

Sevion Therapeutics, Inc.
Form 10-K/A
November 16, 2016

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

(Mark One)

☒ ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the fiscal year ended June 30, 2016

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: **001-31326**

SEVION THERAPEUTICS, INC.
(Exact name of registrant as specified in its charter)

Delaware **84-1368850**
(State or other jurisdiction of (I.R.S. Employer Identification No.)
incorporation or organization)

10210 Campus Point Dr., Suite 150, San Diego, CA 92121
(Address of principal executive offices) (Zip Code)

(858) 909-0749
(Registrant's telephone number,
including area code)

Securities registered under Section 12(b) of the Act:

Title of each class Name of each exchange on which registered

None

Securities registered under Section 12(g) of the Act:

Common Stock, \$0.01 par value per share.

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 15(d) of the Exchange 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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes ☒ No ☐

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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K 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. x

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

Large accelerated filer ☐ Accelerated filer ☐

Non-accelerated filer ☐ Smaller reporting company ☒

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

As of December 31, 2015, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was **\$6,807,255**, based on the closing sales price as reported on the OTCQB Marketplace on that date.

The number of shares outstanding of each of the registrant's classes of common stock, as of October 24, 2016:

Class	Number of Shares
Common Stock, \$0.01 par value	20,636,847
Preferred Stock, \$0.01 par value	235,384

EXPLANATORY NOTE

We are filing this Amendment No. 2 on Form 10-K/A (this “Amendment”) to amend our Annual Report on Form 10-K for the fiscal year ended June 30, 2016, originally filed with the Securities and Exchange Commission (the “SEC”) on October 13, 2016, as amended by Amendment No. 1 on Form 10-K/A filed with the SEC on October 28, 2016 (as so amended, the “Original Filing”) to correct, among other things, an error in the Summary Compensation Table in Part III, Item 11 of the Original Filing.

In accordance with Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), Item 11 of the Original Filing is hereby amended and restated in its entirety as set forth below. This Amendment does not amend or otherwise update any other information in the Original Filing. Accordingly, this Amendment should be read in conjunction with the Original Filing.

In addition, as required by Rule 12b-15 under the Exchange Act, new certificates by our principal executive officer and principal financial officer are filed as exhibits to this Amendment.

PART III**Item 11. Executive Compensation.****Summary Compensation Table**

The following table sets forth information concerning compensation for services rendered in all capacities during the fiscal years ended June 30, 2016 and June 30, 2015, if applicable, awarded to, earned by or paid to: (i) all persons that served as our Chief Executive Officer during Fiscal 2016; (ii) our three most highly compensated executive officers other than the Chief Executive Officer who were serving as executive officers at the end of Fiscal 2016; and (iii) individuals who would qualify under (ii) but for the fact that the individual was not serving as an executive officer at the end of the fiscal year, collectively referred to herein as the named executive officers. No other executive officers who would have otherwise been includable in such table on the basis of total compensation for Fiscal 2016 have been excluded by reason of their termination of employment or change in executive status during that year.

Name and Principal Position	Year (1)	Salary \$(2)	Option Awards \$(3)	Total \$
David Rector (4) Chief Executive Officer	2016	\$150,000	—	\$150,000
	2015	\$57,419	—	\$57,419
Vaughn Smider, M.D., Ph.D. Chief Scientific Officer	2016	\$164,308	—	\$164,308
	2015	\$200,000	\$25,495	\$225,495
James Graziano, Ph.D. Chief Technology Officer	2016	\$163,288	—	\$163,288
	2015	\$175,000	\$16,997	\$191,997
Miguel de los Rios Ph.D. Vice President of Research and Development	2016	\$155,481	—	\$155,481
	2015	\$175,000	\$20,548	\$195,548

(1) Sevion's fiscal year ends on June 30.

(2) Such amount represents actual salary paid, including such amounts deferred in connection with our 401K plan.

The amounts shown are the grant date fair value of stock options granted to each named executive officer, in accordance with FASB ASC Topic 718 pursuant to the Black-Scholes pricing model. For a discussion of valuation

(3) assumptions used in the calculations, see Notes 2 and 9 of Notes to Consolidated Financial Statements included in the Annual Report on Form 10-K filed by the Company with the SEC on October 13, 2016. The grant date fair values used to calculate such compensation costs were not adjusted to take into account any estimated forfeitures.

(4) Mr. Rector was appointed as the Company's Interim Chief Executive Officer on January 9, 2015 and is a consultant of the Company.

Narrative Explanation of Certain Aspects of the Summary Compensation Table

Each of our named executive officers is eligible to receive (i) a base salary and (ii) an annual performance bonus payable in cash, stock or a combination at the discretion of the compensation committee of the board of directors, or the Compensation Committee.

Cash Compensation

The base salary for each of our named executive officers for our Fiscal 2016, is listed in the table below:

Name	Fiscal 2016 Base Salary
David Rector	\$ 60,000 (1)
Vaughn Smider, M.D., Ph.D.	\$ 40,000 (2)
James Graziano, Ph.D.	\$ 122,500 (3)
Miguel de los Rios Ph.D.	\$ 87,500 (4)

(1) From June 30, 2015 through March 22, 2016, base salary was \$180,000. Effective March 23, 2016, base salary was decreased to \$60,000.

(2) From June 30, 2015 through March 22, 2016, base salary was \$200,000. Effective March 23, 2016, base salary was decreased to \$40,000.

(3) From June 30, 2015 through March 22, 2016, base salary was \$175,000. Effective March 23, 2016, base salary was decreased to \$122,500.

(4) From June 30, 2015 through March 22, 2016, base salary was \$175,000. Effective March 23, 2016, base salary was decreased to \$87,500.

On March 23, 2016, our senior management team recommended to our board of directors that certain executive level salaries be reduced by upwards of 80%, depending on position, to support our goal of cutting expenses and preserving our cash on hand. The salary reductions listed above were a result of such decision.

The Compensation Committee determined, as a result of reviewing several factors, and primarily because of our limited cash resources reserved for research and development activities, that no bonuses were or would be granted for Fiscal 2016.

Equity Compensation

During Fiscal 2016, the Compensation Committee determined that the performance metrics for the option granted in Fiscal 2015 had not been fully met. Therefore, a percentage of the options granted in Fiscal 2015 were forfeited as follows:

Name	Original Grant Date	Original Grant	Percentage Forfeited	Options Forfeited	Grant Date Fair Value
Vaughn Smider, M.D., Ph.D.	11/18/2014	42,210	40	% 16,884	\$ 15,297
Miguel de los Rios, Ph.D.	11/18/2014	34,020	25	% 8,505	\$ 15,411
James Graziano, Ph.D.	11/18/2014	28,140	45	% 12,663	\$ 9,348

The grant date fair values used to calculate such compensation costs were not adjusted to take into account the effect of the forfeitures.

Grants of Plan-Based Awards

The Company did not grant any stock awards, option awards or equity incentive plan awards to its named executive officers during the fiscal year ended June 30, 2016.

Outstanding Equity Awards at Fiscal Year-End

The following table summarizes the equity awards we have made to our named executive officers, which remain outstanding as of June 30, 2016.

Name	Grant Date	Option Awards		Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date
		Number of Securities Underlying Unexercised Options (#) Exercisable					
David Rector							
Vaughn Smider, M.D., Ph.D.	11/18/2014	10,289		—	15,037	(1) \$ 0.83	11/18/2024
James Graziano, Ph.D.	11/18/2014	6,288		—	9,189	(1) \$ 0.83	11/18/2024
Miguel de los Rios Ph.D.	5/16/2014	103,658	(2)	—	9,424	(2) \$ 2.65	7/9/2023
	11/18/2014	10,365		—	15,150	(1) \$ 0.83	11/18/2024

- Such amounts consist of performance based options with the maximum number of option shares in which the optionee may vest to be determined by the Compensation Committee within 90 days following the fiscal year-end based on achievement of performance metrics and shall vest one-quarter on the first anniversary of the date of grant with one-thirty-sixth of the balance vesting each month thereafter with continued service.
- (1) 47,114 of the options were exercisable on the date of grant, with one-twenty-eighth of the balance vesting each month thereafter.
- (2)

Option Exercises and Stock Vested

There were no option exercises or stock vested activity for our named executive officers during the year ended June 30, 2016.

Executive Benefits and Perquisites

In General – The named executive officers are also provided with certain market competitive benefits, described below. It is the Compensation Committee’s belief that such benefits are necessary for us to remain competitive and to attract and retain top caliber executive officers, since such benefits are typically provided by companies in the biotechnology industry and with other companies with which we compete for executive talent.

Retirement Benefits – The named executive officers may participate in our 401(k) plans administered by Sevion and Fabrus, Sevion’s wholly-owned subsidiary

Other Benefits and Perquisites – All administrative employees, including the named executive officers, are eligible to receive standard health, disability, and life insurance. We do not provide any additional benefits and perquisites.

Severance and Change in Control Benefits

Retention Policy

On October 9, 2012, our board of directors approved a Retention Policy for those officers who do not have an employment agreement as of the date of their termination (the “Policy”). Pursuant to the terms and provisions of the Policy, in the event that an officer is terminated or resigns for good reason (as such term is defined in the Policy) in connection with a change of control transaction (as such term is defined in the Policy), such officer will be entitled to receive the following (subject to the limitation discussed below):

- (i) The involuntary termination benefits provided in the officer’s employment agreement, if any, including unpaid compensation and benefits.
- (ii) The full incentive bonus allocated to the officer for the calendar year in which termination occurs, as determined by the Board.
- (iii) A multiple of the officer’s annual base salary: (CEO=2x, CFO=1.5x, VP R&D=1.5x, VP Clinical=1.5x, other officers=1x).
- (iv) Medical coverage with term equal to base salary continuation under the Company’s group health insurance.
- (v) Allowance for all vested options to be exercisable for the remainder of each such vested option’s full remaining exercise period.
- (vi) Immediate vesting of all unvested options granted to the officer.

Notwithstanding the foregoing, if the aggregate compensation set forth in clauses (i), (ii), (iii) and (iv) above to be paid to all officers exceeds 10% of the value of the transaction as determined by the parties (as reflected in a definitive agreement, including the fair market value of any publicly traded securities), or if not reflected in a definitive agreement, then as determined by a qualified, independent third party selected by our board of directors, then the

board of directors shall have the discretion to reduce such compensation pro-rata to the extent necessary to consummate the change of control transaction.

The Policy also provides that our board of directors shall have discretion to grant a termination package in the event an officer is terminated by the board without cause (as such term is defined in the Policy) or resigns for good reason (as such term is defined in the Policy).

The Compensation Committee believes that the severance benefits under the Policy provide financial protection against the potential loss of employment in designated circumstances and will allow our executive officers to focus attention on changes that are in the best interests of the stockholders, without undue concern as to each officer's own financial situation. The Compensation Committee also believes the accelerated vesting of equity awards is justified because those awards are designed to serve as the primary vehicle for the executives to accumulate financial resources for retirement. Finally, given the time periods and risks involved in pharmaceutical development, the Compensation Committee believes that the extended exercise period is an appropriate way to provide the officers with an opportunity to realize financial gains from decisions made during his or her tenure as an officer.

Executive Compensation Agreements

Consulting Agreement

On January 9, 2015, we entered into a consulting agreement with The David Stephen Group LLC, an entity controlled by David Rector, our interim President and Chief Executive Officer, setting forth Mr. Rector's monthly compensation amount for the provision of his services as our interim President and Chief Executive Officer, as well as certain other standard provisions, such as confidentiality and invention assignment. Effective as of March 23, 2016, our consulting agreement with The David Stephen Group LLC was amended to reflect a reduction in the compensation payable under such agreement.

Director Compensation

We pay our non-employee directors cash compensation, paid in quarterly increments as consideration for their service on our board for each fiscal year as follows:

Annual (Base) Retainer	\$ 10,000
Per Scheduled Board Meeting Fee	\$ 1,500 (1)
Per Committee Meeting Fee	\$ 750 (2)
Additional Annual Retainer:	
Chairman of the Board	\$ 5,000
Audit Committee Chair	\$ 3,500
Compensation Committee Chair	\$ 3,500
Nominating and Corporate Governance Committee Chair	\$ 1,500
Non-Chair Committee Member Additional Retainer (All Committees)	\$ 1,000
Maximum Per Diem For All Meetings	\$ 2,000

(1) \$750 for telephonic meetings (less than 30 minutes: \$375).

(2) \$375 for telephonic meetings.

Equity Compensation

Equity Election Program

A director may elect to receive, in lieu of such cash retainer and meeting fees, either (i) restricted stock units, or RSUs, covering that number of shares having a fair market value on the grant date equal to such cash award or (ii) a number of option shares equal to twice the number of RSU's that would have been received, with an exercise price per share equal to the fair market value of our common stock on the option grant date. Such election must be timely made and generally applies for the entire year. The awards are fully-vested on the grant date and each option has a maximum term of 10 years subject to earlier termination 3 months following cessation of board service. The RSUs or options are generally granted quarterly, effective two (2) days following the filing of our quarterly reports on Form 10-Q for that quarter, and are fully vested as of the grant date.

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For Fiscal 2016, all of the directors elected to receive options in lieu of cash. Accordingly, the directors received options to purchase shares of our common stock pursuant to the provisions of the 2008 Stock Plan and their equity elections with the exercise price per share equal to the closing price on the option grant date. The dollar amount of the fees paid in equity pursuant to such program by each director for Fiscal 2016 and the number of shares subject to such equity awards was as follows:

Director	Grant Date	\$ Amount of Fees paid in Equity	Number of Shares subject to Options
Harlan W. Waksal, M.D.(1)	11/19/15	\$ 10,000	40,000
John N. Braca	11/19/15	\$ 10,625	42,500
	6/13/16	\$ 9,875	89,773
Phillip Frost, M.D.	11/19/15	\$ 8,125	32,500
	6/13/16	\$ 8,625	78,409
Steven Rubin	11/19/15	\$ 10,000	40,000
	6/13/16	\$ 9,875	89,773

(1) Such director resigned from the board on March 4, 2016.

Annual Equity Awards

We do not automatically grant options or other equity to our non-employee board members. Our Compensation Committee reviews the equity program each year and determines the appropriate level of the equity awards to be made for that year. The Compensation Committee did not approve any grant of options or other equity to our non-employee board members during Fiscal 2016.

Aggregate Equity Compensation

The following table sets forth information relating to the equity awards granted to the non-employee directors during Fiscal 2016.

	Stock Awards		Option Exercise Price (\$)/Share	Option Awards	
	Grant Date	Number of Shares		Number of Shares	Grant Date Fair Value
Director					
Harlan W. Waksal, M.D.(1)	11/19/15	-	0.50	40,000(2)	\$ 14,360
John N. Braca	11/19/15	-	0.50	42,500(3)	\$ 15,258
	6/13/16	-	0.22	89,773	\$ 14,600
Phillip Frost, M.D	11/19/15	-	0.50	32,500(4)	\$ 11,668
	6/13/16	-	0.22	78,409	\$ 12,752
Steven Rubin	11/19/15	-	0.50	40,000(2)	\$ 14,360
	6/13/16	-	0.22	89,773	\$ 14,600

(1) Such director resigned from the board on March 4, 2016.

(2) Includes 25,000 additional options granted for service during Fiscal 2015, not for cash compensation for Fiscal 2016. The remainder of the grant of 15,000 options represents payment for service during the first quarter of 2016.

(3) Includes 26,500 additional options granted for service during Fiscal 2015, not for cash compensation for Fiscal 2016. The remainder of the grant of 16,000 options represents payment for service during the first quarter of 2016.

(4) Includes 19,000 additional options granted for service during Fiscal 2015, not for cash compensation for Fiscal 2016. The remainder of the grant of 13,500 options represents payment for service during the first quarter of 2016.

Director Compensation Summary

The table below shows the compensation paid or awarded to our non-employee directors during the fiscal year ended June 30, 2016.

Name	Fees Earned or Paid in Cash (\$)	Option Awards (\$) (1)	All Other Compensation (\$)	Total (\$)
Harlan W. Waksal, M.D.(2)	\$ —	\$ 14,360	—	\$ 14,360
John N. Braca	\$ —	\$ 33,661	—	\$ 33,661
Phillip Frost, M.D.	\$ —	\$ 27,741	—	\$ 27,741
Steven Rubin	\$ —	\$ 32,763	—	\$ 32,763

In accordance with SEC rules, this column reflects the aggregate grant date fair value of the option awards granted during FY2016 computed in accordance with ASC 718. Assumptions used in the calculation of these amounts are included in Notes 2 and 9 to our consolidated financial statements included elsewhere in the Annual Report on Form 10-K filed by the Company with the SEC on October 13, 2016. The grant date fair values used to calculate (1) such compensation costs were not adjusted to take into account any estimated forfeitures. These amounts do not reflect the actual economic value that will be realized by the named executive officer upon the vesting of the stock options, the exercise of the stock options or the sale of the common stock underlying such stock options. For further information concerning such equity awards, see the section above entitled “Aggregate Equity Compensation” and the section below entitled “Outstanding Director Equity Awards.”

(2) Such director resigned from the board on March 4, 2016.

Outstanding Director Equity Awards

The following table shows the total number of shares of our common stock subject to option awards (vested and unvested) held by each non-employee director as of June 30, 2016:

Director	Number of Stock Awards Outstanding	Number of Option Awards Outstanding
Harlan W. Waksal, M.D.(1)		260,420
John N. Braca		209,637
Phillip Frost, M.D.		136,253
Steven Rubin		158,431

(1) Such director resigned from the board on March 4, 2016.

Compensation Committee Interlocks and Insider Participation

No member of the Compensation Committee is or has been an officer or employee of our company or any of our subsidiaries. In addition, no member of the Compensation Committee had any relationships with us or any other entity that requires disclosure under the regulations promulgated by the SEC and none of our executive officers served on the Compensation Committee or board of any company that employed any member of our board in Fiscal 2016.

Report of the Compensation Committee

The Compensation Committee has reviewed and discussed the section captioned “Executive Compensation” with management, and based on this review and these discussions, the Compensation Committee recommended to the board that this “Executive Compensation” section be included in Sevion’s Annual Report on Form 10-K/A.

This report is submitted on behalf of the
Compensation
Committee

Steven Rubin, Chairman

John N. Braca

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(3) Exhibits.

Reference is made to the Exhibit Index on Page 13.

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 this 16th day of November, 2016.

SEVION THERAPEUTICS, INC.

By: /s/ David Rector

David Rector, Chief Executive Officer
(Principal executive officer)

By: /s/ James Schmidt

James Schmidt, Chief Financial Officer
(Principal financial and accounting officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ David Rector David Rector	Chief Executive Officer and Director (principal executive officer)	November 16, 2016
/s/ James Schmidt James Schmidt	Chief Financial Officer (principal financial and accounting officer)	November 16, 2016
/s/ Vaughn M. Smider, M.D. Vaughn Smider, M.D.	Chief Scientific Officer and Director	November 16, 2016
/s/ John Braca John Braca	Director	November 16, 2016
/s/ Phillip Frost, M.D. Phillip Frost, M.D.	Director	November 16, 2016
/s/ Steven Rubin Steven Rubin	Director	November 16, 2016

EXHIBIT INDEX

Exhibit No.	Description of Exhibit
31.1 †	Certification of the principal executive officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2 †	Certification of the principal financial and accounting officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1 †	Certification of the principal executive officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2 †	Certification of the principal financial and accounting officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

† Filed herewith.