

BIODELIVERY SCIENCES INTERNATIONAL INC

Form 8-K

July 11, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or Section 15(d)

of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 11, 2013 (July 5, 2013)

BioDelivery Sciences International, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

001-31361
(Commission

File Number)

35-2089858
(IRS Employer

Identification No.)

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801 Corporate Center Drive, Suite #210

Raleigh, NC
(Address of principal executive offices)

27607
(Zip Code)

Registrant's telephone number, including area code: 919-582-9050

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 to 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.

On July 5, 2013, BioDelivery Sciences International, Inc. (the Company), together with its consolidated subsidiaries, Arius Pharmaceuticals, Inc., a Delaware corporation (Arius), and Arius Two, Inc., a Delaware corporation (Arius Two), and together with Arius, the Subsidiaries, and the Subsidiaries together with the Company, collectively, the Borrowers, entered into a \$20 million secured loan facility (the Loan Transaction and such loan, the Loan) with MidCap Financial SBIC, LP, as agent and lender (MidCap), pursuant to the terms and conditions of that certain Credit and Security Agreement, dated as of July 5, 2013 (the Credit Agreement) among the Borrowers and MidCap. The Company received net Loan proceeds in the aggregate amount of \$19,887,730.85 and will use the Loan proceeds for general corporate purposes or other activities of Borrower and its Subsidiaries permitted under the Credit Agreement.

In addition, pursuant to the Loan Transaction, the Company issued to MidCap a warrant (the Warrant) to purchase 357,356 unregistered shares of the Company's common stock, par value \$.001 per share (the Common Stock), which warrant has an exercise price of \$4.20 per share, the 20-day volume-weighted average share price of the Common Stock prior to the closing of the Loan. The Warrant is exercisable for a term of five (5) years and contains cashless exercise provisions and customary, stock-based anti-dilution protection provisions.

The Loan has a term of 36 months with interest only payments for the first 6 months. The interest rate is 8.45% plus a LIBOR floor of 0.5%. Upon execution of the Credit Agreement, the Company paid to MidCap a closing fee of 0.5% of the aggregate Loan amount. Upon repayment in full of the Loan, the Company is obligated to make a final payment fee equal to 3.5% of the aggregate Loan amount. In addition, the Company may prepay all or any portion of the Loan at any time subject to a prepayment premium of: (i) 5% of the Loan amount prepaid in the first year of the Loan and (ii) 3% of the Loan amount prepaid in each year thereafter. In addition, if the Company receives the second of two anticipated database lock milestone payments (the Database Lock Payments) from Endo Health Solutions, Inc. (Endo) in connection with the Company's BEMA Buprenorphine license and commercialization agreement with Endo, the Company may prepay 50% of the principal amount of the Loan then outstanding and, concurrently and at the Company's election, either: (i) pay to MidCap a cash prepayment fee 2% of the principal amount of the Loan and all obligations thereunder outstanding as of the date of prepayment or (ii) issue to MidCap a warrant (in a form substantially similar to the Warrant) to purchase shares of Common Stock equal to 2.0% of the prepayment amount, with the number of shares being calculated using the Black-Scholes pricing model.

The obligations of the Borrowers under the Credit Agreement are secured by a first priority lien in favor of MidCap on substantially all of the Company's and its Subsidiaries' existing and after-acquired assets, but excluding certain intellectual property and general intangible assets of the Borrowers (but not any proceeds thereof). The obligations of the Company under the Loan Agreement are also secured by a first priority lien on the equity interests held by the Company in the Subsidiaries. The Borrowers entered into customary pledge and intellectual property security agreements to evidence the security interest in favor of MidCap.

Under the Credit Agreement, the Borrowers are subject to affirmative covenants which are customary for financings of this type, including the obligations of the Borrowers to: (i) maintain good standing and governmental authorizations, (ii) provide certain information and notices to MidCap, (iii) deliver monthly and annual financial statements to MidCap, (iv) maintain insurance, (v) discharge all taxes, (vi) protect their intellectual property and (vii) generally protect the collateral granted to MidCap.

The Borrowers are also subject to negative covenants customary for financings of this type, including that they may not: (i) enter into a merger or consolidation or certain change of control events, (ii) incur liens on the collateral, (iii) incur additional indebtedness, (iii) dispose of any property, (iv) amend material agreements or organizational documents, (v) change their jurisdictions of organization or their organizational structures or types, (vi) declare or pay dividends (other than dividends payable solely in Common Stock), (vii) make certain investments or acquisitions, or (viii) enter into certain transactions with affiliates, in each case subject to certain exceptions provided for in the Credit Agreement, including exceptions that allow the Company and its Subsidiaries to acquire additional products and to enter into licenses and similar agreements provided certain conditions are met.

The Credit Agreement provides that events of default include: (i) failure to make payment of principal or interest on the Loan when required, (ii) failure to perform obligations under the Credit Agreement and related documents, (iii) defaults in other indebtedness and breaches of material agreements of the Borrowers, (iv) if any Borrower shall generally not pay its debts as such debts become due and similar insolvency matters, (v) material adverse changes to the Borrowers (subject to a 10-day notice and cure period), (vi) if the Company ceases to be a publicly-listed and reporting company, (vii) failure to receive the Database Lock Payments by June 30, 2014, and (viii) certain other events, including certain adverse actions taken by the Food and Drug Administration or other governmental authorities. Upon an event of default, the Company's and its Subsidiaries' obligations under the Credit Agreement may, or in the event of insolvency or bankruptcy will automatically, be accelerated. Upon the occurrence of any event of default, the Company's and its Subsidiaries' obligations under the Credit Agreement will bear interest at a rate equal to the lesser of: (i) 4% above the rate of interest applicable to such obligations immediately prior to the occurrence of the event of default and (ii) the maximum rate allowable under law.

The Credit Agreement and Form of Warrant are attached to this Current Report as Exhibit 10.1 and Exhibit 4.1, respectively. All descriptions of the Credit Agreement and Form of Warrant herein are qualified in their entirety to the text of Exhibit 10.1 and Exhibit 4.1, respectively, hereto, which are 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.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 7.01. Regulation FD Disclosure

In connection with the Credit Agreement described in Item 1.01 of this Current Report, the Company issued a press release on July 8, 2013. This press release is attached to this Current Report as Exhibit 99.1.

Item 9.01. Financial Statements and Exhibits.

Set forth below is a list of Exhibits included as part of this Current Report.

Exhibit	Description
4.1	Form of Warrant
10.1*	Credit and Security Agreement, dated July 5, 2013, by and among the Company, Arius, Arius Two and MidCap Financial SBIC, LP, as agent and lender.
99.1	Press release regarding Loan Transaction, dated July 8, 2013.

*** Confidential treatment is requested for certain portions of this exhibit pursuant to 17 C.F.R. Sections 200.8(b)(4) and 240.24b-2. Cautionary Note on Forward-Looking Statements**

This Current Report and any related statements of representatives and partners of the Company contain, or may contain, among other things, certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve significant risks and uncertainties. Such statements may include, without limitation, statements with respect to the Company's plans, objectives, projections, expectations and intentions and other statements identified by words such as projects, may, will, could, would, should, believes, expects, anticipates, estimates, intends, plans, or similar expressions. These statements are based upon the current beliefs and expectations of the Company's management and are subject to significant risks and uncertainties, including those detailed in the Company's filings with the Securities and Exchange Commission. Actual results (including, without limitation, the results and effect of the Company's loan transaction described herein and the timing for, and results of, the clinical trials and proposed NDA submissions for, and FDA review of, the Company's products in development described in this Current Report) may differ significantly from those set forth in the forward-looking statements. These forward-looking statements involve certain risks and uncertainties that are subject to change based on various factors (many of which are beyond the Company's control). The Company undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

July 11, 2013

BIODELIVERY SCIENCES INTERNATIONAL, INC.

By: /s/ James A. McNulty

Name: James A. McNulty

Title: Secretary, Treasurer and CFO