

SYNERGY PHARMACEUTICALS, INC.

Form 8-K

May 04, 2012

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): May 3, 2012

Synergy Pharmaceuticals Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

001-35268
(Commission
File Number)

33-0505269
(IRS Employer
Identification No.)

420 Lexington Avenue, Suite 1609

New York, NY 10170

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(Address of principal executive offices)

Registrant's telephone number, including area code: (212) 297-0020

N/A

(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 communication 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))
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Item 1.01 Entry into a Material Definitive Agreement

On May 3, 2012, Synergy Pharmaceuticals Inc. (the Company) entered into an underwriting agreement (the Underwriting Agreement) with Aegis Capital Corp., as representative of the several underwriters (collectively, the Underwriters), relating to the issuance and sale of 10,000,000 shares of common stock, par value \$0.0001 per share (Common Stock). The public offering price for each share of Common Stock is \$4.50.

The Underwriting Agreement contains customary representations, warranties and agreements by the Company, customary conditions to closing, indemnification obligations of the Company and the Underwriters, including for liabilities under the Securities Act of 1933, as amended (the Securities Act), other obligations of the parties and termination provisions. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution of the Underwriting Agreement.

Pursuant to the Underwriting Agreement, subject to certain exceptions, the Company, its directors and officers have agreed not to sell or otherwise dispose of any of the Company's Common Stock held by them for a period ending 90 days after the date of the Underwriting Agreement without first obtaining the written consent of Aegis Capital Corp., as representative of the Underwriters, subject to certain exceptions.

The Common Stock is being offered and sold pursuant to the Company's effective shelf registration statement on Form S-3 and an accompanying prospectus (Registration Statement No. 333-163316) filed and declared effective with the Securities and Exchange Commission (the SEC) on November 24, 2009 and December 10, 2009, respectively, as amended by Post-Effective Amendment No. 1 thereto which was declared effective on May 2, 2012, the Company's Registration Statement on Form S-3 (Registration No. 333-181136) filed and effective with the SEC pursuant to Rule 462(b) under the Securities Act on May 4, 2012, and a preliminary and final prospectus supplement filed with the SEC on May 3, 2012 and May 4, 2012, respectively, in connection with the Company's takedown relating to the offering. A copy of the opinion of Sichenzia Ross Friedman Ference LLP relating to the legality of the issuance and sale of the shares of Common Stock in the offering is attached as Exhibit 5.1 hereto.

The net proceeds to the Company from the sale of the shares of Common Stock is expected to be approximately \$42.3 million, after deducting underwriting discounts and commissions and other estimated offering expenses payable by the Company, assuming no exercise by the Underwriters of the 45 day option which the Company has granted the Underwriters under the terms of the Underwriting Agreement to purchase up to an additional 1,500,000 shares of Common Stock to cover over-allotments, if any. The Underwriting Agreement is filed as an exhibit to this report, and the description of the terms of the Underwriting Agreement in this report is qualified in its entirety by reference to such exhibit.

The offering is expected to close on or about May 9, 2012, subject to customary closing conditions.

The foregoing description of the terms of the Underwriting Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to the Underwriting Agreement which is filed herewith as Exhibit 1.1 and is incorporated herein by reference.

On May 3, 2012, the Company issued a press release announcing that it had commenced the offering. A copy of the press release is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On May 4, 2012, the Company issued a press release announcing that it had priced the offering. A copy of the press release is attached hereto as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Forward-Looking Statements

Certain statements in this Current Report on Form 8-K are forward-looking statements that involve a number of risks and uncertainties. Such forward-looking statements include statements about the expected settlement of the sale and purchase of securities described herein and the Company's receipt of net proceeds therefrom. For such statements, the Company claims the protection of the Private Securities Litigation Reform Act of 1995. Actual events or results may differ materially from the Company's expectations. Factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to, the Company's ability to satisfy applicable closing conditions under the Underwriting Agreement. Additional factors that could cause actual results to differ materially from those stated or implied by the Company's forward-looking statements are disclosed in the Prospectus Supplement and accompanying prospectus and the Company's reports filed with the SEC.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed with this Current Report on Form 8-K:

Exhibit

No.	Description
1.1	Underwriting Agreement, dated May 3, 2012, by and among Synergy Pharmaceuticals Inc. and the underwriters named on Schedule C thereto
5.1	Opinion of Sichenzia Ross Friedman Ference LLP
23.1	Consent of Sichenzia Ross Friedman Ference LLP (included in Opinion of Sichenzia Ross Friedman Ference LLP filed as Exhibit 5.1)
99.1	Press release of Synergy Pharmaceuticals Inc., dated May 3, 2012
99.2	Press release of Synergy Pharmaceuticals Inc., dated May 4, 2012

SIGNATURE

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.

Dated: May 4, 2012

SYNERGY PHARMACEUTICALS INC.

By: /s/ Gary S. Jacob
Gary S. Jacob, Ph.D.
President and Chief Executive Officer
