

VITAL THERAPIES INC
Form 8-K
October 23, 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): October 22, 2015

VITAL THERAPIES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-36201

(Commission File Number)

56-2358443

(IRS Employer
Identification No.)

15010 Avenue of Science, Suite 200

San Diego, California 92128

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: **(858) 673-6840**

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 (see General Instruction A.2. below):

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 October 22, 2015, Vital Therapies, Inc. (the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”) with Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Underwriter”) relating to a public offering (the “Offering”), relating to the issuance and sale of 5,454,546 shares of our common stock, par value \$0.0001 per share (the “Common Stock”). Under the terms of the Underwriting Agreement, the Company granted the Underwriter a 30 day option to purchase up to an additional 818,181 shares of Common Stock to cover overallotments, if any. The Offering is expected to close on October 28, 2015. The net proceeds to the Company after deducting the underwriting discounts and estimated offering expenses (excluding the Underwriter’s overallotment option, if exercised) will be approximately \$27.8 million.

The Offering was made pursuant to the Company’s effective registration statement on Form S-3 (Registration Statement No. 333-204097) previously filed with and declared effective by the Securities and Exchange Commission (the “SEC”) and a prospectus supplement thereunder filed with the SEC.

The Underwriting Agreement contains customary representations, warranties and agreements by the Company, customary conditions to closing, indemnification obligations of the Company and the Underwriter, including for liabilities under the Securities Act of 1933, as amended (the “Securities Act”), other obligations of the parties and termination provisions. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties. A copy of the Underwriting Agreement is attached as Exhibit 1.1 to this report and is incorporated by reference herein. The foregoing description of the terms of the Underwriting Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

The legal opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation relating to the legality of the Common Stock being offered is filed as Exhibit 5.1 to this Current Report on Form 8-K.

Item 2.02 Results of Operations and Financial Condition.

On October 22, 2015, the Company filed with the SEC a preliminary prospectus supplement pursuant to Rule 424(b) of the Securities Act in which the Company disclosed that it had \$59.8 million of cash and cash equivalents as of September 30, 2015.

The information in this Item 2.02 is being furnished and shall not be deemed “filed” for the purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that Section. The

information in this Item 2.02 shall not be incorporated by reference into any registration statement or other document pursuant to the Securities Act, regardless of any general incorporation language.

Item 8.01 Other Information.

On October 22, 2015, the Company issued a press release announcing the pricing of the Offering. The press release announcing the pricing of the Offering is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts contained in this report are forward-looking statements, including, among others, statements relating to the offering, including the timing and size of the offering. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Risks and uncertainties include stock market conditions and our ability to satisfy the conditions to closing in the underwriting agreement and complete the offering. Although we believe that the forward-looking statements contained herein are reasonable, we can give no assurance that our expectations are correct. All forward-looking statements are expressly qualified in their entirety by this cautionary statement. For a detailed description of our risks and uncertainties, you are encouraged to review the official corporate documents filed with the SEC. These forward-looking statements speak only as of the date hereof and Vital Therapies, Inc. disclaims any obligation to update these statements except as may be required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
1.1	Underwriting Agreement, dated as of October 22, 2015, by and between Vital Therapies, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
23.1	Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1)
99.1	Press Release dated October 22, 2015.

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.

VITAL THERAPIES, INC.

By: /s/ Michael V. Swanson

Michael V. Swanson

Chief Financial Officer

Date: October 23, 2015

EXHIBIT INDEX

Exhibit No.	Description
1.1	Underwriting Agreement, dated as of October 22, 2015, by and between Vital Therapies, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
23.1	Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1)
99.1	Press Release dated October 22, 2015.