

VARIAN MEDICAL SYSTEMS INC

Form 10-K/A

August 18, 2016

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended October 2, 2015

OR

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: 1-7598

VARIAN MEDICAL SYSTEMS, INC.

(Exact name of Registrant as specified in its charter)

Delaware

94-2359345

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification Number)

3100 Hansen Way, Palo Alto, California

94304-1038

(Address of principal executive offices)

(Zip Code)

(650) 493-4000

(Registrant's telephone number, including area code)

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

Title of each class Name of each exchange on which registered

Common Stock, \$1 par value New York Stock Exchange

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 during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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  Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of April 3, 2015, the last business day of Registrant's most recently completed second fiscal quarter, the aggregate market value of shares of Registrant's common stock held by non-affiliates of Registrant (based upon the closing sale price of such shares on the New York Stock Exchange on April 2, 2015) was \$9,373,307,322. Shares of Registrant's common stock held by the Registrant's executive officers and directors and by each entity that owned 10% or more of Registrant's outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

At November 13, 2015, the number of shares of the Registrant's common stock outstanding was 96,884,737.

**DOCUMENTS INCORPORATED BY REFERENCE**

Definitive Proxy Statement for the Company's 2016 Annual Meeting of Stockholders—Part III of this Form 10 K

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**EXPLANATORY NOTE**

This Amendment No. 1 to Varian Medical Systems, Inc.'s Annual Report on Form 10-K (the "Form 10-K") for the fiscal year ended October 2, 2015 is being filed solely to update Exhibits 10.43, 10.44, 10.45 and 10.46 in response to comments received from the staff of the Securities and Exchange Commission to a previously filed request for confidential treatment. No other changes have been made to the Form 10-K. This Amendment No. 1 speaks as of the original filing date of the Form 10-K, does not reflect events that may have occurred subsequent to the original filing date, and does not modify or update in any way disclosures made in the original Form 10-K.

**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.

Dated: August 18, 2016

VARIAN MEDICAL SYSTEMS, INC.

By: /s/ Elisha W. Finney

Elisha W. Finney

Executive Vice President, Finance and

Chief Financial Officer

Exhibit Index

Exhibit Number	Description
2	Amended and Restated Distribution Agreement, dated as of January 14, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 2 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).
3.1	Registrant's Amended and Restated Certificate of Incorporation, as amended (incorporated by reference to Exhibit No. 3.1 to the Registrant's Form 8-K Current Report filed as of August 18, 2014, File No. 1-7598).
3.2	Registrant's By-Laws, as amended, effective August 18, 2014 (incorporated by reference to Exhibit No. 3.2 to the Registrant's Form 8-K Current Report filed as of August 18, 2014, File No. 1-7598).
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit No. 4.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).
10.1†	Form of Registrant's Indemnity Agreement with the directors and executive officers (incorporated by reference to Exhibit No. 10.3 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).
10.2†*	Form of Registrant's Change in Control Agreement for Chief Executive Officer.
10.3†*	Form of Registrant's Change in Control Agreement for Senior Executives (Chief Financial Officer and General Counsel).
10.4†*	Form of Registrant's Change in Control Agreement for Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel).
10.5†*	Form of Registrant's Change in Control Agreement for Key Employees.
10.6	Amended and Restated Note Purchase and Private Shelf Agreement, dated as of April 2, 1999, between the Registrant and Prudential Insurance Company of America (certain exhibits and schedules omitted) (incorporated by reference to Exhibit No. 10.7 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).
10.7	Employee Benefits Allocation Agreement, dated April 2, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 99.1 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).
10.8	Intellectual Property Agreement, dated April 2, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 99.2 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).
10.9	

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Tax Sharing Agreement, dated April 2, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 99.3 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).

10.10† Registrant's Frozen Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.17 to the Registrant's Form 10-K Annual Report for the fiscal year ended September 29, 2000, File No. 1-7598).

10.11† Registrant's Amended and Restated 2005 Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.2 of the Registrant's Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).

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Exhibit Number	Description
10.12†*	Registrant's Management Incentive Plan.
10.13†	Registrant's Retirement Plan (incorporated by reference to Exhibit No. 99.1 to the Registrant's Registration Statement on Form S-8 filed on March 14, 2001, and amended June 20, 2001, Registration No. 333-57012).
10.14†	Registrant's 2010 Employee Stock Purchase Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).
10.15†*	Description of Certain Compensatory Arrangements between the Registrant and

its Executive  
Officers and  
Directors as of  
November 20,  
2015.

10.16† Registrant's  
Second  
Amended and  
Restated 2005  
Omnibus Stock  
Plan  
(incorporated  
by reference to  
Exhibit No.  
10.1 to the  
Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
March 30,  
2007, File No.  
1-7598).

10.17† Amendment  
No. 3 to the  
Registrant's  
Second  
Amended and  
Restated 2005  
Omnibus Stock  
Plan  
(incorporated  
by reference to  
Exhibit No.  
10.4 to the  
Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
April 3, 2009,  
File No.  
1-7598).

10.18† Form of  
Registrant's  
Nonqualified  
Stock Option  
Agreement

under the  
Registrant's  
Second  
Amended and  
Restated 2005  
Omnibus Stock  
Plan (effective  
for  
nonqualified  
stock option  
awards)  
(incorporated  
by reference to  
Exhibit No.  
10.22 to the  
Registrant's  
Form 10-K  
Annual Report  
for the fiscal  
year ended  
September 28,  
2007, File No.  
1-7598).

10.19† Form of  
Registrant's  
Nonqualified  
Stock Option  
Agreement  
under the  
Registrant's  
Second  
Amended and  
Restated 2005  
Omnibus Stock  
Plan (effective  
for  
nonqualified  
stock option  
awards granted  
to executive  
officers)  
(incorporated  
by reference to  
Exhibit No.  
10.23 to the  
Registrant's  
Form 10-K  
Annual Report  
for the fiscal  
year ended



September 28,  
2007, File No.  
1-7598).

10.20† Form of  
Registrant's  
Nonqualified  
Stock Option  
Agreement  
under the  
Registrant's  
Second  
Amended and  
Restated 2005  
Omnibus Stock  
Plan (effective  
for  
nonqualified  
stock option  
awards granted  
to  
non-employee  
directors)  
(incorporated  
by reference to  
Exhibit No.  
10.24 to the  
Registrant's  
Form 10-K  
Annual Report  
for the fiscal  
year ended  
September 28,  
2007, File No.  
1-7598).

10.21† Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(incorporated  
by reference to  
Exhibit No.  
10.1 to the  
Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
March 30,

2012, File No.  
1-7598).

10.22† Form of  
Registrant's  
Nonqualified  
Stock Option  
Agreement  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(incorporated  
by reference to  
Exhibit No.  
10.2 to the  
Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
March 30,  
2012, File No.  
1-7598).

10.23† Form of  
Registrant's  
Nonqualified  
Stock Option  
Agreement  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(effective for  
nonqualified  
stock option  
awards granted  
to executive  
officers after  
November 8,  
2015)  
(incorporated  
by reference to  
Exhibit No.  
10.1 to the  
Registrant's

Form 8-K  
Current Report  
filed as of  
November 12,  
2015, File No.  
1-7598).

10.24† Form of  
Registrant's  
Non-Employee  
Director  
Nonqualified  
Stock Option  
Agreement  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Option  
Plan  
(incorporated  
by reference to  
Exhibit No.  
10.3 to the  
Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
March 30,  
2012, File No.  
1-7598).

10.25† Form of  
Registrant's  
Non-Employee  
Director  
Nonqualified  
Stock Option  
Agreement (for  
use in  
Singapore)  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(incorporated  
by reference to

Exhibit 10.4 of  
the Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
March 30,  
2012, File No.  
1-7598).

10.26† Form of  
Registrant's  
Non-Employee  
Director  
Nonqualified  
Stock Option  
Agreement (for  
use outside of  
U.S. except for  
Singapore)  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(incorporated  
by reference to  
Exhibit No.  
10.26 to the  
Registrant's  
Form 10-K  
Annual Report  
for the year  
ended  
September 28,  
2012, File No.  
1-7598).

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Exhibit Number	Description
10.27†	<p>Form of Registrant's Restricted Stock Unit Agreement under the Registrant's Third Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.5 to the Registrant's Form 10-Q Quarterly Report for the quarter ended March 30, 2012, File No. 1-7598).</p>
10.28†	<p>Form of Registrant's Restricted Stock Unit Agreement under the Registrant's Third Amended and Restated 2005 Omnibus Stock Plan (effective for restricted stock unit awards granted to executive officers on or after October 1, 2013 and prior to November 9, 2015) (incorporated</p>

by reference to  
Exhibit No.  
10.2 to the  
Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
December 27,  
2013, File No.  
1-7598).

10.29† Form of  
Registrant's  
Restricted  
Stock Unit  
Agreement  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(effective for  
restricted stock  
unit awards  
granted to  
executive  
officers after  
November 8,  
2015)  
(incorporated  
by reference to  
Exhibit No.  
10.2 to the  
Registrant's  
Form 8-K  
Current Report  
filed as of  
November 12,  
2015, File No.  
1-7598).

10.30†\* Form of  
Registrant's  
Performance  
Unit  
Agreement  
under the  
Registrant's  
Third Amended

and Restated  
2005 Omnibus  
Stock Plan.

10.31†\* Form of  
Registrant's  
Performance  
Unit  
Agreement  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(effective for  
performance  
unit awards  
granted to  
executive  
officers on or  
after October 1,  
2013 and prior  
to November 9,  
2015).

10.32† Form of  
Registrant's  
Performance  
Unit  
Agreement  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(effective for  
performance  
unit awards  
granted to  
executive  
officers after  
November 8,  
2015)  
(incorporated  
by reference to  
Exhibit No.  
10.3 to the  
Registrant's  
Form 8-K

Current Report  
filed as of  
November 12,  
2015, File No.  
1-7598).

10.33† Form of  
Registrant's  
Grant  
Agreement for  
Deferred Stock  
Units under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(incorporated  
by reference to  
Exhibit No.  
10.7 to the  
Registrant's  
Form 10-Q  
Quarterly  
Report for the  
quarter ended  
March 30,  
2012, File No.  
1-7598).

10.34† Form of  
Registrant's  
Non-Employee  
Grant  
Agreement for  
Deferred Stock  
Units (for use  
in Singapore)  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(incorporated  
by reference to  
Exhibit 10.8 of  
the Registrant's  
Form 10-Q  
Quarterly  
Report for the



quarter ended  
March 30,  
2012, File No.  
1-7598).

10.35† Form of  
Registrant's  
Non-Employee  
Grant  
Agreement for  
Deferred Stock  
Units (for use  
outside of U.S.  
except for  
Singapore)  
under the  
Registrant's  
Third Amended  
and Restated  
2005 Omnibus  
Stock Plan  
(incorporated  
by reference to  
Exhibit No.  
10.31 to the  
Registrant's  
Form 10-K  
Annual Report  
for the year  
ended  
September 28,  
2012, File No.  
1-7598).

10.36 Credit  
Agreement,  
dated as of  
August 27,  
2013, among  
the Registrant,  
Bank of  
America, N.A.,  
as  
Administrative  
Agent, Swing  
Line Lender  
and L/C Issuer  
and each lender  
from time to  
time party  
thereto

(incorporated by reference to Exhibit No. 10.32 to the Registrant's Form 10-K Annual Report for the year ended September 26, 2014, File No. 1-7598).

Amendment No. 1, effective as of September 27, 2013, to the Credit Agreement, dated as of August 27, 2013, among the Registrant, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer and each of the lenders signatory thereto (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended December 27, 2013, File No. 1-7598).

10.37

10.38

Loan and Security Agreement between

California  
Proton  
Treatment  
Center, LLC,  
ORIX Capital  
Markets, LLC,  
ORIX Capital  
Markets, LLC,  
and Varian  
Medical  
Systems  
International  
AG, dated  
September 30,  
2011  
(incorporated  
by reference to  
Exhibit No.  
10.44 to the  
Registrant's  
Form 10-K  
Annual Report  
for the fiscal  
year ended  
September 30,  
2011, File No.  
1-7598).

10.39\* First  
Amendment to  
Loan and  
Security  
Agreement and  
Other Loan  
Documents  
among ORIX  
Capital  
Markets, LLC,  
California  
Proton  
Treatment  
Center, LLC  
and Jeffrey L.  
Bordox and  
James  
Thomson, dated  
as of October  
25, 2013.



Exhibit Number	Description
10.40*	Second Amendment to Loan and Security Agreement and Other Loan Documents among ORIX Capital Markets, LLC, ORIX Capital Markets, LLC, and Varian Medical Systems International AG, dated as of June 10, 2014.
10.41*	Third Amendment to Loan and Security Agreement and Other Loan Documents And Amendment to Fee Deed of Trust and Leasehold Deed of Trust among ORIX Capital Markets, LLC, ORIX Capital Markets, LLC, Varian Medical Systems International AG, and JP Morgan Chase Bank, N.A., dated as of November 6, 2015.
10.42	Revenue Sharing Agreement between ORIX Proton San Diego, LLC and Varian Medical Systems International AG, dated September 30, 2011 (incorporated by reference to Exhibit No. 10.45 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 30, 2011, File No. 1-7598).
10.43***++	Loan and Security Agreement (Building Loan) dated as of July 15, 2015 by and among MM PROTON I, LLC, as Borrower; JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent; and the Lenders referenced therein. “Lenders” includes the Registrant.
10.44***++	First Amendment to Loan and Security Agreement (Building Loan) dated as of August 5, 2015 by and among MM PROTON I, LLC, as Borrower; JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent; and the Lenders referenced therein. “Lenders” includes the Registrant.
10.45***++	Loan and Security Agreement (Project Loan) dated as of July 15, 2015 by and among MM PROTON I, LLC, a Borrower; JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent, and the Lenders referenced therein. “Lenders” includes the Registrant.
10.46***++	Amendment No. One to Loan and Security Agreement (Project Loan) dated as of July 31, 2015 by and among MM PROTON I, LLC, as Borrower; JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent, and the Lenders referenced therein. “Lenders” includes the Registrant.
21*	List of Subsidiaries as of November 1, 2015.
23*	Consent of Independent Registered Public Accounting Firm.
31.1*	Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.
31.2*	Chief Financial Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.
32.1*	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document

101.CAL XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF XBRL Taxonomy Extension Definition Linkbase Document

101.LAB XBRL Taxonomy Extension Label Linkbase Document

101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

† Management contract or compensatory arrangement.

\* Previously filed

\*\* Filed herewith

++ Confidential treatment has been requested as to certain portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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