

UNILIFE CORP

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 01/26/17

Address	250 CROSS FARM LANE YORK, PA 17406
Telephone	(717) 384-3400
CIK	0001476170
Symbol	UNIS
SIC Code	3841 - Surgical and Medical Instruments and Apparatus
Industry	Medical Equipment, Supplies & Distribution
Sector	Healthcare
Fiscal Year	06/30

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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

UNILIFE CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

27-1049354
(I.R.S. Employer Identification No.)

250 Cross Farm Lane, York, Pennsylvania
(Address of principal executive offices)

17406
(Zip Code)

**UNILIFE CORPORATION AMENDED AND RESTATED
2009 STOCK INCENTIVE PLAN**
(Full title of the plan)

Stephanie Walters
Senior Vice President, General Counsel and Secretary
Unilife Corporation
250 Cross Farm Lane
York, Pennsylvania 17406
(Name and address of agent for service)

(717) 384-3400
(Telephone number, including area code, of agent for service)

Copies to:

Richard A. Silfen, Esq.
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
(215) 979-1000

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 definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee (2)
Common Stock, par value \$0.01 per share	2,376,837(3)	\$2.42	\$5,751,945.54	\$666.65

- (1) Pursuant to Rule 416(a), under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers an indeterminate number of shares of the common stock, par value \$0.01 per share ("Common Stock"), of Unilife Corporation (the "Registrant") that may be offered or issued by reason of stock splits, stock dividends or similar transactions.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act based on the average of the high and low prices of the shares of Common Stock, as reported by The NASDAQ Stock Market LLC on January 20, 2017.
- (3) An aggregate of 4,959,212 shares of Common Stock may be offered or issued pursuant to the Unilife Corporation Amended and Restated 2009 Stock Incentive Plan, of which 600,000 shares were previously registered on Form S-8 (File No. 333-164964), 499,867 shares were previously registered on Form S-8 (File No. 333-178882), 193,850 shares were previously registered on Form S-8 (File No. 333-186049), 2,886,582 shares were previously registered on Form S-8 (File No. 333-193358), 1,000,000 shares were previously registered on Form S-8 (File No. 333-200223) and 2,376,837 shares are registered on this Registration Statement. On May 13, 2016, pursuant to prior stockholder authorization, the Registrant effected a 1-for-10 reverse split of the Common Stock. All share amounts included in this Registration Statement have been adjusted to reflect the reverse split.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

A prospectus setting forth the information required by Part I of Form S-8 will be sent or given to participants in the Unilife Corporation Amended and Restated 2009 Stock Incentive Plan (the "Plan") as specified by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the U.S. Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are incorporated into this Registration Statement by reference (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with the Commission's rules):

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended June 30, 2016, filed with the Commission on October 24, 2016 (and related Notification of Late Filing on Form 12b-25 filed with the Commission in connection therewith on September 15, 2016);
 - (b) The Registrant's Amendment on Form 10-Q/A to its Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2015, filed with the Commission on August 9, 2016;
 - (c) The Registrant's Amendment on Form 10-K/A to its Annual Report on Form 10-K for the fiscal year ended June 30, 2015, filed with the Commission on October 24, 2016;
 - (d) The Registrant's Amendment on Form 10-Q/A to its Quarterly Reports on Form 10-Q for the quarterly periods ended September 30, 2015 and December 31, 2015, filed with the Commission on October 24, 2016;
 - (e) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, filed with the Commission on October 24, 2016 (and related Notification of Late Filing on Form 12b-25 filed with the Commission in connection therewith on May 11, 2016);
 - (f) The Registrant's definitive proxy statement on Schedule 14A, filed with the Commission on October 28, 2016, as amended by the definitive additional proxy materials filed with the Commission on December 5, 2016;
 - (g) The Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2016, filed with the Commission on November 14, 2016;
 - (h) The Registrant's Current Reports on Forms 8-K and 8-K/A, as applicable, filed with the Commission on July 18, 2016; July 28, 2016 (two filings on this date); September 8, 2016; September 14, 2016; September 23, 2016; September 29, 2016 (two filings on this date); October 5, 2016; October 24, 2016 (two filings on this date); October 31, 2016, December 16, 2016 and December 20, 2016;
 - (i) The description of the Registrant's shares of Common Stock contained in Item 11 of Amendment No. 4 to the Registrant's registration statement on Form 10 filed on February 11, 2010 (File No. 001-34540) with the Commission, including any amendment or report filed for the purpose of updating such description.
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All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Notwithstanding the foregoing, information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits, is not incorporated by reference in this Registration Statement or any related prospectus.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein 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. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant's Certificate of Incorporation provides that, to the fullest extent permitted by the Delaware General Corporation Law, the Registrant's directors shall not be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. The Registrant's Bylaws provide that, to the fullest extent permitted by Delaware law, we will indemnify, and advance expenses to, a director or officer in an action brought by reason of the fact that the director or officer is or was the Registrant's director or officer, or is or was serving at the Registrant's request as a director or officer of any other entity, against all expenses, liability and loss reasonably incurred or suffered by such person in connection therewith. The Registrant may maintain insurance to protect a director or officer against any expense, liability or loss, whether or not the Registrant would have the power to indemnify such person against such expense, liability or loss under Delaware law.

The limitation of liability and indemnification provisions in the Registrant's Certificate of Incorporation and Bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against the Registrant's directors and officers, even though such an action, if successful, might otherwise benefit the Registrant and its stockholders. However, these provisions do not limit or eliminate the Registrant's rights, or those of any stockholder, to seek non-monetary relief such as injunction or rescission in the event of a breach of a director's duty of care. The provisions will not alter the liability of directors under the federal securities laws. In addition, your investment may be adversely affected to the extent that, in a class action or direct suit, the Registrant pays the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following Exhibits are filed as part of this Registration Statement:

Exhibit No.	Description
4.1	Unilife Corporation Amended and Restated 2009 Stock Incentive Plan (incorporated by reference to Annex A of the Registrant's Proxy Statement on Schedule 14A filed with the Commission on October 28, 2016).
4.2	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to Registrant's Form 10 filed with the Commission on November 12, 2009).
5.1*	Opinion of Duane Morris LLP.
23.1*	Consent of KPMG LLP.
23.2*	Consent of Duane Morris LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on the signature page of this Registration Statement).

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned Registrant 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;

(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% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

(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 Registrant 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.

(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 undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant'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 the 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 Registrant pursuant to the foregoing provisions, or otherwise, the Registrant 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 Registrant of expenses incurred or paid by a director, officer or controlling person of the registrant 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 registrant 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 of 1933, the Registrant 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 York, Commonwealth of Pennsylvania, on January 26 , 2017.

UNILIFE CORPORATION

By: /s/ John Ryan
Name: John Ryan
Title: President and Chief Executive Officer

POWER OF ATTORNEY

We, the undersigned officers and directors of Unilife Corporation (the "Company"), hereby constitute and appoint John Ryan and Stephanie Walters and each of them, the true and lawful agents and attorneys-in-fact of the undersigned with full power and authority in said agents and attorneys-in-fact, and in any one or more of them, to sign for the undersigned and in their respective names as an officer/director of the Company, a registration statement on Form S-8 (or other appropriate form) relating to the offer and sale of common stock of the Company pursuant to this Registration Statement and any amendments thereto and file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, and with full power of substitution; hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
<u>/s/ John Ryan</u> John Ryan	President, Chief Executive Officer and Director (Principal Executive Officer)	January 26 , 2017
<u>/s/ David C. Hastings</u> David C. Hastings	Senior Vice President, Chief Financial Officer, Chief Accounting Officer and Treasurer (Principal Financial and Accounting Officer)	January 26 , 2017
<u>/s/ Mary Katherine Wold</u> Mary Katherine Wold	Director (Chair)	January 26 , 2017
<u>/s/ Jeff Carter</u> Jeff Carter	Director	January 26 , 2017
<u>/s/ Rosemary A. Crane</u> Rosemary A. Crane	Director	January 26 , 2017
<u>/s/ Duane DeSisto</u> Duane DeSisto	Director	January 26 , 2017

/s/ Harry A. Hamill
Harry A. Hamill

Director

January 26 , 2017

/s/ Michael E. Kamarck
Michael E. Kamarck

Director

January 26 , 2017

/s/ John Lund
John Lund

Director

January 26 , 2017

EXHIBIT INDEX

Exhibit No.	Description
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4.2	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to Registrant's Form 10 filed with the Commission on November 12, 2009).
5.1*	Opinion of Duane Morris LLP.
23.1*	Consent of KPMG LLP.
23.2*	Consent of Duane Morris LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on the signature page of this Registration Statement).

* Filed herewith.

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A GCC REPRESENTATIVE OFFICE
OF DUANE MORRIS
ALLIANCES IN MEXICO
AND SRI LANKA

January 26, 2017

Unilife Corporation
250 Cross Farm Lane
York, Pennsylvania 17406

Re: Unilife Corporation Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Unilife Corporation, a Delaware corporation (the "Company"), in connection with the preparation of a registration statement on Form S-8 (the "Registration Statement") for filing with the U.S. Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Act"), for the registration by the Company of 2,376,837 shares (the "Shares") of the Company's common stock, par value \$0.01 per share, which may be issued under the Unilife Corporation Amended and Restated 2009 Stock Incentive Plan (the "Plan"). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as expressly stated herein with respect to the issue of the Shares.

In connection with the opinion set forth in this letter, we have examined the Registration Statement, originals, or copies certified or otherwise identified to our satisfaction, of the Plan, the Company's Certificate of Incorporation, as amended, and the Company's Amended and Restated Bylaws, and such other documents, records and other instruments as we have deemed appropriate for purposes of the opinion set forth herein. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters.

DUANE MORRIS LLP

30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196 PHONE: +1 215 979 1000 FAX: +1 215 979 1020

We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of the documents submitted to us as originals, the conformity with the originals of all documents submitted to us as certified, facsimile, photostatic or other copies and the authenticity of the originals of all documents submitted to us as copies.

Based upon the foregoing, we are of the opinion that the Shares, when issued against receipt by the Company of consideration for the Shares in accordance with the Plan, will be legally issued, fully paid and non-assessable.

The opinions set forth above are limited to the laws of the State of Delaware as currently in effect, and no opinion is expressed with respect to such laws as subsequently amended, or any other laws, or any effect that such amended or other laws may have on the opinions expressed herein. The opinions expressed herein are limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein. The opinions expressed herein are given as of the date hereof, and we undertake no obligation to advise you of any changes in applicable laws after the date hereof or of any facts that might change the opinions expressed herein that we may become aware of after the date hereof.

We hereby consent to the use of this opinion as Exhibit 5.1 to the Registration Statement to be filed by the Company on or about the date hereof. In giving such opinion, we do not hereby admit that we are acting within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the U.S. Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Duane Morris LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Unilife Corporation:

We consent to the use of our reports dated October 21, 2016, with respect to the consolidated balance sheets of Unilife Corporation and subsidiaries (the Company) as of June 30, 2016 and 2015 and the related consolidated statements of operations and comprehensive loss, stockholders' (deficit) equity, and cash flows for each of the years in the three-year period ended June 30, 2016, and the effectiveness of internal control over financial reporting as of June 30, 2016, incorporated by reference herein.

Our report, on the Company's consolidated financial statements, dated October 21, 2016 contains an explanatory paragraph that states that the Company has incurred recurring losses from operations and has limited cash resources, which raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Our report dated October 21, 2016, on the effectiveness of internal control over financial reporting as of June 30, 2016, expresses our opinion that Unilife Corporation did not maintain effective internal control over financial reporting as of June 30, 2016 because of the effect of material weaknesses on the achievement of the objectives of the control criteria and contains an explanatory paragraph that states:

The following material weaknesses have been identified and included in management's assessment:

- Ineffective tone at the top and design and operation of controls to monitor, investigate and communicate non-compliance with the Company's Code of Conduct;
- Insufficient number of trained resources with responsibility and accountability for financial reporting processes and controls;
- Ineffective continuous risk assessment process;
- Ineffective information and communication processes and monitoring activities regarding related party transactions;
- Ineffective operation of certain process level controls due to management override of controls, including related party transactions and loans and advances to executives and a former Board member;
- Ineffective design and implementation and documentation of management review controls; and
- Ineffective program change and access general information technology controls resulting in ineffective process level automated controls and, ineffective compensating manual controls.

/s/KPMG/LLC

Harrisburg, Pennsylvania
January 26, 2017