

SMUCKER J M CO
Form 8-K
March 08, 2004

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**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) **March 7, 2004**

The J. M. Smucker Company

(Exact Name of Registrant as Specified in Charter)

Ohio

1-5111

34-0538550

**One Strawberry Lane
Orrville, Ohio**

44667-0280

Registrant's telephone number, including area code **(330) 682-3000**

N/A

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

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Item 5. Other Events and Regulation FD Disclosure.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

SIGNATURE

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EX-2.1 AGREEMENT AND PLAN OF MERGER

JMS SHAREHOLDERS AGREEMENT AND IRREVOCABLE PROXY

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Item 5. Other Events and Regulation FD Disclosure.

On March 8, 2004, The J. M. Smucker Company, an Ohio corporation (*SJM*) and International Multifoods Corporation, a Delaware corporation (*IMC*) issued a joint press release announcing that they had entered into an Agreement and Plan of Merger (the *Merger Agreement*), dated as of March 7, 2004, pursuant to which *IMC* will merge (the *Merger*) with and into *MIX Acquisition Corporation*, a Delaware corporation and wholly owned subsidiary of *SJM* (*Merger Sub*). Following the *Merger*, the surviving corporation will be a wholly owned subsidiary of *SJM*.

Under the terms of the *Merger Agreement*, *IMC* stockholders will receive a combination of *SJM* common shares and cash with a value of \$25 per share. *IMC* stockholders are expected to receive (i) *SJM* common shares valued at \$20 per share based on the average closing price of *SJM* common shares for the 20 consecutive trading days ending on the trading day immediately preceding the closing date, and (ii) \$5 in cash in the *Merger*. If, however, the average trading price of *SJM* common shares during such measurement period falls to a level that would require the issuance by *SJM* in the *Merger* of more than 19.9% of its common shares outstanding immediately prior to such issuance, the applicable exchange ratio will be adjusted so that no more than 19.9% of *SJM*'s common shares outstanding immediately prior to such issuance are issued in the *Merger* and the cash portion of the merger consideration will be increased so that the aggregate per share merger consideration will equal \$25 per share.

In connection with the *Merger*, *IMC* has entered into a shareholders agreement (the *Shareholders Agreement*) with certain *SJM* shareholders (the *Shareholders*), which provides among other things, that the *Shareholders* will vote: (i) in favor of the issuance of *SJM* common shares pursuant to the *Merger* and, to the extent that a vote is solicited in connection with the *Shareholders Agreement* or the *Merger Agreement*, any other action required or desirable in furtherance thereof, (ii) against approval of any action, agreement or proposal that would result in a breach of any representation, warranty, covenant or obligation of *SJM* or *Merger Sub* in the *Merger Agreement* or that would delay or hinder the consummation of the *Merger* or that would preclude fulfillment of a condition precedent under the *Merger Agreement* to *SJM*'s, *Merger Sub*'s or *IMC*'s obligation to consummate the *Merger*, and (iii) against approval of any action, agreement or proposal made in opposition to or in competition with the issuance of the *SJM* common shares pursuant to the *Merger* and the consummation of the *Merger*.

The transaction, which is expected to close in June 2004, is subject to customary closing conditions, including regulatory approvals and the approvals of *SJM* and *IMC* shareholders.

The foregoing descriptions of the *Merger Agreement* and the *Shareholders Agreement* are not complete and are qualified in their entirety by reference to the full text of those agreements, copies of which are filed as exhibits to this Form 8-K and are incorporated herein by reference.

A copy of the joint press release issued in connection with the execution of the *Merger Agreement* is filed as exhibit 99.2 hereto and is incorporated herein by reference.

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Item 7. Financial Statements, *Pro Forma* Financial Information and Exhibits.

(c) Exhibits.

| Exhibit Number | Exhibit Description |
|---------------------------|--|
| 2.1 | Agreement and Plan of Merger, dated March 7, 2004, by and among The J. M. Smucker Company, International Multifoods Corporation and MIX Acquisition Corporation. Pursuant to Rule 601(b)(2) of Regulation S-K, certain schedules to the Merger Agreement have been omitted from this filing. The J. M. Smucker Company agrees to furnish supplementally a copy of any omitted schedule to the Securities and Exchange Commission upon request. |
| 99.1 | JMS Shareholders Agreement and Irrevocable Proxy, dated March 7, 2004, between International Multifoods Corporation and the Shareholders identified on the signature page thereto. The J. M. Smucker Company agrees to furnish supplementally a copy of any omitted schedule to the Securities and Exchange Commission upon request. |
| 99.2 | Joint press release, dated March 8, 2004 (incorporated herein by reference to the Form 425 filed by The J. M. Smucker Company with the Commission on March 8, 2004, Commission File No. 1-51111). |

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SIGNATURE

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.

THE J. M. SMUCKER COMPANY

By: /s/ M. Ann Harlan

M. Ann Harlan
General Counsel and Secretary

Date: March 8, 2004

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