
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Surmodics, Inc.

(Exact name of Registrant as specified in its charter)

Minnesota

(State or other jurisdiction of
incorporation or organization)

41-1356149

(I.R.S. Employer Identification No.)

9924 West 74th Street

Eden Prairie, Minnesota 55344

(Address of principal executive offices) (Zip Code)

Surmodics, Inc. 2019 Equity Incentive Plan

(Full title of the plan)

Copy to:

Gordon S. Weber

Senior Vice President of Legal, General Counsel and Secretary

9924 West 74th Street

Eden Prairie, Minnesota 55344

(952) 500-7000

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

Nicole J. Leimer

Faegre Drinker Biddle & Reath LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402-3901

(612) 766-7000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

Pursuant to General Instruction E of Form S-8, this Registration Statement is filed to register an additional 800,000 shares of the common stock, \$0.05 par value (“Common Stock”), of Surmodics, Inc. (the “Company”) reserved for issuance under the Surmodics, Inc. 2019 Equity Incentive Plan, as amended and restated (the “Plan”). Shares of the Company’s Common Stock issuable under the Plan were previously registered pursuant to a Registration Statement on Form S-8 (No. 333-231199) filed with the Securities and Exchange Commission (the “Commission”) on [May 3, 2019](#). Such Registration Statement is currently effective and the contents thereof are incorporated herein by reference except to the extent that such content is superseded by the items appearing below.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated by reference into this Registration Statement (other than portions of documents filed with the Commission which are furnished, but not filed, pursuant to applicable rules promulgated by the Commission) and made a part hereof:

- (a) The Company’s Annual Report on Form 10-K for the fiscal year ended September 30, 2021, filed with the Commission on [November 24, 2021](#), including all material incorporated by reference therein;
- (b) The Company’s Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2021 filed with the Commission on [February 4, 2022](#);
- (c) The Company’s Current Report on Form 8-K filed with the Commission on [February 14, 2022](#); and
- (d) The description of the Company’s common stock in the Company’s [Form 8-A](#) filed with the Commission on February 25, 1998, or in any report, including any amendment, filed under the Exchange Act for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to filing a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing such documents, except for the documents, or portions thereof, that are “furnished” (e.g., the portions of those documents set forth under Items 2.02 or 7.01 of Form 8-K or other information “furnished” to the Commission rather than filed with the Commission). Any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 6. Indemnification of Directors and Officers.

The Company is subject to Minnesota Statutes Chapter 302A, the Minnesota Business Corporation Act (the “Corporation Act”). Section 302A.521 of the Corporation Act provides in substance that, unless prohibited by its articles of incorporation or bylaws, a corporation must indemnify an officer or director who is made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys’ fees and disbursements, incurred by such person in connection with the proceeding, if certain criteria are met. These criteria, all of which must be met by the person seeking indemnification, are (a) that such person has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys’ fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions; (b) that such person must have acted in good faith; (c) that no improper personal benefit was obtained by such person and such person satisfied certain statutory conflicts of interest provisions, if applicable; (d) that in the case of a criminal proceeding, such person had no reasonable cause to believe that the conduct was unlawful; and (e) that, in the case of acts or omissions occurring in such person’s performance in an official capacity, such person must have acted in a manner such person reasonably believed was in the best interests of the corporation or, in certain limited circumstances, not opposed to the best interests of the corporation. In addition, Section 302A.521, subd. 3 requires payment by the Company, upon written request, of reasonable expenses in advance of final disposition in certain instances. A decision as to required indemnification is made by a majority of the disinterested board of directors present at a meeting at which a disinterested quorum is present, or by a designated committee of disinterested directors, by special legal counsel, by the disinterested shareholders, or by a court. The Company’s articles of incorporation or bylaws impose no limitations on the applicability of Section 302A.521 of the Corporation Act.

The Company also maintains a director and officer insurance policy to cover the Company, its directors and its officers against certain liabilities.

Item 8. Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
<u>4.1</u>	<u>Restated Articles of Incorporation, as amended — incorporated by reference to Exhibit 3.1 of the Company’s Quarterly Report on Form 10-Q filed on July 29, 2016.</u>
<u>4.2</u>	<u>Restated Bylaws of Surmodics, Inc., as amended December 18, 2015 — incorporated by reference to Exhibit 3.2 of the Company’s Current Report on Form 8-K filed on December 23, 2015.</u>
<u>4.3</u>	<u>Surmodics, Inc. 2019 Equity Incentive Plan (as amended and restated on February 10, 2022) — incorporated by reference to Appendix B to the Company’s Definitive Proxy Statement for the annual meeting of shareholders held on February 10, 2022 filed on Schedule 14A on December 20, 2021.</u>
<u>5.1*</u>	<u>Opinion of Faegre Drinker Biddle and Reath LLP</u>
<u>23.1*</u>	<u>Consent of Faegre Drinker Biddle and Reath LLP (included in Exhibit 5.1)</u>
<u>23.2*</u>	<u>Consent of Deloitte & Touche LLP</u>
<u>24.1*</u>	<u>Powers of Attorney (included on the signature page of this Form S-8)</u>
<u>107*</u>	<u>Filing Fee Table</u>

* Filed herewith.

Item 9. Undertakings.

(a) The Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Filing Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Eden Prairie, State of Minnesota, on February 23, 2022.

SURMODICS, INC.

By /s/ Gary R. Maharaj
Gary R. Maharaj
President and Chief Executive Officer

POWERS OF ATTORNEY

Each of the undersigned hereby appoints Gary R. Maharaj and Timothy J. Arens, and each of them (with full power to act alone), as attorneys and agents for the undersigned, with full power of substitution, for and in the name, place and stead of the undersigned, to sign and file with the Securities and Exchange Commission under the Securities Act any and all amendments and exhibits to this registration statement and any and all applications, instruments and other documents to be filed with the Securities and Exchange Commission pertaining to the registration of the securities covered hereby, with full power and authority to do and perform any and all acts and things whatsoever requisite and necessary or desirable.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons, representing a majority of the Board of Directors, in the capacities indicated on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Gary R. Maharaj</u> Gary R. Maharaj	President and Chief Executive Officer (principal executive officer) and Director	February 23, 2022
<u>/s/ Timothy J. Arens</u> Timothy J. Arens	Senior Vice President of Finance and Chief Financial Officer (principal financial officer)	February 23, 2022
<u>/s/ John D. Manders</u> John D. Manders	Vice President and Corporate Controller (principal accounting officer)	February 23, 2022
<u>/s/ Susan E. Knight</u> Susan E. Knight	Chair of the Board of Directors	February 23, 2022
<u>/s/ José H. Bedoya</u> José H. Bedoya	Director	February 23, 2022
<u>/s/ David R. Dantzker, M.D.</u> David R. Dantzker, M.D.	Director	February 23, 2022
<u>/s/ Ronald B. Kalich</u> Ronald B. Kalich	Director	February 23, 2022
<u>/s/ Lisa Wipperman Heine</u> Lisa Wipperman Heine	Director	February 23, 2022

February 23, 2022

Surmodics, Inc.
9924 West 74th Street
Eden Prairie, Minnesota 55344

Ladies and Gentlemen:

We have acted as counsel to Surmodics, Inc., a Minnesota corporation (the “Company”), in connection with the preparation and filing by the Company with the Securities and Exchange Commission (the “Commission”) of a Registration Statement on Form S-8 (the “Registration Statement”) under the Securities Act of 1933, as amended (the “Act”). The Registration Statement registers the offer and sale of up to an aggregate of 800,000 shares (the “Shares”) of the Company’s common stock, par value \$0.05 per share, issuable pursuant to the Surmodics, Inc. 2019 Equity Incentive Plan, as amended and restated (the “Plan”).

For purposes of this opinion letter, we have examined the Restated Articles of Incorporation, as amended, and the Restated Bylaws, as amended, of the Company, each as currently in effect, the Registration Statement, the Plan and the resolutions of the Board of Directors of the Company authorizing the issuance of the Shares. We have also examined a certificate of the Secretary of the Company dated the date hereof (the “Certificate”) and originals, or copies certified or otherwise authenticated to our satisfaction, of such corporate records and other records, agreements, instruments, certificates of public officials and documents as we have deemed necessary as a basis for the opinions hereinafter expressed and have reviewed such matters of law as we have deemed relevant hereto. As to all issues of fact material to this opinion letter, we have relied on certificates, statements or representations of public officials, of officers and representatives of the Company (including the Certificate) and of others, without any independent verification thereof.

In our examination, we have assumed: (i) the legal capacity of all natural persons; (ii) the genuineness of all signatures, including electronic signatures; (iii) the authenticity of all documents submitted to us as originals; (iv) the conformity to original documents of all documents submitted to us as certified, conformed, photostatic or facsimile copies; (v) the authenticity of the originals of such latter documents; (vi) the truth, accuracy and completeness of the information, representations and warranties contained in the agreements, documents, instruments, certificates and records we have reviewed; and (vii) the absence of any undisclosed modifications to the agreements and instruments reviewed by us.

Based upon such examination and review, and subject to the foregoing and the other qualifications, assumptions and limitations set forth herein, it is our opinion that all necessary corporate action on the part of the Company has been taken to authorize the issuance and sale of the Shares to be issued in accordance with the Plan and that, when (a) the Shares have been issued and sold as contemplated in the Registration Statement and related prospectuses and in accordance with the Plan and any applicable award agreement, and (b) where applicable, the consideration for the Shares specified in the Plan and any applicable award agreement has been received by the Company, the Shares will be legally and validly issued, fully paid and nonassessable.

We are admitted to the practice of law in the State of Minnesota and the foregoing opinions are limited to the laws of that state.

This opinion speaks only as of the date the Registration Statement becomes effective under the Act, and we assume no obligation to revise or supplement this opinion thereafter. This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

FAEGRE DRINKER BIDDLE & REATH LLP

By: /s/ Nicole J. Leimer

Nicole J. Leimer, Partner

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated November 24, 2021, relating to the financial statements of Surmodics, Inc. and the effectiveness of Surmodics, Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Surmodics, Inc. for the fiscal year ended September 30, 2021.

/s/ Deloitte & Touche LLP

Minneapolis, Minnesota
February 23, 2022

CALCULATION OF FILING FEE TABLE

Form S-8
(Form Type)

Surmodics, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Unit (2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.05 par value, Surmodics, Inc. 2019 Equity Incentive Plan	Rules 457(c) and (h)	800,000	\$ 43.42	\$ 34,736,000.00	\$ 0.0000927	\$ 3,220.03
Total Offering Amounts					\$ 34,736,000.00		\$ 3,220.03
Total Fee Offsets							—
Net Fee Due							<u>\$ 3,220.03</u>

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement will also cover any additional shares of common stock, par value \$0.05 (“Common Stock”), of Surmodics, Inc. (the “Company”) that become issuable under the Surmodics, Inc. 2019 Equity Incentive Plan, as amended and restated (the “Plan”), by reason of any stock dividend, stock split, reorganization or other similar transaction effected without the Company’s receipt of consideration that results in an increase in the number of outstanding shares of the Common Stock.
- (2) Estimated solely for the purpose of determining the registration fee pursuant to the provisions of Rule 457(c) and Rule 457(h) under the Securities Act based on the average of the high and low prices per share of the Company’s Common Stock as quoted on the Nasdaq Global Select Market on February 18, 2022.