

AVEO PHARMACEUTICALS INC
Form 10-K/A
April 30, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended: December 31, 2018

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF
1934

For the transition period from _____ to _____

Commission file number: 001-34655

AVEO PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware 04-3581650
(State or Other Jurisdiction of (I.R.S. Employer

Incorporation or Organization) Identification No.)

One Broadway, 14th Floor

Cambridge, Massachusetts 02142

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(Address of Principal Executive Offices) (zip code)

Registrant's telephone number, including area code: (617) 588-1960

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$.001 par value	Nasdaq Capital Market

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See 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	Accelerated filer
Non-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 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

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The aggregate market value of the registrant's common stock, \$0.001 par value per share, held by non-affiliates of the registrant, based on the last reported sale price of the common stock on the Nasdaq Capital Market at the close of business on June 29, 2018, was \$204,881,812.

The number of shares outstanding of the registrant's Common Stock as of March 8, 2019 were 139,000,340.

Documents incorporated by reference:

Portions of our definitive proxy statement for our 2019 annual meeting of stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K.

EXPLANATORY NOTE

AVEO Pharmaceuticals, Inc. (the “Company”) is filing this Amendment No. 1 on Form 10-K/A (“Amendment”) to amend its Annual Report on Form 10-K for the fiscal year ended December 31, 2018 (the “Form 10-K”), which was originally filed with the Securities and Exchange Commission (the “SEC”) on March 14, 2019. The purpose of this Amendment is to refile Exhibit 10.36, which was originally filed with the Form 10-K, to transition to the requirements set forth in Item 601(b) of Regulation S-K permitting registrants to omit confidential information from material contracts filed pursuant to Item 601(b)(10) without the need to submit a confidential treatment request to the SEC.

This Amendment speaks as of the original filing date and does not reflect events occurring after the filing of the Form 10-K or modify or update disclosures that may be affected by subsequent events. No revisions are being made to the Company’s financial statements or any other disclosure contained in the Form 10-K.

This Amendment is an exhibit-only filing. Except for the changes to Exhibit 10.36, this Amendment does not otherwise update any exhibits as originally filed or previously amended.

In addition, as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), new certifications by the Company’s principal executive officer and principal financial officer are filed herewith as exhibits to this Amendment pursuant to Rule 13a-14(a) or 15d-14(a) of the Exchange Act. As no financial statements have been included in this Amendment and this Amendment does not contain or amend any disclosure with respect to Items 307 and 308 of Regulation S-K, paragraphs 3, 4, and 5 of the certifications have been omitted. The Company is not including certifications pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as no financial statements are being filed with this Amendment.

PART IV

ITEM 15. Exhibits, Financial Statement Schedules

(a) The following documents are included as part of the Company's Annual Report on Form 10-K filed with the SEC on March 14, 2019:

(1) Financial Statements

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets

Consolidated Statements of Operations

Consolidated Statements of Comprehensive Loss) Income

Consolidated Statements of Stockholders' (Deficit) Equity

Consolidated Statements of Cash Flows

Notes to Consolidated Financial Statements

(2) Schedules

Schedules have been omitted as all required information has been disclosed in the financial statements and related footnotes.

(3) Exhibits

(b) The following exhibits are filed herewith or incorporated by reference:

EXHIBIT INDEX

Exhibit Number	Description of Exhibit	Incorporated by Reference			Filed Herewith
		File Number	Date of Filing	Exhibit Number	
	Articles of Incorporation and Bylaws				
3.1	<u>Restated Certificate of Incorporation of the Registrant</u>	8981-34655	03/18/2010	3.1	
3.2	<u>Certificate of Amendment of Restated Certificate of Incorporation of the Registrant</u>	8981-34655	06/03/2015	3.1	
3.3	<u>Certificate of Amendment of Restated Certificate of Incorporation of the Registrant</u>	100Q-34655	08/09/2017	3.1	
3.4	<u>Second Amended and Restated Bylaws of the Registrant</u>	S337A163778	02/08/2010	3.5	
	Instruments Defining the Rights of Security Holders, Including Indentures				
4.1	<u>Specimen Stock Certificate evidencing the shares of common stock</u>	S337A163778	03/09/2010	4.1	
4.2	<u>Registration Rights Agreement, dated May 13, 2016, by and among the Company and the Investors named therein</u>	8981-34655	05/13/2016	10.3	
4.3	<u>Warrant Agreement, dated July 16, 2018, by</u>	8981-34655	07/16/2018	4.1	

and among the
Company and
Computershare Inc.
and Computershare
Trust Company, N.A.,
acting jointly as
Warrant Agent

Material
Contracts—Management
Contracts and
Compensatory Plans

10.1 2002 Stock Incentive S338A163778 02/23/2010 10.1
Plan, as amended

- 10.2 Form of Incentive Stock Option Agreement under 2002 Stock Incentive Plan S-1 333-163778 12/16/2009 10.2
- 10.3 Form of Nonstatutory Stock Option Agreement under 2002 Stock Incentive Plan S-1 333-163778 12/16/2009 10.3
- 10.4 Form of Restricted Stock Agreement under 2002 Stock Incentive Plan S-1 333-163778 12/16/2009 10.4
- 10.5 Second Amended and Restated 2010 Stock Incentive Plan 8-K 001-34655 06/27/2017 99.1
- 10.6 Form of Incentive Stock Option Agreement under 2010 Stock Incentive Plan S-1/A 333-163778 02/08/2010 10.6
- 10.7 Form of Nonqualified Stock Option Agreement under 2010 S-1/A 333-163778 02/08/2010 10.7

	<u>Stock</u>				
	<u>Incentive</u>				
	<u>Plan</u>				
10.8	<u>Form of</u>				
	<u>Restricted</u>				
	<u>Stock</u>				
	<u>Agreement</u>	10-K	001-34655	03/30/2012	10.8
	<u>under 2010</u>				
	<u>Stock</u>				
	<u>Incentive</u>				
	<u>Plan</u>				
10.9	<u>Key</u>				
	<u>Employee</u>				
	<u>Change in</u>	S-1	333-163778	12/16/2009	10.8
	<u>Control</u>				
	<u>Severance</u>				
	<u>Benefits Plan</u>				
10.10	<u>2010</u>				
	<u>Employee</u>				
	<u>Stock</u>	S-1/A	333-163778	02/23/2010	10.17
	<u>Purchase</u>				
	<u>Plan, as</u>				
	<u>amended</u>				
10.11	<u>Amendment</u>				
	<u>No. 1 to 2010</u>				
	<u>Employee</u>	8-K	001-34655	06/04/2013	99.2
	<u>Stock</u>				
	<u>Purchase</u>				
	<u>Plan</u>				
10.12	<u>Offer Letter</u>				
	<u>by Registrant</u>				
	<u>to Michael</u>	10-Q	001-34655	05/07/2015	10.1
	<u>Bailey, dated</u>				
	<u>as of January</u>				
	<u>6, 2015</u>				
10.13	<u>Severance</u>				
	<u>Agreement,</u>				
	<u>dated</u>				
	<u>September</u>				
	<u>13, 2010, by</u>	10-Q	001-34655	11/05/2010	10.1
	<u>and between</u>				
	<u>the Registrant</u>				
	<u>and Michael</u>				
	<u>Bailey</u>				

- 10.14 Letter
Agreement
regarding
Retention
Bonus Award
and
Severance
Agreement. 10-K 001-34655 3/13/2014 10.22
dated
February 3,
2014, by and
between the
Company and
Michael
Bailey
- 10.15 Offer Letter
by the
Registrant to
Michael 10-Q 001-34655 05/07/2015 10.4
Needle, dated
January 8,
2015
- 10.16 Severance
and Change
in Control
Agreement.
dated as of
January 9, 10-Q 001-34655 05/07/2015 10.2
2015, by and
between the
Registrant
and Michael
Needle
- 10.17 Offer Letter
by and
between the
Registrant 8-K 001-34655 05/17/2017 10.1
and Matthew
Dallas, dated
May 8, 2017
- 10.18 Severance 8-K 001-34655 11/20/2017 10.1
and Change
in Control
Agreement.
dated
November
20, 2017, by

and between
the Registrant
and Matthew
Dallas

- 10.19 Offer Letter
by and
between the
Registrant 10-K 001-34655 3/13/2018 10.21
and Nikhil
Mehta, dated
November
10, 2017
- 10.20 Severance
and Change
in Control
Agreement,
dated
November 10-K 001-34655 3/13/2018 10.22
20, 2017, by
and between
the Registrant
and Nikhil
Mehta
- 10.21 Offer Letter
by and
between the
Registrant 10-K 001-34655 3/14/2019 10.21
and Karuna
Rubin dated
June 16, 2015
- 10.22 Severance
and Change
in Control
Agreement,
dated March 10-K 001-34655 3/14/2019 10.22
13, 2019, by
and between
the Registrant
and Karuna
Rubin
-

Material
Contracts—Financing
Agreements

10.23 Securities Purchase Agreement, dated May 13, 2016, by and among the Company and the Investors named therein 8-K 001-34655 05/13/2016 10.1

10.24 Form of Warrant to Purchase Common Stock 8-K 001-34655 05/13/2016 10.2

10.25 Amended and Restated Loan and Security Agreement, dated December 28, 2017, by and among the Registrant and the parties named therein. 8-K 001-34655 01/02/2018 10.1

10.26 Sales Agreement dated February 16, 2018, by and between the Company and Leerink Partners LLC 8-K 001-34655 02/16/2018 1.1

Material
Contracts—License
and Strategic
Partnership
Agreements

10.27† License Agreement, dated as of December 21, 2006, by and between the Registrant and Kirin Brewery Co. Ltd. S-1 333-163778 12/16/2009 10.22

10.28† Option and License Agreement, dated as of March 18, 2009. S-1 333-163778 12/16/2009 10.26

2016, by and
between the
Registrant and
CANbridge Life
Sciences Ltd.

10.35† First Amendment,
dated October 14,
2016, to
Co-Development
and Collaboration
Agreement, dated
April 9, 2014, by
and between the
Company and
Biodesix, Inc. 10-Q 001-34655 11/04/2016 10.1

10.36† Agreement, dated
December 18, 2018,
by and between the
Registrant and
Novartis
International
Pharmaceutical Ltd. X

Additional Exhibits

10.37 Memorandum of
Understanding,
dated December 26,
2017, by and among
the Company and
the parties named
therein 8-K 001-34655 12/26/2017 10.1

10.38	<u>Stipulation of Settlement, dated January 29, 2018, by and among the Company and the parties named therein</u>	10-Q	001-34655	5/8/2018	10.2	
21.1	Subsidiaries of the Registrant	10-K	001-34655	3/14/2019	21.1	
23.1	Consent of Ernst & Young LLP	10-K	001-34655	3/14/2019	23.1	
31.1	Certification of principal executive officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.	10-K	001-34655	3/14/2019	31.1	
31.2	Certification of principal financial officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.	10-K	001-34655	3/14/2019	31.2	
31.3	<u>Certification of principal executive officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.</u>					X
31.4	<u>Certification of principal financial officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.</u>					X

32.1* Certification of principal executive officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2* Certification of principal financial officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

101.INS	XBRL Instance Document.	10-K	001-34655	3/14/2019	101.INS
101.SCH	XBRL Taxonomy Extension Schema Document.	10-K	001-34655	3/14/2019	101.SCH
101.CAL	XBRL Taxonomy Calculation Linkbase Document.	10-K	001-34655	3/14/2019	101.CAL
101DEF	XBRL Taxonomy Extension Definition Linkbase Document.	10-K	001-34655	3/14/2019	101DEF
101.LAB	XBRL Taxonomy Label Linkbase Document.	10-K	001-34655	3/14/2019	101.LAB
101.PRE	XBRL Taxonomy Presentation Linkbase Document.	10-K	001-34655	3/14/2019	101.PRE

†Confidential treatment has been granted as to certain portions, which portions have been omitted and separately filed with the SEC.

††Certain portions of this exhibit are subject to confidential treatment.

*Furnished as an exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AVEO PHARMACEUTICALS, INC.

Date: April 30, 2019 By: /s/ MICHAEL BAILEY
Michael Bailey
President & Chief Executive Officer
(Principal Executive Officer)