

INSPIREMD, INC.

FORM 8-K (Current report filing)

Filed 02/21/18 for the Period Ending 02/21/18

Telephone	(888) 776-6804
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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 21, 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 “Agreement”) with an institutional 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”).

On February 21, 2018, the Company and the Series D Investor entered into an amendment (the “Amendment”) to the Agreement to (i) remove the restriction on the Company from issuing shares of common stock or securities convertible into common stock until March 1, 2018, or until February 26, 2018, if the Company offers and sells its securities in a qualified offering, as defined in the Agreement; (ii) require the Company to use 15% of the proceeds from any subsequent offering of our securities that is not a qualified offering to redeem the outstanding shares of the Company’s Series C Convertible Preferred Stock (the “Series C Preferred Stock”) held by the Series D Investor at a per share purchase price equal to the stated value of the Series C Preferred Stock, and (iii) upon closing of any subsequent offering that is a qualified offering, to exchange all remaining outstanding shares of Series C Preferred Stock held by the Series D Investor for any securities issued in such qualified offering on a \$1.00 per stated value for \$1.00 new subscription amount basis (subject to the beneficial ownership limitation set forth in the certificate of designation for the Series C Preferred Stock). In the event that the Company fails, or is unable, to issue securities issued in the qualified offering to the Series D Investor in exchange for such investor’s remaining Series C Preferred Stock due to limitations mandated by the NYSE American, the Securities and Exchange Commission, or for any other reason, the Company is required to offer to purchase from such investor those shares of Series C Preferred Stock not exchanged for the securities sold in the qualified offering at a per share purchase price equal to the stated value of Series C Preferred Stock.

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

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
10.1	<u>Amendment to Securities Purchase Agreement, dated February 21, 2018</u>

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 21, 2018

By: /s/ Craig Shore

Name: Craig Shore

Title: Chief Financial Officer

AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This AMENDMENT TO SECURITIES PURCHASE AGREEMENT (this “*Amendment*”), dated as of February 21, 2018 (the “*Effective Date*”), 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 (as amended from time to time, the “*Securities Purchase Agreement*”);

WHEREAS, in connection with the NYSE American imposing certain limitations on the ability of the parties to consummate the transactions originally contemplated in Section 4.22 of the Securities Purchase Agreement, the Company and the Purchasers desire to amend the Securities Purchase Agreement;

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

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. Amendments to the Securities Purchase Agreement. As of the Effective Date:

(a) Section 4.13 of the Securities Purchase Agreement is hereby amended by deleting subsection (a) in its entirety and replacing with the following:

“(a) Reserved.”

; and

(b) Section 4.22 of the Securities Purchase Agreement is hereby amended and restated in its entirety to read as follows:

“4.22. Series C Exchange/Redemption.

(a) At the closing of any subsequent debt or equity financing (other than an Exempt Issuance) that is not a Qualified Offering, the Company shall be required to use 15% of the gross proceeds from such financing (the “*Redemption Amount*”) to offer to purchase from the Purchasers, on a pro rata basis, any remaining Series C Preferred Stock then held by such Purchasers (up to the Redemption Amount) at a per share purchase price equal to the stated value of the Series C Preferred Stock (as set forth in the Certificate of Designation of Preferences, Rights and Limitations of the Series C Convertible Preferred Stock, as amended to date) (the “*Series C Stated Value*”), payable directly out of the closing of such subsequent debt or equity financing.

(b) In connection with the closing of any subsequent debt or equity financing (other than an Exempt Issuance) that is a Qualified Offering, the Company and each Purchaser agree to exchange all remaining Series C Preferred Stock then held by such Purchaser for any securities or units (including Common Stock purchase warrants, if any) issued in such Qualified Offering (the “**Qualified Offering Securities**”) on a \$1.00 per stated value for \$1.00 new subscription amount basis. The surrender of Series C Preferred Stock shall be in lieu of any cash subscription amount required for the participation in such Qualified Offering. By way of example, if a Purchaser holds Series C Preferred Stock with a stated value of \$100,000, such Purchaser shall surrender such Series C Preferred Stock in exchange for \$100,000 of Qualified Offering Securities (in lieu of cash consideration in the Qualified Offering of \$100,000). Notwithstanding anything herein to the contrary, in the event that such exchange would otherwise cause such Purchaser to exceed the Beneficial Ownership Limitation (as defined in the Preferred Stock), then the Company shall ensure that, as a condition to any such Qualified Offering and the obligation to exchange hereunder, a like security is available to issue to the Purchaser to ensure that the Purchaser does not exceed the Beneficial Ownership Limitation as result of the exchange hereunder (the form and substance of such security which shall be reasonably acceptable to such Purchaser). Moreover, in the event that the Company fails, or is unable, to issue any Qualified Offering Securities to a Purchaser in exchange for such Purchaser’s remaining Series C Preferred Stock pursuant to the terms of this Section 4.22(b) (due to limitations mandated by the NYSE American, the Commission, or for any other reason), the Company shall be required to offer to purchase from such Purchaser those shares of Series C Preferred Stock were not exchanged for Qualified Offering Securities in the Qualified Offering at a per share purchase price equal to the Series C Stated Value (payable directly out of the closing of the Qualified Offering).”

2. Continuing Effect. Except as modified and amended 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, the amendments contained herein will not be construed as an amendment to or 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. On and after the Effective Date, each reference in the Securities Purchase Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein” or words of like import, and each reference to the Securities Purchase Agreement in any other agreements, documents or instruments executed and delivered pursuant to, or in connection with, the Securities Purchase Agreement, will mean and be a reference to the Securities Purchase Agreement as amended by this Amendment

3. 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 Amendment and to perform its obligations hereunder and under the Securities Purchase Agreement as amended by this Amendment, and (ii) the execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such party, and the delivery of this Amendment by such party, have been duly authorized by all necessary action on the part of such party; and (iii) this Amendment 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.

4. Counterparts; Choice of Law . This Amendment may be executed in several identical counterparts all of which shall constitute one and the same instrument. This Amendment 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.

5. 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 Amendment.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 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
