

WMS INDUSTRIES INC /DE/
Form DEFA14A
February 04, 2013

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

Date of Report (Date of earliest event reported): January 30, 2013

WMS INDUSTRIES INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

1-8300
(Commission

File Number)

36-2814522
(IRS Employer

Identification No.)

800 South Northpoint Blvd.,

Waukegan, Illinois
(Address of principal executive offices)

Registrant's telephone number, including area code: (847) 785-3000

60085
(Zip 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:

- ☐ 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 1.01. Entry into a Material Definitive Agreement.

On January 30, 2013, WMS Industries Inc., a Delaware corporation ("WMS"), entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among Scientific Games Corporation, a Delaware corporation ("Scientific Games"), SG California Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Scientific Games ("Merger Sub"), and Scientific Games International, Inc., a Delaware corporation and a wholly owned subsidiary of Scientific Games ("Financing Sub") providing for the merger of Merger Sub with and into WMS (the "Merger"), with WMS surviving the Merger as a wholly owned subsidiary of Scientific Games. The Merger Agreement was unanimously approved by WMS' Board of Directors (the "Board").

At the effective time of the Merger, on the terms and subject to the conditions set forth in the Merger Agreement, each share of WMS' common stock, par value \$0.50 ("WMS Common Stock") issued and outstanding immediately prior to such time, other than shares of WMS Common Stock owned by WMS, Scientific Games, or Merger Sub (which will be cancelled) and shares of WMS Common Stock with respect to which appraisal rights are properly exercised and not withdrawn under Delaware law, shall be automatically cancelled and converted into the right to receive \$26.00 in cash, without interest.

Consummation of the Merger is subject to customary conditions, including without limitation (i) the required approval of the Merger Agreement by WMS' stockholders, (ii) the expiration or early termination of the waiting period applicable to the consummation of the Merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1974, as amended, (iii) the receipt of specified licenses, permits, and other approvals relating to WMS' gaming operations issued by certain governmental authorities, (iv) the absence of any law or order that is in effect and restrains, enjoins or otherwise prohibits the Merger, (v) the accuracy of the representations and warranties of the parties and compliance by the parties with their respective obligations under the Merger Agreement (subject to customary materiality qualifiers) and (vi) the absence of any change, effect, development or circumstance that, individually or in the aggregate, constitutes or is reasonably likely to constitute a Company Material Adverse Effect (as defined in the Merger Agreement).

WMS has made customary representations and warranties and covenants in the Merger Agreement. Among other things, WMS may not solicit or initiate discussions (and has agreed to cease any existing discussions) with third parties regarding other proposals to acquire WMS and has agreed to certain restrictions on its ability to respond to such proposals. In addition, until the termination of the Merger Agreement or the effective time of the Merger, WMS has agreed to operate its business in the ordinary course of business consistent with past practices and has agreed to certain other negative covenants.

The Merger Agreement contains certain termination rights for Scientific Games and WMS including, with respect to WMS. In connection with the termination of the Merger Agreement under specified circumstances, (i) WMS may be required to pay to Scientific Games a termination fee of \$44,300,000 or (ii) Scientific Games may be required to pay WMS a termination fee of \$80,000,000 or \$100,000,000 depending on the circumstances of such termination.

The representations, warranties and covenants of WMS contained in the Merger Agreement have been made solely for the benefit of Scientific Games, Merger Sub, and Financing Sub and the additional persons specifically described therein. In addition, such representations, warranties and covenants (a) have been made only for purposes of the Merger Agreement, (b) have been qualified by (i) matters specifically disclosed in any reports filed by WMS with the Securities and Exchange Commission (the "SEC") prior to the date of the Merger Agreement and (ii) matters described in a confidential exceptions letter delivered by WMS to Scientific Games in connection with the Merger Agreement, (c) are subject to materiality qualifications contained in the Merger Agreement, which might differ from what is viewed as material by investors, (d) were made only as of the date of the Merger Agreement or such other date as is specified in the Merger Agreement and (e) have been included in the Merger Agreement for the purpose of allocating risk between the contracting parties rather than establishing matters as fact. Accordingly, the Merger Agreement is included with this filing only to provide investors with information regarding the terms of the Merger Agreement, and not to provide investors with any other factual information regarding WMS or its business. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of WMS or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in WMS' public disclosures. The Merger Agreement should not be read alone, but should instead be read in conjunction with the other information regarding WMS that is or will be contained in, or incorporated by reference into, the Forms 10-K, Forms 10-Q and other documents that WMS files or has filed with the SEC.

The foregoing description of the Merger Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit 2.1 hereto and is incorporated in its entirety herein by reference.

Forward Looking Statements

This communication may contain forward-looking statements. Forward-looking statements may be typically identified by such words as "may," "will," "should," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," and other similar expressions among others. The forward-looking statements are subject to known and unknown risks and uncertainties that could cause our actual results to differ materially from the expectations expressed in the forward-looking statements. Although we believe that the expectations reflected in our forward-looking statements are reasonable, any or all of our forward-looking statements may prove to be incorrect. Consequently, no forward-looking statements may be guaranteed and there can be no assurance that the actual results or developments anticipated by such forward looking statements will be realized or, even if substantially realized, that they will have the expected consequences to, or effects on, WMS or its business or operations. Factors which could cause our actual results to differ from those projected or contemplated in any such forward-looking statements include, but are not limited to, the following factors: (1) the risk that the conditions to

the closing of the merger are not satisfied (including a failure of the stockholders of WMS to approve, on a timely basis or otherwise, the merger and the risk that regulatory approvals required for the merger are not obtained, on a timely basis or otherwise, or are obtained subject to conditions that are not anticipated); (2) litigation relating to the merger; (3) uncertainties as to the timing of the consummation of the merger and the ability of each of WMS and Scientific Games to consummate the merger; (4) risks that the proposed transaction disrupts the current plans and operations of WMS; (5) the ability of WMS to retain and hire key personnel; (6) competitive responses to the proposed merger; (7) unexpected costs, charges or expenses resulting from the merger; (8) the failure by Scientific Games and Financing Sub to obtain the necessary debt financing arrangements set forth in the commitment letter received in connection with the merger; (9) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the merger; and (10) legislative, regulatory and economic developments. The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in WMS most recent Annual Report on Form 10-K for the year ended June 30, 2012, and our more recent reports filed with the U.S. Securities and Exchange Commission (the "SEC"). WMS can give no assurance that the conditions to the Merger will be satisfied. Except as required by applicable law, WMS undertakes no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

Additional Information and Where to Find It

This communication is being made in respect of the proposed transaction involving WMS and Scientific Games. The proposed transaction will be submitted to the stockholders of WMS for their consideration. In connection with the proposed transaction, WMS will prepare a proxy statement to be filed with the SEC. WMS and Scientific Games also plan to file with the SEC other documents regarding the proposed transaction. **WMS SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT REGARDING THE PROPOSED TRANSACTION AND ANY OTHER RELEVANT DOCUMENTS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.** When completed, a definitive proxy statement and a form of proxy will be mailed to the stockholders of WMS. WMS stockholders will be able to obtain, without charge, a copy of the proxy statement (when available) and other relevant documents filed with the SEC from the SEC's website at <http://www.sec.gov>. WMS stockholders will also be able to obtain, without charge, a copy of the proxy statement and other relevant documents (when available) by going to WMS Investor Relations website page at <http://ir.wms.com> or by directing a written request by mail to WMS Industries Inc., Attn: Investor Relations, 800 South Northpoint Blvd., Waukegan, Illinois 60085, or by calling the Secretary at (847) 785-3000.

Participants in Solicitation

WMS and its directors and executive officers may be deemed to be participants in the solicitation of proxies from WMS stockholders with respect to the meeting of stockholders that will be held to consider the proposed Merger. Information about WMS directors and executive officers and their ownership of WMS common stock is set forth in the proxy statement for WMS 2012 Annual Meeting of Stockholders, which was filed with the SEC on October 17, 2012. Stockholders may obtain additional information regarding the interests of WMS and its directors and executive officers in the proposed Merger, which may be different than those of WMS stockholders generally, by reading the proxy statement and other relevant documents regarding the proposed Merger, when it becomes available. You may obtain free copies of this document as described in the preceding paragraph.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

- 2.1 Agreement and Plan of Merger, dated as of January 30, 2013, by and among Scientific Games Corporation, SG California Merger Sub, Inc., Scientific Games International, Inc., and WMS Industries Inc.

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.

WMS Industries Inc.

Date: February 4, 2013

By: /s/ Kathleen J. McJohn
Kathleen J. McJohn

Senior Vice President, General Counsel and Secretary

EXHIBIT INDEX

**Exhibit
Number**

Description of Exhibit

2.1	Agreement and Plan of Merger, dated as of January 30, 2013, by and among Scientific Games Corporation, SG California Merger Sub, Inc., Scientific Games International, Inc., and WMS Industries Inc.
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