

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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): **September 23, 2019**

AVID BIOSERVICES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-32839
(Commission File Number)

95-3698422
(I.R.S. 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(s) | Name of each exchange on which registered |
|---|-------------------|---|
| Common Stock, \$0.001 par value per share | CDMO | The NASDAQ Stock Market LLC |
| 10.50% Series E Convertible Preferred Stock, \$0.001 par value per share | CDMOP | 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 September 23, 2019, Avid Bioservices, Inc. (the “Company”) entered into an Amendment to Rights Agreement (the “Amendment”) between the Company and Broadridge Corporate Issuer Solutions, Inc., as rights agent (the “Rights Agent”), amending the Amended and Restated Rights Agreement dated March 16, 2016 between the Company and the Rights Agent (the “Rights Agreement”).

The Amendment accelerates the scheduled expiration date of the Rights issued pursuant to the Rights Agreement to September 23, 2019. Accordingly, as of 5:00 p.m., California time, on September 23, 2019, the Rights issued pursuant to the Rights Agreement will expire and will no longer be outstanding and the Rights Agreement will terminate.

The foregoing summary of the Amendment is a general description only, does not purport to be complete and is qualified in its entirety by the full text of the Amendment, which is filed as Exhibit 4.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement.

The information set forth under Item 1.01 is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth under Item 1.01 is incorporated herein by reference.

Item 8.01 Other Events.

On September 23, 2019, the Company issued a press release announcing the Amendment. A copy of the press release is attached to this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits. The following exhibits are being filed herewith:

**Exhibit
Number**

- | | |
|------|---|
| 4.1 | <u>Amendment to Rights Agreement dated September 23, 2019, between Avid Bioservices, Inc. and Broadridge Corporate Issuer Solutions, Inc., as rights agent.</u> |
| 99.1 | <u>Press Release issued September 23, 2019.</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: September 23, 2019

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

EXHIBIT INDEX

| Exhibit Number | Description |
|---------------------------|---|
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AMENDMENT TO RIGHTS AGREEMENT

This Amendment to Rights Agreement (this "Amendment"), dated and effective as of September 23, 2019 (the "Effective Date"), is made and entered into by and between Avid Bioservices, Inc., a Delaware corporation (the "Company"), and Broadridge Corporate Issuer Solutions, Inc., as rights agent (the "Rights Agent"), under that certain Amended and Restated Rights Agreement, dated as of March 16, 2016 (the "Rights Agreement").

WHEREAS, pursuant to Section 27 of the Rights Agreement, the Company may, prior to such time as any Person becomes an Acquiring Person, supplement or amend the Rights Agreement without the approval of any holders of Rights;

WHEREAS, no Person has become an Acquiring Person under the Rights Agreement;

WHEREAS, the Company desires to amend the Rights Agreement as set forth herein; and

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company and its stockholders to amend the Rights Agreement as hereinafter set forth and has duly approved this Amendment and authorized its execution and delivery.

NOW, THEREFORE, the Company and the Rights Agent hereby agree as follows:

1. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Rights Agreement.

2. As of the Effective Date, Section 7(a) of the Rights Agreement is amended and restated in its entirety to read as follows:

"(a) Except as otherwise provided herein, the Rights shall become exercisable on the Distribution Date, and thereafter the registered holder of any Right Certificate may, subject to Section 11(a)(ii) hereof and except as otherwise provided herein, exercise the Rights evidenced thereby in whole or in part upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the office or agency of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of one one-thousandths (1/1000th) of a share of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which the Rights are exercised, at any time which is both after the Distribution Date and prior to the time (the "Expiration Date") that is the earliest of (i) the Close of Business on September 23, 2019 (the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the "Redemption Date"), (iii) the time at which such Rights are exchanged as provided in Section 24 hereof, or (iv) the closing of any merger or other acquisition transaction involving the Company pursuant to an agreement of the type described in Section 13(f) at which time the Rights are terminated."

3. As of the Effective Date, Exhibit B to the Rights Agreement is amended by deleting each reference to "March 16, 2021" in the Form of Right Certificate and substituting therefor "September 23, 2019."

4. As of the Effective Date, Exhibit C to the Rights Agreement is amended by deleting each reference to "March 16, 2021" in the Updated Summary of Rights to Purchase Shares of Preferred Stock and substituting therefor "September 23, 2019."

5. Except as expressly set forth herein, the Rights Agreement shall be unaffected by this Amendment and shall remain in full force and effect.

6. Sections 28 (Successors), 31 (Severability), 32 (Governing Law), and 33 (Counterparts) of the Rights Agreement are hereby incorporated by reference into this Amendment and shall apply to this Amendment, mutatis mutandis, as if fully set forth herein.

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

AVID BIOSERVICES, INC.

By: /s/ Daniel R. Hart

Name: Daniel R. Hart

Title: Chief Financial Officer

BROADRIDGE CORPORATE ISSUER
SOLUTIONS, INC., as Rights Agent

By: /s/ John P. Dunn

Name: John P. Dunn

Title: Senior Vice President



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AVID BIOSERVICES ANNOUNCES TERMINATION OF STOCKHOLDER RIGHTS PLAN

TUSTIN, CA, September 23, 2019 -- Avid Bioservices, Inc. (NASDAQ:CDMO) (NASDAQ:CDMOP), a dedicated biologics contract development and manufacturing organization (CDMO) working to improve patient lives by providing high quality services to biotechnology and pharmaceutical companies, today announced that its Board of Directors has voted to accelerate the expiration of the Company's Stockholder Rights Plan (often referred to as a "poison pill"). Stockholders do not have to take any action as a result of this expiration.

Joseph Carleone, Ph.D., Avid's Chairman of the Board said, "Since its reconstitution in November 2017, the Board has been continuously seeking to enhance our corporate governance practices and improve long-term stockholder value. In connection with these efforts, the Board recently evaluated the effectiveness of, and the need for, a stockholder rights plan, sometimes called a 'poison pill,' and has determined that the rights plan is unnecessary at this time. This action aligns us more closely with the governance guidelines offered by ISS and Glass Lewis."

The action of the Board of Directors accelerated the expiration date of the Company's current Stockholder Rights Plan to September 23, 2019. The rights plan had been originally due to expire on March 16, 2021. In taking this action, the Board reserved the right to take any future action that it determines in the exercise of its fiduciary duties to be necessary or advisable in order to protect the interests of stockholders.

About Avid Bioservices, Inc.

Avid Bioservices is a dedicated contract development and manufacturing organization (CDMO) focused on development and CGMP manufacturing of biopharmaceutical products derived from mammalian cell culture. The company provides a comprehensive range of process development, high quality CGMP clinical and commercial manufacturing services for the biotechnology and biopharmaceutical industries. With 25 years of experience producing monoclonal antibodies and recombinant proteins in batch, fed-batch and perfusion modes, Avid's services include CGMP clinical and commercial product manufacturing, purification, bulk packaging, stability testing and regulatory strategy, submission and support. The company also provides a variety of process development activities, including cell line development and optimization, cell culture and feed optimization, analytical methods development and product characterization. www.avidbio.com