

BIODELIVERY SCIENCES INTERNATIONAL INC
Form 10-K/A
March 17, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE
ACT OF 1934**

For the fiscal year ended December 31, 2007

**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 001-31361

BioDelivery Sciences International, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

35-2089858
(I.R.S. Employer
Identification No.)

801 Corporate Center Drive, Suite #210

Raleigh, NC
(Address of principal executive offices)

27607
(Zip Code)

Issuer's telephone number: 919-582-9050

Securities registered pursuant to Section 12(b) of the Act: None

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

Common Stock, \$.001 par value NASDAQ-Capital Market

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

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 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. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer
Non-accelerated filer
(Do not check if a smaller reporting company)

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

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The aggregate market value of the voting and non-voting common equity held by non-affiliates as of March 6, 2008 was approximately \$29,681,244 based on the closing sale price of the company's common stock on such date of U.S. \$2.54 per share, as reported by the Nasdaq Capital Market.

As of March 6, 2008, there were 19,160,637 shares of company common stock issued and 19,145,546 shares of company common stock outstanding.

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (the Amendment) to the Annual Report on Form 10-K of BioDelivery Sciences International, Inc. (the Company) for the year ended December 31, 2007, which was filed with the Securities and Exchange Commission on March 7, 2008 (the Original Filing), is being filed solely for the limited purpose of amending Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters. to the Original Filing to properly reflect the amount of shares of our common stock beneficially owned by CDC IV, LLC.

As a result of this amendment, the certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as filed as exhibits to the Original Filing, have been re-executed and re-filed as of the date of this Amendment.

Except for the amendments described above, this Amendment does not modify or update other disclosures in, or exhibits to, the Original Filing, and, accordingly, this Amendment should be read in conjunction with the Original Filing.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following table sets forth, as of March 7, 2008, by: (i) each of our directors, (ii) all persons who, to our knowledge, are the beneficial owners of more than 5% of the outstanding shares of common stock, (iii) each of the executive officers, and (iv) all of our directors and executive officers, as a group. Each person named in this table has sole investment power and sole voting power with respect to the shares of common stock set forth opposite such person's name, except as otherwise indicated. Unless otherwise indicated, the address for each person listed below is in care of BioDelivery Sciences International, Inc., 801 Corporate Center Drive, Suite #210, Raleigh, NC 27607.

Name of Beneficial Owner	Number of Shares of Common Stock Owned ⁽¹⁾	Percentage of Class as of March 7, 2008
Hopkins Capital Group II, LLC ⁽²⁾	4,171,523	21.79%
Francis E. O'Donnell, Jr., M.D. ⁽³⁾	4,478,788	23.39%
The Francis E. O'Donnell, Jr. Irrevocable Trust #1 ⁽⁴⁾	4,339,023	22.66%
CDC IV, LLC ⁽⁵⁾	4,505,120	23.53%
Laurus Master Fund. Ltd. ⁽⁶⁾	955,137	4.99%
Mark A. Sirgo, Pharm.D. ⁽⁷⁾	966,109	5.05%
Andrew L. Finn, Pharm.D. ⁽⁸⁾	871,183	4.55%
Raphael J. Mannino, Ph.D. ⁽⁹⁾	384,044	2.01%
James A. McNulty ⁽¹⁰⁾	155,573	*
William B. Stone ⁽¹¹⁾	240,000	1.25%
John J. Shea ⁽¹²⁾	175,000	*
William S. Poole ⁽¹³⁾	118,190	*
Thomas D. Alonzo ⁽¹⁴⁾	70,730	*
All Directors and Officers as a group (9 persons)	7,459,617	38.96%

* Less than 1%

(1) Based on 19,145,146 shares of common stock outstanding as of March 7, 2008.

(2) Includes 400,402 shares of our common stock which were converted from Series B Convertible Preferred Stock in January 2007.

(3) Dr. O'Donnell is our Chairman of the Board and a Director. Includes the shares owned by Hopkins Capital Group II, LLC (see Note 2). Excludes 167,000 shares owned by The Francis E. O'Donnell, Jr. Irrevocable Trust #1, of which Dr. O'Donnell's sister, Kathleen O'Donnell, is trustee, and as to which Dr. O'Donnell disclaims beneficial interest (see Note 4). The remaining 4,576 shares of common stock are owned by Dr. O'Donnell's sister. In addition, this number includes 157,689 shares owned personally by Dr. O'Donnell and options to purchase 145,000 shares of our common stock, all of which is currently exercisable. Dr. O'Donnell's address is 709 The Hampton Lane, Chesterfield MO 63017.

(4) Includes the shares owned by Hopkins Capital Group II, LLC (see Note 3). The remaining 167,500 shares of common stock are held directly by this trust.

(5) Includes 2,000,000 shares of common stock owned by CDC IV, LLC and includes 2,505,120 warrants to purchase shares of our common stock. The address for CDC IV, LLC is 47 Hullfish Street, Suite 310, Princeton, NJ. 08542.

(6) Up to a maximum potential of 2,559,138 shares of common stock are issuable upon exercise, as the case may be, of warrants with Laurus. However, the terms of the warrants issued by us to Laurus provide that Laurus is not entitled to receive shares upon exercise of the warrants, if such receipt

- would cause Laurus to be deemed to beneficially own in excess of 4.99% or 9.99% (depending on the warrant) of the outstanding shares of our common stock on the date of issuance of such shares (such provision may be waived by Laurus upon 75 days prior written notice to us or without notice upon an event of default). Laurus' address is 335 Madison Avenue, 10th Floor, New York, NY 10017.
- (7) Includes 844,443 shares owned by Dr. Sirgo, our President and Chief Executive Officer. Includes options to purchase 120,266 shares of common stock, all of which are currently exercisable. Excludes options to purchase 528,879 shares of common stock which are not currently exercisable. Dr. Sirgo's address is 1203 Clematis Street, Knightdale, North Carolina 27545.
- (8) Dr. Finn is our Executive Vice President of Clinical Development and Regulatory Affairs. Includes 797,413 shares owned by Dr. Finn. Includes options to purchase 73,770 shares of common stock, all of which are currently exercisable. Excludes options to purchase 181,400 shares of common stock which are not currently exercisable. Dr. Finn's address is 200 Royal Kings Lane, Raleigh, NC 27615.
- (9) Dr. Mannino is our Executive Vice President, Chief Scientific Officer and a Director. Includes 212,609 shares owned by Dr. Mannino. Includes options to purchase 171,435 shares of our common stock, all of which are currently exercisable. Excludes options to purchase 24,356 shares of common stock which are not currently exercisable. Mr. Mannino's address is 518 Lannon Lane Glen Gardner, NJ 08826.
- (10) Mr. McNulty is our Chief Financial Officer, Secretary and Treasurer. Includes 79,371 shares owned by Mr. McNulty. Includes options to purchase 73,914 shares of our common stock, all of which are currently exercisable. Includes 2,288 shares owned by his wife, as to which he disclaims beneficial interest of. Excludes options to purchase 166,246 shares of common stock which are not currently exercisable. Mr. McNulty's address is 4419 W. Sevilla Street, Tampa, FL 33629.
- (11) Mr. Stone is a Director. Includes 35,000 shares owned and options to purchase 205,000 shares of our common stock, all of which are currently exercisable. Mr. Stone's address is 11120 Geyer Down Lane, Frontenac MO 63131.
- (12) Mr. Shea is a Director. Includes 26,300 shares owned and options to purchase 148,700 shares of our common stock, all of which are currently exercisable. Mr. Shea's address is 290 Wax Myrtle Trail, Southern Shores, NC 27949.
- (13) Mr. Poole is a Director. Includes 8,190 shares owned and options to purchase 110,000 shares of our common stock, all of which are currently exercisable. Mr. Poole's address is 7813 Hardwick Drive, Raleigh, NC 27615.
- (18) Mr. D Alonzo is a Director. Includes 5,730 shares owned and options to purchase 65,000 shares of our common stock, all of which are currently exercisable. Mr. D Alonzo's address is 11896 Hedgestone Court Naples, FL 34135

Item 15. Exhibits, Financial Statement Schedules.

The following exhibits are filed with this Report.

Number	Description
31.1	Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (*)(**)
31.2	Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (*)(**)
32.1	Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (*)(**)

32.2 Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (*)(**)

* Filed herewith

** A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant has duly caused this Amendment No. 1 on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized.

BIODELIVERY SCIENCES INTERNATIONAL, INC.

Date: March 17, 2008

By: /s/ Mark A. Sirgo
 Name: Mark A. Sirgo
 Title: President and Chief Executive Officer

In accordance with the Exchange Act, this Amendment has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Person	Capacity	Date
/s/ Francis E. O Donnell, Jr. Francis E. O Donnell, Jr.	Chairman of the Board and Director	March 17, 2008
/s/ Mark A. Sirgo Mark A. Sirgo	President and Chief Executive Officer (Principal Executive Officer)	March 17, 2008
/s/ James A. McNulty James A. McNulty	Chief Financial Officer, Secretary and Treasurer (Principal Accounting Officer)	March 17, 2008
/s/ Raphael J. Mannino Raphael J. Mannino	Executive Vice President, Chief Scientific Officer and Director	March 17, 2008
/s/ William B. Stone William B. Stone	Director	March 17, 2008
/s/ John J. Shea John J. Shea	Director	March 17, 2008
/s/ Thomas D Alonzo Thomas D Alonzo	Director	March 17, 2008
/s/ William S. Poole William S. Poole	Director	March 17, 2008