

INCYTE CORP
Form 10-K/A
March 15, 2016

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10 K/A

(Amendment No. 1)

(mark one)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT
OF 1934

For the fiscal year ended December 31, 2015

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT
OF 1934

For the transition period from _____ to _____

Commission File Number: 0 27488

INCYTE CORPORATION

(Exact name of registrant as specified in its charter)

| | |
|---|--|
| Delaware | 94 3136539 |
| (State of other jurisdiction | (IRS Employer |
| of incorporation or organization) | Identification No.) |
| 1801 Augustine Cut-Off | 19803 |
| Wilmington, DE | (zip code) |
| (Address of principal executives offices) | (302) 498 6700 |
| | (Registrant's telephone number, including area code) |

Securities registered pursuant to Section 12(b) of the Act:

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| | |
|--|--------------------------------------|
| Title of each class | Name of exchange on which registered |
| Common Stock, \$.001 par value per share | The NASDAQ Stock Market LLC |

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15 (d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10 K or any amendment to this Form 10 K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b 2 of the Exchange Act. (check one)

| | | | |
|-------------------------|-------------------|---|---------------------------|
| Large accelerated filer | Accelerated filer | Non accelerated filer | Smaller reporting company |
| | | (Do not check if a smaller reporting company) | |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b 2 of the Exchange Act). Yes No

The aggregate market value of Common Stock held by non affiliates (based on the closing sale price on The NASDAQ Global Select Market on June 30, 2015) was approximately \$17.1 billion.

As of February 5, 2016 there were 187,199,761 shares of Common Stock, \$.001 par value per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Items 10 (as to directors and Section 16(a) Beneficial Ownership Reporting Compliance), 11, 12, 13 and 14 of Part III incorporate by reference information from the registrant's proxy statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the registrant's 2016 Annual Meeting of Stockholders to be held on May 27, 2016.

EXPLANATORY NOTE

This Amendment No. 1 to Form 10-K (this “Amendment”) amends the Annual Report on Form 10-K for the fiscal year ended December 31, 2015, originally filed on February 12, 2016 (the “Original Form 10-K”) of Incyte Corporation (the “Company” or “we”). We are filing this Amendment to amend Item 15(a) to include the separate consolidated financial statements of Agenus Inc. (“Agenus”) as of December 31, 2015 and 2014 and for each of the years in the three-year period ended December 31, 2015 (the “Agenus Financial Statements”), pursuant to Rule 3-09 of Regulation S-X (“Rule 3-09”). The Agenus Financial Statements were prepared and provided to the Company by Agenus, and were not available at the time of filing of the Original Form 10-K. We are also amending Item 15(b) to correct the reference to Exhibit 10.14 to indicate that it was incorporated by reference.

Rule 3-09 provides that if a 50% or less-owned person accounted for by the equity method meets the first or third condition of the significant subsidiary tests set forth in Rule 1-02(w) of Regulation S-X, substituting 20% for 10%, separate financial statements for such 50% or less-owned person corresponding to the periods covered by the financial statements of the Company included in the Original Form 10-K shall be filed. Those separate financial statements are required to be audited only for the years in which such person met at least one of such significant subsidiary tests. Agenus met such significant subsidiary tests for the Company’s fiscal year ended December 31, 2015.

This Amendment should be read in conjunction with the Original Form 10-K and the Company’s other filings made with the Securities and Exchange Commission subsequent to the filing of the Original Form 10-K. The Original Form 10-K has not been amended or updated to reflect events occurring after February 12, 2016, except as specifically set forth in this Amendment.

Item 15. Exhibits, Financial Statement Schedules

(a) Documents filed as part of this report:

(1) Financial Statements

Reference is made to the Index to Consolidated Financial Statements of Incyte Corporation under Item 8 of Part II of the Original Form 10-K.

(2) Financial Statement Schedules

The consolidated financial statements of Agenus required by Rule 3-09 are incorporated by reference to Item 8 of the Annual Report on Form 10-K for the fiscal year ended December 31, 2015 filed by Agenus with the Securities and Exchange Commission on March 15, 2015 and are provided as Exhibit 99.1 to this Amendment.

All other financial statement schedules have been omitted because they are not applicable or not required or because the information is included elsewhere in the Consolidated Financial Statements or the Notes thereto referred to under Item 15(a)(1) above.

(3) Exhibits

See Item 15(b) below. Each management contract or compensatory plan or arrangement required to be filed has been identified.

(b) Exhibits

| Exhibit | Description of Document |
|---------|--|
| Number | |
| 3(i) | Integrated copy of the Restated Certificate of Incorporation, as amended, of the Company (incorporated by reference to Exhibit 3(i) to the Company's Annual Report on Form 10-K for the year ended December 31, 2009). |

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| 3(ii) | Bylaws of the Company amended and restated as of July 31, 2015 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2015). |
| 4.1 | Form of Common Stock Certificate (incorporated by reference to the exhibit of the same number to the Company's Annual Report on Form 10-K for the year ended December 31, 2002). |
| 4.2 | Indenture, dated as of November 14, 2013, between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed November 14, 2013). |
| 4.3 | Indenture, dated as of November 14, 2013, between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed November 14, 2013). |
| 10.1# | 1991 Stock Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009). |
| 10.2# | Form of Incentive Stock Option Agreement under the 1991 Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)). |
| 10.3# | Form of Nonstatutory Stock Option Agreement under the 1991 Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)). |
| 10.4# | 1993 Directors' Stock Option Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009). |
| 10.5# | Incyte Corporation Amended and Restated 2010 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed May 29, 2014). |
| 10.6# | Form of Nonstatutory Stock Option Agreement for Executive Officers under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014). |
| 10.7# | Form of Incentive Stock Option Agreement for Executive Officers under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014). |
| 10.8# | Form of Nonstatutory Stock Option Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014). |
| 10.9# | Form of Incentive Stock Option Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014). |
| 10.10# | Form of Nonstatutory Stock Option Agreement for Outside Directors under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.24 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013). |
| 10.11# | Form of Restricted Stock Unit Award Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014). |
| 10.12# | Form of Performance Share Award Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014). |
| 10.13# | Form of Indemnity Agreement between the Company and its directors and officers (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1 (File No. 33-68138)). |
| 10.14# | 1997 Employee Stock Purchase Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.6 to the Company's Annual Report on Form 10-K for the year ended December 31, 2014). |
| 10.15# | Form of Employment Agreement between the Company and Barry P. Flannelly (effective as of August 11, 2014), and David W. Gryska (effective as of October 31, 2014) (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K for the year ended December 31, 2012). |

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| 10.16# | Form of Amended and Restated Employment Agreement, effective as of April 18, 2012, between the Company and Reid M. Huber, Richard S. Levy, Eric H. Siegel, Paula J. Swain and Wenqing Yao (incorporated by reference to Exhibit 10.14 to the Company's Quarterly Report on Form 10 Q for the quarter ended March 31, 2012). |
| 10.17# | Offer of Employment Letter, dated as of January 3, 2014, from the Company to Hervé Hoppenot (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8 K filed January 13, 2014). |
| 10.18.1# | Employment Agreement between the Company and Hervé Hoppenot dated as of January 11, 2014 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8 K filed January 13, 2014). |
| 10.18.2# | Amendment, dated as of April 13, 2015, to Employment Agreement between the Company and Hervé Hoppenot, dated as of January 11, 2014 (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015). |
| 10.19# | Restricted Stock Unit Award Agreement between the Company and Hervé Hoppenot dated January 13, 2014 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8 K filed January 13, 2014). |
| 10.20† | Collaborative Research and License Agreement dated as of November 18, 2005, by and between the Company and Pfizer Inc. (incorporated by reference to Exhibit 10.49 to the Company's Annual Report on Form 10 K for the year ended December 31, 2005). |
| 10.21† | Collaboration and License Agreement entered into as of November 24, 2009, by and between the Company and Novartis International Pharmaceutical Ltd. (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10 K for the year ended December 31, 2009). |
| 10.22.1† | License, Development and Commercialization Agreement, entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10 K for the year ended December 31, 2009). |
| 10.22.2† | Amendment, dated June 22, 2010, to License, Development and Commercialization Agreement entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10 Q for the quarter ended June 30, 2010). |
| 10.23† | License, Development and Commercialization Agreement, entered into as of January 9, 2015, by and between the Company, Incyte Europe S.a.r.l. (a wholly owned subsidiary of the Company), Agenus, Inc. and 4-Antibody AG (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015). |
| 10.24 | Stock Purchase Agreement, entered into as of January 9, 2015, between the Company and Agenus, Inc. (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015). |
| 10.25† | License and Collaboration Agreement, dated as of September 1, 2015, by and between Incyte Europe S.a.r.l. and Jiangsu Hengrui Medicine Co., Ltd. (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015). |
| 10.26 | Letter Agreement dated September 24, 2009 among the Company and the entities named therein (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8 K filed September 30, 2009). |
| 10.27 | Letter Agreement dated November 7, 2013 among the Company and the entities named therein (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8 K filed November 14, 2013). |
| 10.28* | Registration Rights Agreement, dated as of February 12, 2016, between the Company and 667, L.P., Baker Brothers Life Sciences, L.P. and 14159, L.P. |
| 10.29† | |

Lease Agreement by and between the Company and Augustine Land I, L.P., effective October 4, 2013 (incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10 K for the year ended December 31, 2013).

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| 10.30 | Agreement of Sale between Incyte Corporation and Augustine Land II, L.P., dated August 21, 2015 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 25, 2015). |
| 12.1* | Computation of Ratios of Earnings to Fixed Charges. |
| 21.1* | Subsidiaries of the Company. |
| 23.1* | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. |
| 23.2** | Consent of KPMG LLP, Independent Registered Public Accounting Firm. |
| 24.1* | Power of Attorney (see page 114 of this Form 10 K). |
| 31.1* | Rule 13a 14(a) Certification of the Chief Executive Officer, dated February 12, 2016. |
| 31.2* | Rule 13a 14(a) Certification of the Chief Financial Officer, dated February 12, 2016. |
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| 32.1*** | Statement of the Chief Executive Officer under Section 906 of the Sarbanes Oxley Act of 2002 (18 U.S.C Section 1350), dated February 12, 2016. |
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| 101.INS* | XBRL Instance Document |
| 101.SCH* | XBRL Taxonomy Extension Schema Document |
| 101.CAL* | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.LAB* | XBRL Taxonomy Extension Label Linkbase Document |
| 101.PRE* | XBRL Taxonomy Presentation Linkbase Document |
| 101.DEF* | XBRL Taxonomy Definition Linkbase Document |

*Filed with the Original Form 10-K.

**Filed herewith

***In accordance with Item 601(b)(32)(ii) of Regulation S K and SEC Release Nos. 33 8238 and 34 47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 to the Original Form 10-K and in Exhibits 32.3 and 32.4 hereto are deemed to accompany the Form 10 K, as amended, and will not be deemed "filed" for purpose of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

†Confidential treatment has been requested with respect to certain portions of these agreements.

#Indicates management contract or compensatory plan or arrangement.

Copies of above exhibits not contained herein are available to any stockholder upon written request to: Investor Relations, Incyte Corporation, 1801 Augustine Cut Off, Wilmington, DE 19803.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment to be signed on its behalf by the undersigned, thereunto duly authorized.

INCYTE CORPORATION

By: /s/ David W. Gyska

David W. Gyska

Executive Vice President and Chief Financial Officer

Date: March 15, 2016

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EXHIBIT INDEX

Exhibit

Number Description of Document

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Copies of above exhibits not contained herein are available to any stockholder upon written request to: Investor Relations, Incyte Corporation, 1801 Augustine Cut Off, Wilmington, DE 19803.

