

Neos Therapeutics, Inc.
Form 8-K
November 06, 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 6, 2018**

NEOS THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-37508
(Commission
File Number)

27-0395455
(I.R.S. Employer
Identification Number)

**2940 N. Highway 360
Grand Prairie, TX 75050
(972) 408-1300**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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)

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- o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

- o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13d-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 x

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. x

Item 1.01. Entry into a Material Definitive Agreement.

Underwriting Agreement

On November 6, 2018, Neos Therapeutics, Inc., a Delaware corporation (the *Company*), entered into an underwriting agreement (the *Underwriting Agreement*) with Cantor Fitzgerald & Co., as representative of the several underwriters listed therein (the *Underwriters*), related to an underwritten public offering (the *Offering*) of 17,391,304 shares (the *Shares*) of the Company's common stock, \$0.001 par value per share (the *Common Stock*), at a public offering price of \$2.30 per Share (the *Offering Price*), before underwriting discounts and commissions. Pursuant to the terms of the *Underwriting Agreement*, the Company granted the *Underwriters* an option, exercisable for 30 days, to purchase up to an additional 2,608,695 shares of *Common Stock*. The gross proceeds to the Company, before deducting the underwriting discounts and estimated expenses associated with the *Offering* payable by the Company, are expected to be approximately \$40 million (assuming the *Underwriters* do not exercise their option to purchase additional shares). The closing of the *Offering* is expected to occur on or about November 8, 2018, subject to the satisfaction of customary closing conditions.

The *Shares* are being offered and sold pursuant to a prospectus dated August 12, 2016 and a prospectus supplement dated November 6, 2018, in connection with a takedown from the Company's shelf registration statement on Form S-3 (Registration No. 333-212809) (the *Registration Statement*), which the U.S. Securities and Exchange Commission declared effective on August 12, 2016.

The *Underwriting Agreement* contains customary representations, warranties, covenants, conditions to closing, indemnification and other obligations of the parties and termination provisions.

A copy of the legal opinion of Goodwin Procter LLP, relating to the validity of the *Shares* issued in the *Offering*, is filed as Exhibit 5.1 to this Current Report on Form 8-K and is filed with reference to, and is hereby incorporated by reference into, the *Registration Statement*.

The foregoing description of the *Underwriting Agreement* does not purport to be complete and is qualified in its entirety by reference to the text of the *Underwriting Agreement*, which is included as Exhibit 1.1 to this Current Report on Form 8-K and incorporated by reference herein.

The *Underwriting Agreement* has been filed with this Current Report on Form 8-K to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the *Underwriting Agreement* were made only for purposes of such agreement and as of specific dates, and were solely for the benefit of the parties to such agreement.

Item 8.01. Other Events.

On November 5, 2018, the Company issued a press release announcing the commencement of the *Offering*. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

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On November 6, 2018, the Company issued a press release announcing its entry into the Underwriting Agreement. A copy of the press release is attached hereto as Exhibit 99.2 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

| Exhibit No. | Description |
|-------------|--|
| 1.1 | <u>Underwriting Agreement, dated November 6, 2018, between Neos Therapeutics, Inc. and Cantor Fitzgerald & Co.</u> |
| 5.1 | <u>Opinion of Goodwin Procter LLP.</u> |
| 23.1 | <u>Consent of Goodwin Procter LLP (included in its opinion filed as Exhibit 5.1).</u> |
| 99.1 | <u>Press release dated November 5, 2018.</u> |
| 99.2 | <u>Press release dated November 6, 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.

NEOS THERAPEUTICS, INC.

| | |
|--------|---------------------------------------|
| Date: | November 6, 2018 |
| By: | /s/ Gerald McLaughlin |
| Title: | President and Chief Executive Officer |