation at the special meeting, please complete and return the enclosed proxy card or submit your proxy by telephone or through the Internet.** Please vote promptly whether or not you expect to attend the special meeting. Submitting a proxy now will not prevent you from being able to vote at the special meeting by attending in person and casting a vote.

The board of directors of XM recommends that you vote FOR the proposal to adopt the merger agreement and FOR the proposal to approve any motion to adjourn or postpone the Special Meeting to a later date or dates if necessary to solicit additional proxies.

By Order of the Board of Directors,

Gary M. Parsons
Chairman of the Board of Directors

_____, 2007

PLEASE VOTE YOUR SHARES PROMPTLY. YOU CAN FIND INSTRUCTIONS FOR VOTING ON THE ENCLOSED PROXY CARD. IF YOU HAVE QUESTIONS ABOUT THE PROPOSALS OR ABOUT VOTING YOUR SHARES, PLEASE CONTACT _____ BY TELEPHONE AT _____ (TOLL FREE) OR VIA

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Satellite Radio Inc.

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QUESTIONS AND ANSWERS ABOUT THE MEETINGS

The following questions and answers briefly address some commonly asked questions about the SIRIUS and the XM special meetings. They may not include all the information that is important to stockholders of XM and SIRIUS. We urge stockholders to read carefully this entire Proxy Statement, including the annexes and the other documents referred to herein.

Q: Why am I receiving these materials?

A: We are sending you these materials to help you decide how to vote your shares of XM or SIRIUS stock with respect to their proposed merger.

The merger cannot be completed unless XM stockholders adopt the merger agreement, and SIRIUS stockholders approve the amendment of SIRIUS' certificate of incorporation and the issuance of SIRIUS capital stock in the merger. Each of SIRIUS and XM is holding its special meeting of stockholders to vote on the proposals necessary to complete the merger. Information about these meetings, the merger and the other business to be considered by stockholders is contained in this Proxy Statement.

We are delivering this document to you as both a joint proxy statement of XM and SIRIUS and a prospectus of SIRIUS. It is a joint proxy statement because each of our boards of directors is soliciting proxies from its stockholders. It is a prospectus because SIRIUS will exchange shares of its common stock for shares of XM in the merger.

Q: What will stockholders receive in the merger?

A: In the proposed merger, XM stockholders will receive 4.6 shares of SIRIUS common stock for each share of XM common stock. This exchange ratio is fixed and will not be adjusted to reflect stock price changes prior to the closing. SIRIUS' stockholders will continue to own their existing shares, which will not be affected by the merger.

Q: When do XM and SIRIUS expect to complete the merger?

A: XM and SIRIUS expect to complete the merger after all conditions to the merger in the merger agreement are satisfied or waived, including after stockholder approvals are received at the special meetings of XM and SIRIUS and all required regulatory approvals are received. SIRIUS and XM currently expect to complete the merger by the end of 2007. However, it is possible that factors outside of either company's control could require SIRIUS or XM to complete the merger at a later time or not to complete it at all.

Q: How do the boards of directors of SIRIUS and XM recommend that I vote?

A: The SIRIUS board of directors recommends that holders of SIRIUS common stock vote FOR the proposal to amend SIRIUS' certificate of incorporation and FOR the proposal to approve the issuance of SIRIUS common stock and preferred stock in the merger.

The XM board of directors recommends that XM stockholders vote FOR the proposal to adopt the merger agreement.

Q: What do I need to do now?

A: After carefully reading and considering the information contained in this Proxy Statement, please vote your shares as soon as possible so that your shares will be represented at your respective company's special meeting. Please follow the instructions set forth on the proxy card or on the voting instruction form provided by the record holder if your shares are held in the name of your broker or other nominee.

Q: How do I vote?

A: You may vote before your company's special meeting in one of the following ways:

use the toll-free number shown on your proxy card;

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visit the website shown on your proxy card to vote via the Internet; or

complete, sign, date and return the enclosed proxy card in the enclosed postage-paid envelope.

You may also cast your vote in person at your company's special meeting.

If your shares are held in street name, through a broker, bank or other nominee, that institution will send you separate instructions describing the procedure for voting your shares. Street name stockholders who wish to vote at the meeting will need to obtain a proxy form from the institution that holds their shares.

Q: When and where are the SIRIUS and XM special meetings of stockholders?

A: The special meeting of SIRIUS stockholders will be held at _____ at _____ a.m., local time, on _____, 2007. Subject to space availability, all stockholders as of the record date, or their duly appointed proxies, may attend the meeting. Since seating is limited, admission to the meeting will be on a first-come, first-served basis. Registration and seating will begin at _____ a.m., local time.

The special meeting of XM stockholders will be held at the _____ at _____ a.m., local time, on _____, 2007. Subject to space availability, all stockholders as of the record date, or their duly appointed proxies, may attend the meeting. Since seating is limited, admission to the meeting will be on a first-come, first-served basis. Registration and seating will begin at _____ a.m., local time.

Q: If my shares are held in street name by a broker or other nominee, will my broker or nominee vote my shares for me?

A: Your broker or other nominee does not have authority to vote on the proposals described in this Proxy Statement. Your broker or other nominee will vote your shares held by it in street name with respect to these matters ONLY if you provide instructions to it on how to vote. You should follow the directions your broker or other nominee provides.

Q: What constitutes a quorum?

Stockholders who hold a majority in voting power of the SIRIUS common stock issued and outstanding as of the close of business on the record date and who are entitled to vote must be present or represented by proxy in order to constitute a quorum to conduct business at the SIRIUS special meeting.

Stockholders who hold a majority in voting power of the XM common stock issued and outstanding as of the close of business on the record date and who are entitled to vote must be present or represented by proxy in order to constitute a quorum to conduct business at the XM special meeting.

Q: What vote is required to approve each proposal?

A: *To amend the certificate of incorporation of SIRIUS:* the affirmative vote of a majority of the outstanding shares of common stock of SIRIUS entitled to vote is required to approve the amendment to the certificate of incorporation to increase the authorized number of shares of common stock, which is referred to in this Proxy Statement as the Charter Amendment.

To issue SIRIUS common stock and Series A convertible preferred stock in the merger: the affirmative vote of a majority of the SIRIUS shares voting on the proposal is required to approve the issuance of SIRIUS common stock and Series A convertible preferred stock in the merger, which is referred to in this Proxy Statement as the Share Issuance.

To approve the merger agreement: the affirmative vote of a majority of the outstanding shares of XM common stock entitled to vote is required to approve the merger agreement, which is referred to in this Proxy Statement as the Merger Proposal.

Q: What if I do not vote on the matters relating to the merger?

A: If you are a SIRIUS stockholder and you fail to vote or fail to instruct your broker or other nominee how to vote on the Charter Amendment, your failure to vote will have the same effect as a vote against the Charter Amendment. If you respond with an `abstain` vote, your proxy will have the same effect as a vote against this

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proposal. If you respond but do not indicate how you want to vote on the Charter Amendment, your proxy will be counted as a vote in favor of the Charter Amendment.

If you are a SIRIUS stockholder and you fail to vote or fail to instruct your broker or other nominee how to vote on the Share Issuance, it will have no effect on the outcome of the vote for this proposal. Similarly, if you respond with an abstain vote, your proxy will have no effect on the outcome of the vote for this proposal. If you respond but do not indicate how you want to vote on the Share Issuance, your proxy will be counted as a vote in favor of the Share Issuance.

The approval of the Charter Amendment and the Share Issuance are conditioned on each other, and approval of each is required for completion of the merger.

If you are an XM stockholder and you fail to vote or fail to instruct your broker or other nominee how to vote on the Merger Proposal, it will have the same effect as a vote against the Merger Proposal. If you respond with an abstain vote on the Merger Proposal, your proxy will have the same effect as a vote against the Merger Proposal. If you respond but do not indicate how you want to vote on the Merger Proposal, your proxy will be counted as a vote in favor of the Merger Proposal.

Q: What if I hold shares in both XM and SIRIUS?

A. If you are a stockholder of both XM and SIRIUS, you will receive two separate packages of proxy materials. A vote as an XM stockholder for the Merger Proposal will not constitute a vote as a SIRIUS stockholder for the Charter Amendment or the Share Issuance, or vice versa. Therefore, please sign, date and return all proxy cards that you receive, whether from XM or SIRIUS, or vote as both a XM and SIRIUS stockholder by internet or telephone.

Q: May I change my vote after I have delivered my proxy or voting instruction card?

A: Yes. You may change your vote at any time before your proxy is voted at your special meeting. You may do this in one of four ways: