

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): **April 30, 2021**

AVID BIOSERVICES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of other jurisdiction of incorporation)

001-32839
(Commission File Number)

95-3698422
(IRS Employer Identification No.)

2642 Michelle Drive, Suite 200, Tustin, California 92780
(Address of Principal Executive Offices)

Registrant's telephone number, including area code: **(714) 508-6100**

(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:

- 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.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each Class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	CDMO	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 1.01 Entry into a Material Definitive Agreement

On April 30, 2021, Avid Bioservices, Inc. (the “Company”) and Avid SPV, LLC, a wholly-owned subsidiary of the Company (“Merger Sub”), entered into an Agreement and Plan of Merger (the “Merger Agreement”). Pursuant to the Merger Agreement, Merger Sub was merged with and into the Company effective April 30, 2021, with the Company as the surviving corporation (the “Merger”).

In connection with the Merger, on April 30, 2021, the Company entered into a first supplemental indenture (the “First Supplemental Indenture”) to an indenture, dated March 12, 2021 (as amended or supplemented, the “Indenture”) between the Company, Merger Sub and U.S. Bank National Association, as trustee, pursuant to which the Company agreed to assume all obligations under the Indenture, along with the related notes issued thereunder (the “Notes”). Immediately prior, the Company was the sole guarantor under the Indenture. Upon the Merger and entering into the First Supplemental Indenture, the Company was discharged from its obligations under the guarantee set forth in the Indenture.

The Notes had an aggregate principal amount of \$143.8 million outstanding at April 30, 2021.

The foregoing description of the First Supplemental Indenture is a summary and is qualified in its entirety by reference to the First Supplemental Indenture, a copy of which is attached hereto as Exhibit 4.1 and is incorporated by reference into this Item 1.01.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
2.1	<u>Agreement and Plan of Merger, dated as of April 30, 2021, by and between Avid SPV, LLC and Avid Bioservices, Inc.</u>
4.1	<u>First Supplemental Indenture, dated as of April 30, 2021, by and among Avid SPV, LLC, Avid Bioservices, Inc. and U.S. Bank National Association.</u>

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.

AVID BIOSERVICES, INC.

Date: May 4, 2021

By: /s/ Daniel R. Hart
Daniel R. Hart
Chief Financial Officer

EXHIBIT INDEX

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**AGREEMENT AND PLAN OF MERGER
BETWEEN
AVID SPV, LLC
AND
AVID BIOSERVICES, INC.**

This AGREEMENT AND PLAN OF MERGER (this “Agreement”) is made and entered into as of April 30, 2021, by and between Avid SPV, LLC, a Delaware limited liability company (“SPV”), and Avid Bioservices, Inc., a Delaware corporation (“Avid”).

RECITALS:

WHEREAS, Avid desires to acquire the properties and other assets, and to assume all of the liabilities and obligations, of SPV by means of a merger of SPV with and into Avid;

WHEREAS, Section 18-209 of the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq. (the “LLC Act”), and Section 264 of the General Corporation Law of the State of Delaware, 8 Del. C. §§ 101, et seq. (the “DGCL”) authorize the merger of a Delaware limited liability company with and into a Delaware corporation; and

WHEREAS, the sole member and the Board of Managers of SPV and the Board of Directors of Avid have determined that it is advisable and in the best interests of SPV and Avid, respectively, for SPV and Avid to merge, with Avid as the surviving entity (the “Merger”), pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

THE MERGER

Section 1.01 The Merger.

(a) After satisfaction or, to the extent permitted hereunder, waiver of all conditions to the Merger, and subject to the applicable provisions of the DGCL and the LLC Act, SPV shall merge with and into Avid, with Avid being the surviving entity, and Avid shall file a certificate of merger (the “Certificate of Merger”) with the Secretary of State of the State of Delaware (“Secretary of State”) in accordance with the provisions of the DGCL and the LLC Act and shall make all other filings or recordings required by Delaware law in connection with the Merger. The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State or such later time as may be provided for in the Certificate of Merger (the “Effective Time”).

(b) At the Effective Time, SPV shall be merged with and into Avid, whereupon the separate existence of SPV shall cease, and Avid shall be the surviving entity of the Merger (the “Surviving Corporation”) in accordance with Section 18-209 of the LLC Act and Section 264 of the DGCL.

Section 1.02 Cancellation of Interests; Stock Unchanged. At the Effective Time:

(a) Each limited liability company interest of SPV outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be canceled and no consideration shall be issued in respect thereof; and

(b) Each share of capital stock of Avid outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, remain unchanged and continue to remain outstanding as a share of capital stock of Avid.

ARTICLE II

THE SURVIVING CORPORATION

Section 2.01 Certificate of Incorporation and Bylaws. The certificate of incorporation and bylaws of Avid in effect immediately prior to the Effective Time shall be the certificate of incorporation and bylaws of the Surviving Corporation unless and until amended in accordance with their terms and applicable law. The name of the Surviving Corporation shall be Avid Bioservices, Inc.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01 Representations and Warranties of SPV. SPV hereby represents and warrants that it:

(a) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and has all the requisite power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted;

(b) is duly qualified to do business as a foreign person, and is in good standing, in each jurisdiction where the character of its properties or the nature of its activities make such qualification necessary;

(c) is not in violation of any provisions of its certificate of formation or limited liability company agreement; and

(d) has full power and authority to execute and deliver this Agreement and, assuming the adoption of this Agreement by the sole member of SPV in accordance with the LLC Act, consummate the Merger and the other transactions contemplated by this Agreement.

Section 3.02 Representations and Warranties of Avid. Avid hereby represents and warrants that it:

(a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all the requisite power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted;

(b) is duly qualified to do business as a foreign person, and is in good standing, in each jurisdiction where the character of its properties or the nature of its activities make such qualification necessary;

(c) is not in violation of any provisions of its certificate of incorporation or bylaws; and

(d) has full corporate power and authority to execute and deliver this Agreement and consummate the Merger and the other transactions contemplated by this Agreement.

ARTICLE IV

TRANSFER AND CONVEYANCE OF ASSETS AND ASSUMPTION OF LIABILITIES

Section 4.01 Transfer, Conveyance and Assumption. At the Effective Time, Avid shall continue in existence as the Surviving Corporation, and without further transfer, succeed to and possess all of the rights, privileges and powers of SPV, and all of the assets and property of whatever kind and character of SPV shall vest in Avid without further act or deed; thereafter, Avid, as the Surviving Corporation, shall be liable for all of the liabilities and obligations of SPV, and any claim or judgment against SPV may be enforced against Avid, as the Surviving Corporation, in accordance with Section 18-209 of the LLC Act and Section 259 of the DGCL.

Section 4.02 Further Assurances. If at any time Avid shall consider or be advised that any further assignment, conveyance or assurance is necessary or advisable to vest, perfect or confirm of record in the Surviving Corporation the title to any property or right of SPV, or otherwise to carry out the provisions hereof, the proper representatives of SPV as of the Effective Time shall execute and deliver any and all proper deeds, assignments and assurances and do all things necessary or proper to vest, perfect or convey title to such property or right in the Surviving Corporation, and otherwise to carry out the provisions hereof.

ARTICLE V

CONDITIONS TO THE MERGER

Section 5.01 Conditions to the Obligations of Each Party. The respective obligations of Avid and SPV to consummate the Merger are subject to the satisfaction of the following conditions as of the Effective Time:

- (a) no provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit the consummation of the Merger;
- (b) all actions by or in respect of or filings with any governmental body, agency, official or authority required to permit the consummation of the Merger shall have been obtained; and
- (c) this Agreement shall have been approved by the sole member of SPV in accordance with the requirements of the LLC Act.

ARTICLE VI

TERMINATION

Section 6.01 Termination. At any time prior to the Effective Time, this Agreement may be terminated and the Merger abandoned for any reason whatsoever by the sole member and Board of Managers of SPV or the Board of Directors of Avid, notwithstanding the adoption of this Agreement by the sole member of SPV.

Section 6.02 Effect of Termination. If this Agreement is terminated pursuant to Section 6.01, this Agreement shall become void and of no effect with no liability on the part of either party hereto.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Amendments; No Waivers.

(a) At any time prior to the Effective Time, this Agreement may be amended, modified or supplemented by the sole member and the Board of Managers of SPV and the Board of Directors of Avid, whether before or after the adoption of this Agreement by the sole member of SPV; provided, however, that after any such adoption, there shall not be made any amendment that by law requires the further approval by such member of SPV without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of Avid and SPV.

(b) No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.02 Integration. All prior or contemporaneous agreements, contracts, promises, representations, and statements, if any, between SPV and Avid, or their representatives, are merged into this Agreement, and this Agreement shall constitute the entire understanding between SPV and Avid with respect to the subject matter hereof.

Section 7.03 Successors and Assigns. Neither this Agreement nor any right, interest or obligation hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is not intended to confer any rights or benefits upon any person other than the parties hereto.

Section 7.04 Governing Law. This Agreement shall in all respects be interpreted by, and construed, interpreted and enforced in accordance with and pursuant to the laws of the State of Delaware.

Section 7.05 Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the date first above written.

AVID SPV, LLC

By: /s/ Daniel Hart
Name: Daniel Hart
Title: Chief Financial Officer

AVID BIOSERVICES, INC.

By: /s/ Daniel Hart
Name: Daniel Hart
Title: Chief Financial Officer

AVID SPV, LLC,

as Issuer,

AVID BIOSERVICES, INC.,

as Guarantor

AND

U.S. BANK NATIONAL ASSOCIATION

as Trustee

FIRST SUPPLEMENTAL INDENTURE

dated as of April 30, 2021

to

INDENTURE

dated as of March 12, 2021

1.250% EXCHANGEABLE SENIOR NOTES DUE 2026

THIS FIRST SUPPLEMENTAL INDENTURE dated as of April 30, 2021 (this “*Supplemental Indenture*”), is among AVID SPV, LLC, a Delaware limited liability company (hereinafter called the “*Company*”), AVID BIOSERVICES, INC., a Delaware corporation (the “*Successor Company*”) and U.S. BANK NATIONAL ASSOCIATION, as trustee (the “*Trustee*”) under the Indenture, dated as of March 12, 2021 among the Company, the Successor Company and the Trustee (the “*Indenture*”).

RECITALS

WHEREAS, pursuant to the Indenture, the Company issued its 1.250% Exchangeable Senior Notes due 2026 (the “*Notes*”) of which \$143,750,000 in aggregate principal amount are currently outstanding under the Indenture;

WHEREAS, the Company and the Successor Company desire that that the Company merge with and into the Successor Company (the “*Merger*”), with the Successor Issuer surviving the Merger, in accordance with the terms and subject to the conditions set forth in Section 11.02 of the Indenture;

WHEREAS, Section 10.01 of the Indenture provides that the Company, when authorized by resolutions of the Board of Directors and the Trustee, may from time to time enter into supplemental indentures to provide for the assumption by a Successor Company of the obligations of the Company under the Indenture pursuant to Article 11 thereof;

WHEREAS, accordingly, in connection with and effective upon the Merger, the Company and the Successor Company desire to enter into this Supplemental Indenture to provide for the assumption by the Successor Company of all of the obligations of the Company under the Notes and the Indenture, as required pursuant to Section 11.02 of the Indenture; and

WHEREAS, in connection with the foregoing, the Company has requested that the Trustee execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and for the equal and proportionate benefit of the Holders of the Notes, each party hereto hereby agrees as follows:

Section 1.01 Assumption. The Successor Company (a) expressly assumes all of the Company’s obligations in respect of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon exchange of the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Company, and (b) the Successor Company shall succeed to and shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, in each case, effective upon the Merger. In addition, effective upon the assumption by the Successor Company of the Company’s obligations as described in the immediately preceding sentence, the Guarantor, solely in its capacity as such, shall be discharged from its obligations under the Guarantee set forth in Article 13 of the Indenture. Notwithstanding such discharge, all references to “Guarantor” set forth in the Indenture (other than any such references set forth in the Guarantee set forth in Article 13 of the Indenture) shall be deemed to be references to the Successor Company.

Section 1.02 Capitalized Terms. Any capitalized term used herein and not otherwise defined herein shall have the meaning assigned to such term in the Indenture.

Section 1.03 Conditions Precedent. Other than the consummation of the Merger, the Company represents and warrants that each of the conditions precedent to the supplement to the Indenture contemplated hereby have been satisfied in all respects.

Section 1.04 Corresponding Amendments. With effect on and from the date hereof, each Global Note shall be deemed supplemented, modified and amended in such manner as necessary to make the terms of such Global Note consistent with the terms of the Indenture, as amended by this Supplemental Indenture. To the extent of any conflict between the terms of the Notes and the terms of the Indenture, as amended by this Supplemental Indenture, the terms of the Indenture, as amended by this Supplemental Indenture, shall govern and be controlling.

Section 1.05 Instruments To Be Read Together; Entire Agreement. This Supplemental Indenture is executed as and shall constitute an indenture supplemental to and in implementation of the Indenture, and said Indenture and this Supplemental Indenture shall henceforth be read together. This Supplemental Indenture constitutes the entire agreement of the parties hereto with respect to the supplements to the Indenture set forth herein.

Section 1.06 Ratification of Indenture. The Indenture, as amended by this Supplemental Indenture, is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. Upon and after the execution of this Supplemental Indenture, each reference in the Indenture, as amended by this Supplemental Indenture, to “this Indenture,” “hereunder,” “hereof” or words of like import referring to the Indenture shall mean and be a reference to the Indenture, as amended by this Supplemental Indenture. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder shall be bound hereby.

Section 1.07 Headings. The headings of the Articles and Sections of this Supplemental Indenture have been inserted for convenience of reference only, and are not to be considered a part hereof and shall in no way modify or restrict any of the terms and provisions hereof.

Section 1.08 Responsibility of Trustee. The recitals and statements contained herein shall be taken as the statements of the Company, and the Trustee makes no representation with respect to any such matters and assumes no responsibility for their correctness. The Trustee makes no representations as to the validity, adequacy or sufficiency of this Supplemental Indenture. The Trustee accepts the amendments of the Indenture effected by this Supplemental Indenture and agrees to execute the trust created by the Indenture as hereby amended, but on the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting its liabilities and responsibilities in the performance of the trust created by the Indenture as hereby amended. For the avoidance of doubt, the Trustee, by executing this Supplemental Indenture in accordance with the terms of the Indenture, does not agree to undertake additional actions nor does it consent to any transaction beyond what is expressly set forth in this Supplemental Indenture, and the Trustee reserves all rights and remedies under the Indenture.

Section 1.09 Successors and Assigns. All covenants and agreements in this Supplemental Indenture by the Company shall bind its successors and assigns. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

Section 1.10 Severability. In case any provision in this Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.10 Benefits of Supplemental Indenture. Nothing in this Supplemental Indenture, express or implied, shall give to any Person (other than the parties hereto and their successors hereunder and the Holders) any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

Section 1.11 Governing Law. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY ANY OTHER LAW.

Section 1.12 Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Receipt by telecopy or electronic mail of any executed signature page to this Supplemental Indenture shall constitute effective delivery of such signature page. Electronic signatures may be used in lieu of signatures affixed by hand, and such electronic signature shall have the same validity and effect as signatures affixed by hand.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first written above.

COMPANY:

AVID SPV, LLC

By: /s/ Daniel Hart
Name: Daniel Hart
Title: Chief Financial Officer

SUCCESSOR COMPANY:

AVID BIOSERVICES, INC.

By: /s/ Daniel Hart
Name: Daniel Hart
Title: Chief Financial Officer

TRUSTEE

U.S. BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Michael K. Herberger
Name: Michael K. Herberger
Title: Vice President

[First Supplemental Indenture – 1.250% Exchangeable Senior Notes Due 2026]