

INSPIREMD, INC.

FORM 8-K (Current report filing)

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**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): February 26, 2018

InspireMD, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-35731

(Commission
File Number)

26-2123838

(IRS Employer
Identification No.)

4 Menorat Hamaor St.
Tel Aviv, Israel

(Address of principal executive offices)

6744832

(Zip Code)

Registrant's telephone number, including area code: (888) 776-6804

(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 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 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.

As previously reported, on November 28, 2017, InspireMD, Inc. (the “Company”) entered into a Securities Purchase Agreement (the “Series D Purchase Agreement”) with an institutional accredited investor (the “Series D Investor”) pursuant to which the Company issued and sold 750 shares of its Series D Convertible Preferred Stock (the “Series D Preferred Stock”), which was amended on February 21, 2018. Pursuant to the Series D Purchase Agreement and the certificate of designation for the Series D Preferred Stock, the purchasers of Series D Preferred Stock have the option, subject to certain limitations, to exchange their Series D Preferred Stock into the securities issued in a subsequent offering (the “Series D Exchange Right”).

On February 26, 2018, the Company and the Series D Investor entered into a waiver agreement (the “Waiver Agreement”) which provides that (i) the Series D Exchange Right would not be applicable to a subsequent financing consisting solely of shares of common stock or units consisting of common stock and common stock purchase warrants publicly registered on Form S-3 for gross proceeds to the Company of up to \$7,000,000, to be consummated by not later than March 9, 2018 (the “Offering”), such that no share of Series D Preferred Stock will be exchanged for securities being offered in the Offering, (ii) the Company shall reduce the conversion price of the Series D Preferred Stock to the lowest effective price per share at which shares of the Company’s common stock (or exercise price, if lower, of any warrants sold in the Offering), (iii) instead of using 15% of the proceeds from the Offering to redeem shares of Series C Preferred Stock held by the Series D Investor, the Company shall use 15% of the proceeds from the Offering to redeem a portion of the outstanding shares of Series D Preferred Stock held by the Series D Investor at a per share purchase price equal to the stated value of the Series D Preferred Stock, (iv) in the event that the Company issues any warrants in the Offering as part of a unit consisting of common stock and such subsequent financing warrants, then each Series D Purchaser shall receive, solely with respect to its Series D Preferred Stock outstanding immediately prior to the redemption required pursuant to (ii), the same number of subsequent financing warrants as participants in the Offering as if such Series D Purchaser’s original subscription amount for the Series D Preferred Stock was its subscription amount in the Offering, and (v) the Company shall file a registration statement with the Securities and Exchange Commission under the Securities Act of 1933, as amended, in order to register the resale of the shares of common stock issuable upon the conversion of the Series D Preferred Stock and any shares issuable upon exercise of the subsequent financing warrants, if any, issued to the Series D Investor, as soon as practicable following the closing of the Offering, but in no event later than seven days following such closing and to cause such registration statement to become effective as soon as practical after its filing.

The foregoing description of the Waiver Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Waiver Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02. The securities issued or issuable to the investor pursuant to the Waiver Agreement were issued in reliance upon the exemption from the registration requirements in Section 4(a)(2) of the Securities Act of 1933, as amended.

Item 8.01 Other Events.

On February 26, 2018, the Company issued a press release announcing a proposed public offering of its common stock. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is hereby incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
10.1	Waiver Agreement, dated February 26, 2018
99.1	Press release dated February 26, 2018

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

InspireMD, Inc.

Date: February 26, 2018

By: /s/ Craig Shore

Name: Craig Shore

Title: Chief Financial Officer

WAIVER AGREEMENT

This WAIVER AGREEMENT (this “*Waiver*”), dated as of February 26, 2018, is entered into by and among INSPIREMD, INC., a Delaware corporation (the “*Company*”), and the Purchasers identified on the signature page hereto.

WHEREAS, the Company and the Purchasers have previously entered into that certain Securities Purchase Agreement, dated as of November 28, 2017 (the “*Original Securities Purchase Agreement*”);

WHEREAS, the Company and the Purchasers have previously entered into that certain Amendment to Securities Purchase Agreement (together with the Original Securities Purchase Agreement, the “*Securities Purchase Agreement*”), dated as February 21, 2018, whereby the Company and the Purchasers amended certain provisions of the Original Securities Purchase Agreement;

WHEREAS, the Company has informed the Purchasers that the Company intends to conduct a Subsequent Financing consisting solely of shares of Common Stock or units consisting of Common Stock and Common Stock purchase warrants (“*Subsequent Financing Warrants*”), which shall be publicly registered on Form S-3 (“*Registration Statement*”) for gross proceeds to the Company of up to \$7,000,000, to be consummated by not later than March 9, 2018 (the “*Offering*”);

WHEREAS, due to certain regulatory constraints, the Company is seeking a one-time waiver from compliance with Section 4.16 of the Securities Purchase Agreement with respect to the Offering;

WHEREAS, any provision of the Securities Purchase Agreement may be amended or waived upon the written consent of the Company and the Purchasers holding at least 67% in interest of the Preferred Stock then outstanding;

WHEREAS, the Purchasers executing the signature page hereto hold at least 67% in interest of the Preferred Stock outstanding as of the date hereof; and

WHEREAS, capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Securities Purchase Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Series D Redemption. The parties hereto agree, notwithstanding the provisions of Section 4.22(a) of the Securities Purchase Agreement, solely with respect to the Offering, the Company shall redeem shares of the Preferred Stock pursuant to the terms of such Section 4.22(a) *mutatis mutandis* in lieu of shares of Series C Preferred Stock.

2. One-Time Waiver of Section 4.16. The Purchasers hereby grant to the Company a one-time waiver from compliance with the provisions of Section 4.16 of the Securities Purchase Agreement solely with respect to the Offering. Notwithstanding anything herein to the contrary, the foregoing waiver shall be limited precisely as written to permit the Company to conduct the Offering without violating the provisions of Section 4.16 of the Securities Purchase Agreement and nothing herein shall be deemed a continuing waiver of Section 4.16 of the Securities Purchase Agreement.

3. Reduction of Series D Conversion Price. On or prior to the date hereof, pursuant to Section 7(d) of the Certificate of Designations, the Company's Board of Directors adopted a resolution to permanently reduce, subject to the consummation of the Offering, the Conversion Price of the Preferred Stock to the Base Conversion Price (as defined herein). The Company shall not rescind, amend or modify such resolution after the date hereof. The Purchasers hereby grant a one-time waiver of the 20 day prior notice requirement set forth in Section 7(d) of the Certificate of Designations with respect to the foregoing reduction in the Conversion Price. For purposes hereof, "**Base Conversion Price**" means, to the extent lower than the Conversion Price, the lowest effective price per share at which shares of the Company's Common Stock (or exercise price, if lower, of any Subsequent Financing Warrants, if any) are sold in the Offering (not taking into account the value of any Subsequent Financing Warrants that may be issued as part of a unit with such Common Stock).

4. Issuance to Purchasers of Common Stock Equivalents. In the event that the Company issues any Subsequent Financing Warrants in the Offering as part of a unit consisting of Common Stock and such Subsequent Financing Warrants, then each Purchaser shall receive, solely with respect to its Preferred Stock outstanding immediately prior to the redemption required pursuant to Section 3 (and, for the avoidance of doubt, not with respect to any of its Series C Preferred Stock), the same number of Subsequent Financing Warrants as participants in the offering as if such Purchaser's Subscription Amount was its subscription amount in the Offering. The Purchasers acknowledge that any Subsequent Financing Warrants received pursuant to this Section 4 shall not be registered for sale on the Registration Statement and accordingly shall have customary Securities Act restrictions on resale.

5. Registration Right.

(a) On or prior to the date that is 7 days after the Closing of the Offering, the Company shall use best efforts to prepare and file with the SEC a registration statement on Form S-3 (or such other form if, at such time, the Company is not eligible to utilize such Form S-3) (the "**Resale Registration Statement**" including the base prospectus contained therein the "**Prospectus**") covering the resale of all of the Conversion Shares and any shares issuable upon exercise of the Subsequent Financing Warrant (if any) referred to in Section 4 (the "**Registrable Securities**").

(b) Upon filing the Resale Registration Statement, the Company shall use its best efforts to cause such Resale Registration Statement to be declared effective by the SEC as soon as practicable thereafter, including the filing of amendments and post-effective amendments and supplements to such Resale Registration Statement. The Company shall otherwise use its reasonable best efforts to comply with all rules and regulations of the SEC and other governmental and regulatory authorities applicable to the registration of such Registrable Securities and the effectiveness of the Resale Registration Statement.

(c) The Company shall maintain such Resale Registration Statement and shall comply with its other obligations under this Section 4 until such time as the Registrable Securities may be resold by the Purchasers pursuant to Rule 144 of the Securities Act without the requirement for the Company to be in compliance with the current public information required under such Rule and without volume or manner-of-sale restrictions.

(d) The Company shall notify the Purchasers of the occurrence or existence of any pending corporate development with respect to the Company that it believes is material and that, in the determination of the Company and its counsel, causes the Resale Registration Statement and the Prospectus to contain an untrue statement of material fact or to omit to state a material fact necessary to make the statements contained therein not misleading, or otherwise makes the Resale Registration Statement and the Prospectus not in the best interest of the Company to allow continued availability thereof. The Company shall use its reasonable best efforts to cause the filing of amendments and post-effective amendments and supplements to such Resale Registration Statement and Prospectus as the Company determines are necessary to again allow resales under the Resale Registration Statement as soon as practicable.

(e) All expenses incident to the Company's compliance with this Section 5, including, without limitation, all registration and filing fees, fees and expenses of compliance with securities laws, printing expenses, filing expenses, and fees and disbursements of the Company's counsel and independent registered public accountants will be borne by the Company.

6. Continuing Effect. Except as expressly set forth herein, all of the terms and conditions of the Securities Purchase Agreement shall remain in full force and effect and are hereby ratified and confirmed by the parties. Without limiting the generality of the foregoing, nothing contained herein shall be deemed a waiver of any other provision of the Securities Purchase Agreement or as a waiver of or consent to any further or future action on the part of any party that would require the waiver or consent of another party. This Waiver shall be deemed a Transaction Document.

7. Representations and Warranties. Each Purchaser hereby represents and warrants to the Company, severally, but not jointly, and each Company hereby represents and warrants to the Purchaser, that (i) it has the full right, power and authority to enter into this Waiver and to perform its obligations hereunder and under the Securities Purchase Agreement as amended by this Waiver, and (ii) the execution of this Waiver by the individual whose signature is set forth at the end of this Waiver on behalf of such party, and the delivery of this Waiver by such party, have been duly authorized by all necessary action on the part of such party; and (iii) this Waiver has been executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity.

8. Counterparts; Choice of Law. This Waiver may be executed in several identical counterparts all of which shall constitute one and the same instrument. This Waiver shall be construed and enforced in accordance with the laws of the State of New York, without regard to the principles of conflicts of law thereof.

9. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Waiver.

10. Expense Reimbursement. The Company shall reimburse to the Purchasers the fees of Ellenoff Grossman & Schole LLP, counsel to the Purchasers, in the amount of \$5,000.

11. Clarification regarding Amendment to Securities Purchase Agreement. The parties acknowledge and agree that the provisions regarding the Series C Preferred Stock in the Amendment to the Securities Purchase Agreement (as modified by Section 1 of this Waiver) are applicable to all Series C Preferred Stock held by the Purchasers and their Affiliates, whether or not purchasers of the Preferred Stock.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Waiver to be duly executed as of the day and year written above.

THE COMPANY:

INSPIREMD, INC.

By: /s/ James Barry, Ph.D.
Name: James Barry, Ph.D.
Title: Chief Executive Officer

PURCHASER:

Sabby Healthcare Master Fund, Ltd.

By: /s/ Robert Grundstein
Name: Robert Grundstein
Title: COO of Investment Manager



InspireMD, Inc. Announces Proposed Public Offering of Common Stock

Tel Aviv, Israel— February 26, 2018 – InspireMD, Inc. (NYSE American: NSPR), a leader in embolic prevention systems (EPS) / thrombus management technologies and neurovascular devices, today announced that it intends to offer and sell, subject to market and other conditions, shares of its common stock in an underwritten public offering. InspireMD also expects to grant the underwriter a 30-day option to purchase additional shares of its common stock to cover over-allotments, if any.

H.C. Wainwright & Co. is acting as the sole book-running manager for the offering. The offering is subject to market and other conditions, and there can be no assurance as to whether or when the offering may be completed, or as to the actual size or terms of the offering.

InspireMD intends to use 15% of the gross proceeds of this offering to redeem the outstanding shares of its Series D Convertible Preferred Stock, and the remainder of the net proceeds of this offering for research and development, capital expenditures, working capital and other general corporate purposes.

A shelf registration statement on Form S-3 relating to the public offering of the shares of common stock described above was filed with the Securities and Exchange Commission (“SEC”) and was declared effective on February 23, 2018. A preliminary prospectus supplement describing the terms of the offering will be filed with the SEC and will form a part of the effective registration statement. Copies of the preliminary prospectus supplement and the accompanying prospectus relating to the offering may be obtained, when available, from H.C. Wainwright & Co., LLC, 430 Park Avenue 3rd Floor, New York, NY 10022, or by calling (646) 975-6996 or by emailing placements@hcwco.com or at the SEC’s website at <http://www.sec.gov>. The final terms of the offering will be disclosed in a final prospectus supplement to be filed with the SEC.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction. Any offer, if at all, will be made only by means of the prospectus supplement and accompanying prospectus forming a part of the effective registration statement.

About InspireMD, Inc.

InspireMD seeks to utilize its proprietary MicroNet™ technology to make its products the industry standard for embolic protection and to provide a superior solution to the key clinical issues of current stenting in patients with a high risk of distal embolization, no reflow and major adverse cardiac events.

InspireMD intends to pursue applications of this MicroNet technology in coronary, carotid (CGuard™), neurovascular, and peripheral artery procedures. InspireMD's common stock is quoted on the NYSE American under the ticker symbol NSPR and certain warrants are quoted on the NYSE American under the ticker symbol NSPR.WS.

Forward-Looking Statements

This press release includes statements relating to the proposed offering of InspireMD's shares of common stock, including as to the consummation of this offering described above and the use of net proceeds therefrom. These statements and other statements in this press release constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are not guarantees of future performance, are based on certain assumptions and are subject to various known and unknown risks and uncertainties, many of which are beyond the Company's control, and cannot be predicted or quantified and consequently, actual results may differ materially from those expressed or implied by such forward-looking statements. Such risks and uncertainties include, without limitation, risks and uncertainties associated with (i) market acceptance of our existing and new products, (ii) negative clinical trial results or lengthy product delays in key markets, (iii) an inability to secure regulatory approvals for the sale of our products, (iv) intense competition in the medical device industry from much larger, multinational companies, (v) product liability claims, (vi) product malfunctions, (vii) our limited manufacturing capabilities and reliance on subcontractors for assistance, (viii) insufficient or inadequate reimbursement by governmental and other third party payers for our products, (ix) our efforts to successfully obtain and maintain intellectual property protection covering our products, which may not be successful, (x) legislative or regulatory reform of the healthcare system in both the U.S. and foreign jurisdictions, (xi) our reliance on single suppliers for certain product components, (xii) the fact that we will need to raise additional capital to meet our business requirements in the future and that such capital raising may be costly, dilutive or difficult to obtain and (xiii) the fact that we conduct business in multiple foreign jurisdictions, exposing us to foreign currency exchange rate fluctuations, logistical and communications challenges, burdens and costs of compliance with foreign laws and political and economic instability in each jurisdiction. More detailed information about the Company and the risk factors that may affect the realization of forward looking statements is set forth in the Company's filings with the Securities and Exchange Commission (SEC), including the Company's Annual Report on Form 10-K and its Quarterly Reports on Form 10-Q. Investors and security holders are urged to read these documents free of charge on the SEC's web site at <http://www.sec.gov>. The Company assumes no obligation to publicly update or revise its forward-looking statements as a result of new information, future events or otherwise.

Investor Contacts:

InspireMD, Inc.
Craig Shore
Chief Financial Officer
Phone: 1-888-776-6804 FREE
Email: craigs@inspiremd.com

Crescendo Communications, LLC
David Waldman
Phone: (212) 671-1021
Email: NSPR@crescendo-ir.com
