

BIO REFERENCE LABORATORIES INC
Form 8-K
August 20, 2015

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): August 18, 2015

Bio-Reference Laboratories, Inc.

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction of
incorporation)

0-15266
(Commission File Number)

22-2405059
(IRS Employer Identification No.)

481 Edward H. Ross Drive

Elmwood Park, NJ 07407

(Address of principal executive offices) (Zip Code)

(201) 791-2600

Registrant's telephone number, including area code

Not applicable

(Former name or former address if changed since last report)

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.

The information set forth under Item 2.03 of this Current Report on Form 8-K regarding the Loan Amendment is incorporated into this Item 1.01 by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

On August 20, 2015, pursuant to the terms of the previously announced Agreement and Plan of Merger, dated as of June 3, 2015 (the Merger Agreement), by and among Bio-Reference Laboratories, Inc., a New Jersey corporation (Bio-Reference), OPKO Health, Inc., a Delaware corporation (OPKO), and Bamboo Acquisition, Inc., a New Jersey corporation and wholly owned subsidiary of OPKO (Merger Sub), Merger Sub merged with and into Bio-Reference (the Merger), with Bio-Reference surviving as a wholly-owned subsidiary of OPKO.

At the effective time of the Merger (the Effective Time), each outstanding share of Bio-Reference s common stock, par value \$0.01 per share (the Bio-Reference Common Stock), other than shares of Bio-Reference Common Stock held by OPKO, Merger Sub, Bio-Reference or any wholly-owned subsidiary of OPKO or Bio-Reference, which were cancelled and retired at the Effective Time, was converted into and exchanged for the right to receive 2.75 shares (the Exchange Ratio) of common stock, par value \$0.01 per share, of OPKO (the OPKO Common Stock). No fractional shares of OPKO Common Stock will be issued to Bio-Reference shareholders in connection with the Merger. Instead, a Bio-Reference shareholder who would otherwise be entitled to a fractional share (after taking into account all certificates and book-entry shares delivered by such shareholder) will receive one full share of OPKO Common Stock in lieu of such fractional share.

At the Effective Time, each outstanding option to purchase shares of Bio-Reference Common Stock (each, a Bio-Reference Stock Option) that was outstanding and unexercised immediately prior to the Effective Time, whether or not vested, was converted into an option to purchase OPKO Common Stock and was assumed by OPKO in accordance with the terms of the Bio-Reference 2003 Employee Incentive Stock Option Plan (the Bio-Reference Plan) and the terms of the contract evidencing such Bio-Reference Stock Option, except that as of the Effective Time, (i) OPKO and its compensation committee has been substituted for Bio-Reference and the compensation committee of the board of directors of Bio-Reference administering the Bio-Reference Plan and (ii) each Bio-Reference Stock Option assumed by OPKO may be exercised solely for shares of OPKO Common Stock. The number of shares of OPKO Common Stock subject to each assumed Bio-Reference Stock Option was adjusted to an amount equal to the product of (a) the number of shares of Bio-Reference Common Stock subject to such Bio-Reference Stock Option immediately before the Effective Time and (b) the Exchange Ratio, rounded down to the nearest whole share. The per share exercise price for shares of OPKO Common Stock under each assumed Bio-Reference Stock Option was adjusted to a price equal to the quotient of (a) the per share exercise price of such Bio-Reference Stock Option divided by (b) the Exchange Ratio, rounded up to the nearest whole cent.

Based on the number of shares of Bio-Reference Common Stock and Bio-Reference Stock Options outstanding at the Effective Time, OPKO is expected to issue up to an aggregate of approximately 76.8 million shares of OPKO Common Stock to the former holders of Bio-Reference Common Stock and Bio-Reference Stock Options in consideration for their shares of Bio-Reference Common Stock and upon the exercise of Bio-Reference Stock Options.

The foregoing description of the Merger Agreement and Merger is not complete and is qualified in its entirety by reference to the Merger Agreement, which was included as Annex A to Bio-Reference s definitive proxy statement filed under the cover of Schedule 14A with the Securities and Exchange Commission (the SEC) on July 20, 2015, and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

In connection with the Merger, Bio-Reference entered into a Fifteenth Amendment to Loan Documents, dated as of August 18, 2015 (the Loan Amendment), with PNC Bank, National Association (PNC), as lender and as agent, amending the Amended and Restated Loan and Security Agreement, dated as of September 30, 2004, by and among Bio-Reference and GeneDx, Inc., as borrowers, and PNC, as lender and agent, as amended (the Credit Facility). The Loan Amendment includes PNC 's consent to the Merger and amendments to certain provisions in the Credit Facility to, among other things, (i) permit Bio-Reference to amend its organizational documents and change its fiscal year as a result of the Merger, (ii) modify the event of default triggered upon a change in the existing management of Bio-Reference and (iii) allow termination of the Credit Facility upon 20 days (or such shorter period as is acceptable to PNC) prior written notice and payment in full of the outstanding obligations under the Credit Facility.

The Credit Facility provides Bio-Reference with a line of credit of up to the lesser of \$120 million and 50% of certain eligible receivables of Bio-Reference, subject to the terms and conditions set forth therein. Borrowings under the Credit Facility may be used for working capital needs and to reimburse drawings under letters of credit. Interest on advances under the Credit Facility is payable based on PNC's prime rate, and may also be based in part on a Euro-Rate linked to the London interbank offer rate for US dollars, in each case, plus an additional interest percentage. The Credit Facility is secured by substantially all assets of Bio-Reference and is guaranteed by certain subsidiaries of Bio-Reference. The Credit Facility contains certain affirmative and negative covenants (subject to certain exceptions and baskets), which limit the ability of Bio-Reference, the guarantors thereunder and certain of their subsidiaries to, among other things, pay dividends, incur indebtedness, create liens, enter into certain acquisition transactions and make capital expenditures. Additionally, the Credit Facility contains financial covenants which require Bio-Reference to maintain a minimum fixed charge coverage ratio. The Credit Facility also contains customary events of default, including events of default arising from non-payment, material misrepresentations, breaches of covenants, cross default to certain indebtedness, bankruptcy and changes in management. As of the Effective Time, approximately \$68.5 million was outstanding under the Credit Facility.

A copy of the Loan Amendment is attached as Exhibit 10.1 hereto and is incorporated herein by reference.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

On August 20, 2015, in connection with the closing of the Merger, Bio-Reference notified the NASDAQ Global Select Market (NASDAQ) of the completion of the Merger and requested that NASDAQ file a notification of removal from listing on Form 25 with the SEC to delist the Bio-Reference Common Stock from NASDAQ and deregister the Bio-Reference Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act). NASDAQ halted trading in the Bio-Reference Common Stock effective prior to market open on August 20, 2015. Bio-Reference intends to file with the SEC a Form 15 suspending Bio-Reference's reporting obligations under the Exchange Act.

Item 3.03 Material Modification of Rights of Security Holders.

The information set forth under Items 2.01, 3.01 and 5.03 of this Current Report on Form 8-K is incorporated into this Item 3.03 by reference.

Item 5.01 Changes in Control of Registrant.

The information set forth under Items 2.01 and 5.02 of this Current Report on Form 8-K is incorporated into this Item 5.01 by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

At the Effective Time, each of the directors of Bio-Reference in office immediately prior to the Effective Time voluntarily resigned from the Board of Directors of Bio-Reference and the directors of Merger Sub immediately prior to the Effective Time, Steven D. Rubin and Adam Logal, became the directors of Bio-Reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

At the Effective Time, the certificate of incorporation and bylaws of Bio-Reference were amended and restated in their entirety in accordance with the terms of the Merger Agreement. A copy of the Amended and Restated Certificate of Incorporation of Bio-Reference and the Bylaws of Bio-Reference, as amended, are attached as Exhibits 3.1 and 3.2 hereto, respectively, and are incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders

On August 20, 2015, Bio-Reference held a special meeting of its shareholders (the Special Meeting) to vote on (i) a proposal to approve and adopt the Merger Agreement and approve the Merger, (ii) a proposal to approve, on a non-binding, advisory basis, the compensation to be paid or to become payable to Bio-Reference's named executive officers in connection with the Merger and (iii) a proposal to adjourn the Special Meeting, if necessary, to permit further solicitation of proxies in the event there were not sufficient votes at the time of the Special Meeting to approve and adopt the Merger Agreement and approve the Merger. Below is a summary of the votes for each proposal.

1. The shareholders voted to approve and adopt the Merger Agreement and approve the Merger. The votes on the Merger proposal were as follows:

| For | Against | Abstain | Broker Non-Vote |
|------------|----------------|----------------|------------------------|
| 18,911,036 | 271,499 | 85,295 | 0 |

2. The shareholders voted to approve, on a nonbinding advisory basis, the compensation to be paid or to become payable to Bio-Reference's named executive officers in connection with the Merger. The votes on the Merger-related compensation proposal were as follows:

| For | Against | Abstain | Broker Non-Vote |
|------------|----------------|----------------|------------------------|
| 17,551,328 | 1,439,880 | 276,623 | 0 |

3. The shareholders voted to approve the adjournment of the Special Meeting, if necessary, to permit further solicitation of proxies in the event there were not sufficient votes at the time of the Special Meeting to approve and adopt the Merger Agreement and approve the Merger. The votes on the adjournment proposal were as follows:

| For | Against | Abstain | Broker Non-Vote |
|------------|----------------|----------------|------------------------|
| 17,994,834 | 1,157,837 | 115,160 | 0 |

No other matters were considered or voted upon at the Special Meeting.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

| Exhibit | Description |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 | Amended and Restated Certificate of Incorporation of Bio-Reference Laboratories, Inc. |
| 3.2 | Bylaws of Bio-Reference Laboratories, Inc., as amended. |
| 10.1 | Fifteenth Amendment to Loan Documents, dated as of August 18, 2015, by and among Bio-Reference Laboratories, Inc., GeneDx, Inc. and PNC Bank, National Association, as lender and as agent. |

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.

Bio-Reference Laboratories, Inc.

Dated: August 20, 2015

By: /s/ Marc D. Grodman, M.D.

Name: Marc D. Grodman, M.D.

Title: President and Chief Executive Officer

EXHIBIT INDEX

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