

SYNERGY PHARMACEUTICALS, INC.

Form 8-K

March 06, 2019

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): **March 6, 2019**

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 2.01 Completion of Acquisition or Disposition of Assets.

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 Cases*) 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 January 4, 2019, as previously disclosed, the *Debtors* entered into an amended and restated asset purchase agreement (the *Asset Purchase Agreement*) with Bausch Health Companies, Inc. (*BH*) and its wholly owned subsidiary, Bausch Health Ireland Limited (*Purchaser*), pursuant to which *Purchaser* agreed to acquire substantially all of the *Debtors'* assets and certain liabilities (the *Sale Transaction*) for an aggregate purchase price of \$185.55 million, minus the Cure Costs Deduction (as defined in the *Asset Purchase Agreement*) and the GTN Adjustment Amount (as defined in the *Asset Purchase Agreement*), net of any Deposit Funds (as defined below) (the *Cash Consideration*) and an amount in cash equal to the lesser of (x) \$14.45 million and (y) the amount of severance obligations payable to certain eligible employees (other than executive officers) to the extent such obligations constitute administrative expenses in the *Chapter 11 Cases* pursuant to Sections 503(b)(1) and 507(a)(2) of the *Bankruptcy Code*.

On March 1, 2019, the *Court* approved an order authorizing the *Sale Transaction* with the *Purchaser* pursuant to the *Asset Purchase Agreement* (the *Sale Order*). A copy of the *Sale Order* is attached as Exhibit 99.1.

On March 6, 2019, the *Company* completed the *Sale Transaction*. With the closing of the *Sale Transaction*, the *Debtors* have completed the disposition of certain assets, including all rights to TRULANCE® (plecanatide), dolcanatide and related intellectual property.

Cautionary Information Regarding Trading in the Company's Securities.

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 may 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.

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements, which are based on our current expectations, estimates, and projections about the businesses and prospects of the *Company* and its subsidiaries (*we* or *us*), as well as management's beliefs, and certain assumptions

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made by management. Words such as anticipates, expects, intends, plans, believes, seeks, estimates, may, should, will and va words are intended to identify forward-looking statements. Such statements speak only as of the date hereof and are subject to change. The Company undertakes no obligation to revise or update publicly any forward-looking statements for any reason. These statements are not guarantees of future performance and are subject to certain risks, uncertainties, and assumptions that are difficult to predict. Forward-looking statements discuss, among other matters: the potential adverse impact of the Chapter 11 Cases on the Company's liquidity or results of operations, changes in the Company's ability to meet financial obligations during the Chapter 11 process or to maintain contracts that are critical to the Company's wind-down of its affairs, the outcome or timing of the Chapter 11 process, the effect of the Chapter 11 Cases or the Sale Transaction on the Company's relationships with third parties, regulatory authorities and employees in connection with the Company's wind-down of its affairs, proceedings that may be brought by third parties in connection with the Chapter 11 process, the ability of the Company to fund the wind-down of its affairs and the timing or amount of any distributions to the Company's stakeholders, any statements or assumptions underlying any of the foregoing as well as those risks and uncertainties

disclosed under the sections entitled Risk Factors and Management's Discussion and Analysis of Financial Condition and Results of Operations in our Forms 10-Q filed with the Securities and Exchange Commission (SEC) on May 10, 2018, August 8, 2018 and November 9, 2018 and Form 10-K filed with the SEC on March 1, 2018, and similar disclosures in subsequent reports filed with the SEC. Such statements are not guarantees of future performance and are subject to certain risks, uncertainties, and assumptions that are difficult to predict. Accordingly, actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors.

Additional Information Regarding the Chapter 11 Cases

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.

Item 9.01. Financial Statements and Exhibits.

(a) Pro Forma Financial Information

The Company is currently unable to prepare pro forma financial information reflecting the transaction described in Item 2.01 of this Current Report without unreasonable effort or expense and thus such information is not reasonably available to the Company within the meaning of Rule 12b-21 under the Securities Exchange Act of 1934, as amended. As a debtor-in-possession under the Bankruptcy Code, the Company files monthly operating reports with the Court, which reports include financial statements that are limited in scope and prepared solely for the purpose of complying with requirements of the Court. The Company cautions investors and potential investors not to place undue reliance upon the information contained in the monthly operating reports, which are not prepared for the purpose of providing the basis for an investment decision relating to any of the securities of the Company.

(d) Exhibits.

Exhibit No.	Description of Exhibit
99.1	<u>Sale Order, entered March 1, 2019.</u>
99.2	<u>Press Release dated March 6, 2019</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.

SYNERGY PHARMACEUTICALS INC.

Dated: March 6, 2019

By:

/s/ Troy Hamilton
Troy Hamilton

Chief Executive Officer