

SYNERGY PHARMACEUTICALS, INC.

Form 8-K

December 18, 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): **December 12, 2018**

**SYNERGY PHARMACEUTICALS INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-35268**  
(Commission  
File Number)

**33-0505269**  
(IRS Employer  
Identification No.)

**420 Lexington Avenue, Suite 2012**

**New York, New York 10170**

(Address of principal executive offices) (Zip Code)

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

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(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 (see General Instruction A.2. below):

- 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 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 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

As previously announced, on December 12, 2018, Synergy Pharmaceuticals Inc., a Delaware corporation (the Company) and its wholly-owned subsidiary, Synergy Advanced Pharmaceuticals, Inc., a Delaware corporation (Synergy Advanced) and together with the Company, the Debtors) filed voluntary petitions for relief (the Chapter 11 Filings) under chapter 11 of title 11 of the United States Code (the Bankruptcy Code) in the United States Bankruptcy Court for the Southern District of New York (the Court).

On December 12, 2018, the Company received a Staff Delisting Determination letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC (Nasdaq) indicating that, in accordance with Nasdaq Listing Rules 5101, 5110(b) and IM-5101-1 (the Listing Rules), the Staff has determined that the Company's securities will be delisted from Nasdaq unless the Company requests an appeal of such determination.

The Listing Rules allow Nasdaq to use its discretionary authority to suspend or terminate the listing of a company based on any event, condition or circumstance that exists or occurs that makes continued listing of the securities on Nasdaq unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for continued listing on Nasdaq, including when a company has filed for protection under any provision of the federal bankruptcy laws. Nasdaq based its determination on the following factors: (i) the Chapter 11 Filings and associated public interest concerns raised by the Chapter 11 Filings; (ii) concerns regarding the residual equity interest of the existing listed securities holders; and (iii) concerns about the Company's ability to sustain compliance with all requirements for continued listing on Nasdaq, including, but not limited to, Listing Rule 5450(a)(1). The letter noted that as of December 11, 2018, the closing bid price for the Company's common stock had closed below \$1 per share for 30 consecutive trading days, and accordingly, if the Company appeals, it will need to address this issue at its hearing.

The letter provides that, should the Company fail to request a hearing before the Nasdaq Hearings Panel (the Panel) by December 19, 2018, trading of the Company's securities will be suspended at the opening of business on December 21, 2018, and a Form 25-NSE will be filed with the Securities and Exchange Commission thereafter, which will remove the Company's securities from listing and registration on Nasdaq. The Company plans to timely request a hearing before the Panel, which request will stay any further action by Nasdaq at least pending the issuance of a decision following the hearing and the expiration of any additional extension that may be granted by the Panel. There can be no assurance that the Panel will grant the Company's request for continued listing or that the Company will be able to evidence compliance with the continued listing criteria within the period of time that the Panel may grant it to do so.

***Cautionary Statements***

The Company's securityholders are cautioned that trading in the Company's securities during the pendency of the Chapter 11 Filings is highly speculative and poses substantial risks. Trading prices for the Company's securities may bear little or no relationship to the actual recovery, if any, by holders thereof in the Company's Chapter 11 Filings. Accordingly, the Company urges extreme caution with respect to existing and future investments in its securities.

A plan of reorganization or liquidation will likely result in holders of the Company's capital stock receiving no distribution on account of their interests and cancellation of their existing stock. If certain requirements of the Bankruptcy Code are met, a Chapter 11 plan can be confirmed notwithstanding its rejection by the Company's equity securityholders and notwithstanding the fact that such equity securityholders do not receive or retain any property on account of their equity interests under the plan.

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Information about the Chapter 11 process, as well as court filings and other documents related to the reorganization proceedings, is available through the Company's claims agent, Prime Clerk, at <https://cases.primeclerk.com/Synergy> or 855-388-4579. Information contained on, or that can be accessed through, such web site or the Court's web site is not part of this Current Report.

**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.

**SYNERGY PHARMACEUTICALS INC.**

Dated: December 18, 2018

By: */s/ Troy Hamilton*  
Troy Hamilton  
Chief Executive Officer