

ZIOPHARM ONCOLOGY INC
Form 8-K
November 13, 2018

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): November 11, 2018

ZIOPHARM Oncology, Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-33038
(Commission
File Number)

84-1475642
(IRS Employer
Identification No.)

One First Avenue, Parris Building 34, Navy Yard Plaza

Boston, Massachusetts
(Address of Principal Executive Offices)

02129
(Zip Code)

(617) 259-1970

(Registrant's telephone number, including area code)

Not applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K 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 240.14d-2(b)).

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).
Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act (17 CFR 230.405) or Rule 12b-2 of the Exchange Act (17 CFR 240.12b-2).

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 November 11, 2018, Ziopharm Oncology, Inc. (the *Company*) entered into a securities purchase agreement (the *Purchase Agreement*) with certain institutional and accredited investors (collectively, the *Investors*), pursuant to which the Company agreed to issue and sell to the Investors an aggregate of 18,939,394 immediately separable units (the *Units*), with each Unit being comprised of (i) one share of the Company's common stock, par value \$0.001 per share (the *Common Stock*, and such shares, the *Unit Shares*) and (ii) a warrant to purchase one share of Common Stock (a *Warrant*, and such shares, the *Warrant Shares*), at a price per Unit of \$2.64, for gross proceeds of approximately \$50 million (the *Private Placement*).

The Warrants issued to the Investors on the closing date of the Private Placement will become exercisable on the date that is six months following the date of issuance. The Warrants will have an initial exercise price of \$3.01 per share and will have a term of five years from the date of issuance. The Warrant may be exercised by cashless exercise or by payment of cash, subject to adjustment therein. Subject to limited exceptions, a Warrant holder will not have the right to exercise any portion of its Warrants if the Warrant holder, together with its affiliates, would beneficially own in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such exercise (the *Beneficial Ownership Limitation*); provided, however, that upon prior notice to the Company, the Warrant holder may increase decrease or terminate the Beneficial Ownership Limitation, provided further that any increase in the beneficial ownership limitation will not be effective until 61 days following written notice to the Company.

The Private Placement is expected to close on or about November 13, 2018, subject to satisfaction of customary closing conditions set forth in the Purchase Agreement. The Purchase Agreement also contains representations, warranties, indemnification and other provisions customary for transactions of this nature.

The securities issued by the Company pursuant to the Purchase Agreement and to be issued upon exercise of the Warrants have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. The Company is relying on the private placement exemption from registration provided by Section 4(a)(2) of the Securities Act and by Rule 506 of Regulation D, promulgated thereunder and on similar exemptions under applicable state laws. The Company will file a Form D with the Securities and Exchange Commission (the *SEC*) in accordance with the requirements of Regulation D.

Registration Rights Agreement

In connection with the Private Placement, the Company also entered into a registration rights agreement, dated November 11, 2018 (the *Registration Rights Agreement*) with the Investors. Pursuant to the terms of the Registration Rights Agreement, the Company has agreed to prepare and file a registration statement (the *Registration Statement*) with the SEC within 90 business days after the closing of Private Placement for the purposes of registering the resale of the Unit Shares and the Warrant Shares. The Company has also agreed, among other things, to pay all fees and expenses (excluding any legal fees of the selling holder(s), and any underwriting discounts and selling commissions) incident to the Company's obligations under the Registration Rights Agreement.

Placement Agency Agreement

Raymond James & Associates, Inc. (the *Placement Agent*) acted as placement agent in connection with the Private Placement. Pursuant to the terms of a Placement Agency Agreement, dated November 11, 2018, between the Company and the Placement Agent (the *Placement Agency Agreement*), upon the closing of the Private Placement, the Company has agreed to pay the Placement Agent an aggregate cash fee equal to 5.0% of the aggregate gross proceeds from the Private Placement plus the reimbursement of certain expenses with respect to the Private Placement. The

Placement Agency Agreement contains customary representations, warranties, and indemnification of the Placement Agent by the Company.

The foregoing descriptions of the Purchase Agreement, the Registration Rights Agreement, the Placement Agency Agreement and the Warrants do not purport to be complete and are qualified in their entirety by reference to the full texts of the form of Purchase Agreement, the form of Registration Rights Agreement, the Placement Agency Agreement and the form of Warrant, which are filed as Exhibits 10.1, 10.2, 10.3 and 4.1, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

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

Item 8.01 Other Events.

On November 12, 2018, the Company issued a press release announcing the Private Placement. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
4.1	<u>Form of Warrant to Purchase Common Stock.</u>
10.1	<u>Form of Securities Purchase Agreement.</u>
10.2	<u>Form of Registration Rights Agreement.</u>
10.3	<u>Placement Agency Agreement, dated November 11, 2018, by and among Ziopharm Oncology, Inc. and Raymond James & Associates, Inc.</u>
99.1	<u>Press Release of Ziopharm Oncology, Inc. dated November 12, 2018.</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.

ZIOPHARM ONCOLOGY, INC.

By: /s/ Robert Hadfield
Name: Robert Hadfield
Title: General Counsel and Secretary

Date: November 13, 2018