

BALL CORP
Form 8-K
February 29, 2012

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, DC 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) **February 24, 2012**

BALL CORPORATION

(Exact name of Registrant as Specified in Charter)

Indiana
(State or Other Jurisdiction
of Incorporation)

001-07349
(Commission
File Number)

35-0160610
(IRS Employer
Identification No.)

10 Longs Peak Drive, P.O. Box 5000, Broomfield, Colorado
(Address of Principal Executive Offices)

80021-2510
(Zip Code)

Registrant's telephone number, including area code **(303) 469-3131**

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

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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:

- 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))
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Item 1.01 **Entry Into a Material Definitive Agreement.**

On February 24, 2012, Ball Corporation (the "Company") entered into an underwriting agreement, dated February 24, 2012 (the "Underwriting Agreement"), among the Company, the subsidiary guarantors (the "Guarantors") and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several underwriters named therein (the "Underwriters"), in connection with the Company's previously announced underwritten public offering of \$750,000,000 in aggregate principal amount of 5% senior notes due 2022 (the "2022 Notes"). The 2022 Notes were offered and sold under a prospectus, dated February 24, 2012, within the Company's shelf registration statement on Form S-3 (Registration No. 333-179639). The 2022 Notes, which will be issued at a price equal to 100% of the principal amount thereof, will be fully and unconditionally guaranteed on an unsecured senior basis by certain of the Company's current domestic subsidiaries (and will be guaranteed by certain of its future domestic subsidiaries), other than certain excluded subsidiaries. The 2022 Notes will not be guaranteed by any of the Company's foreign subsidiaries. The 2022 Notes will be issued pursuant to a supplemental indenture to be entered into among the Company, the Guarantors and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York Mellon (formerly known as The Bank of New York)), as Trustee. The closing of the issuance and sale of the 2022 Notes is expected to be on or around March 9, 2012.

The Underwriting Agreement includes customary representations, warranties, covenants and closing conditions. It also provides for customary indemnification by each of the Company, the Guarantors and the Underwriters against certain liabilities and customary contribution provisions in respect of those liabilities.

The Company expects to use a portion of the net proceeds from the offering to pay the consideration in connection with the Company's previously announced tender offer to purchase for cash any and all of the Company's 6 5/8% senior notes due 2018 (the "2018 Notes"), together with related expenses (the "Tender Offer"), and the balance for general corporate purposes, which may include potential investments in strategic alliances and acquisitions, the refinancing or repayment of debt, working capital, share repurchases, pension contributions or capital expenditures.

An affiliate of Deutsche Bank Securities Inc. is the administrative agent and collateral agent under the Company's existing senior secured credit facilities, and Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC, Goldman, Sachs & Co. and Barclays Capital Inc., or their affiliates, are a joint lead arranger and joint bookrunner under these credit facilities. Affiliates of each of the Underwriters are lenders under these credit facilities, and certain of the Underwriters have other lending or credit arrangements with the Company. The Company has also entered into certain derivative hedging transactions with all of the Underwriters (except for PNC Capital Markets LLC and SMBC Nikko Capital Markets Limited). Merrill Lynch, Pierce, Fenner & Smith Incorporated, one of the joint bookrunning managers for the offering, is also acting as the dealer manager and solicitation agent in connection with the Tender Offer. Because a portion of the proceeds from the offering will be used to repay the 2018 Notes, the Underwriters or their affiliates may receive proceeds from the offering to the extent that the Underwriters or their affiliates hold any of the Company's existing 2018 Notes and tender such notes in the Tender Offer and/or the Company redeems such notes. The Underwriters and their affiliates may in the future perform various investment banking, commercial lending, financial advisory and other services for the Company.

A copy of the Underwriting Agreement is attached hereto as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated by reference herein. The above description of the material terms of the Underwriting Agreement does not purport to be complete and is qualified in its entirety by reference to such Exhibit.

Item 9.01. **Financial Statements and Exhibits.**

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The agreement included as an Exhibit to this Current Report on Form 8-K contains representations and warranties by each of the parties to the agreement. These representations and warranties were made solely for the benefit of the other parties to the agreement and (i) were not intended to be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate; (ii) may have been qualified in such agreement by disclosures that were made to the other party in connection with the negotiation of the agreement; (iii) may apply contract standards of materiality that are different from materiality under the applicable securities laws; and (iv) were made only as of the date of the agreement or such other date or dates as may be specified in the agreement.

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The Company acknowledges that, notwithstanding the inclusion of the foregoing cautionary statements, it is responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this Current Report on Form 8-K not misleading.

(d) Exhibits.

Exhibit Number	Description
1.1	Underwriting Agreement, dated February 24, 2012.

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.

Dated: February 29, 2012

BALL CORPORATION

By:	/s/ Charles E. Baker
Name:	Charles E. Baker
Title:	Vice President, General Counsel and Corporate Secretary

EXHIBIT INDEX

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