

EXELIXIS INC
Form 10-K/A
February 25, 2004

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K/A

**FOR ANNUAL AND TRANSITION REPORTS
PURSUANT TO SECTIONS 13 OR 15(d) OF THE
SECURITIES AND EXCHANGE ACT OF 1934**

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

For the fiscal year ended: **December 31, 2003**

OR

**o 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: **0-30235**

EXELIXIS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

04-3257395
(I.R.S. Employer
Identification Number)

**170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083**
(Address of principal executive offices, including zip code)

(650) 837-7000
(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act: **None**

Securities Registered Pursuant to Section 12(g) of the Act:

Common Stock \$.001 Par Value per Share
(Title of Class)

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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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K 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 Annual Report on Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes No

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter: \$436,723,221.

As of December 31, 2003, there were 71,295,105 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated by reference into this Form 10-K/A.

EXPLANATORY NOTE

We are filing this amendment to our Annual Report on Form 10-K, originally filed with the Securities and Exchange Commission on February 20, 2004, solely for the purpose of adding the Amended and Restated Cancer Collaboration Agreement, dated as of December 15, 2003, by and between Exelixis, Inc. and Bristol-Myers Squibb Company as Exhibit 10.41, which was inadvertently omitted from the prior filing. Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, we are including Item 15 below, which incorporates by reference the items listed on the Index to Exhibits. Except as specifically indicated herein, no other information included in our Annual Report on Form 10-K is amended by this Form 10-K/A.

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a)

The following documents are being filed as part of this report:

(1)

The following financial statements of the Company and the Report of the Independent Auditors are included in Part II, Item 8:

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(2)

All financial statement schedules are omitted because the information is inapplicable or presented in the Notes to Consolidated Financial Statements.

(3)

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The items listed on the Index to Exhibits on pages 81 through 84 are incorporated herein by reference.

(b) Reports on Form 8-K.

On December 16, 2003, we filed a current report on Form 8-K under Item 5, announcing the borrowing of an additional \$30.0 million under the Loan and Security Agreement with SmithKlineBeecham Corporation.

On November 5, 2003, we furnished a current report on Form 8-K under Item 12, describing and furnishing the press release announcing certain financial results and information for the quarter ended September 30, 2003.

On October 31, 2003, we filed a current report on Form 8-K under Items 5 and 7, describing and furnishing the press release announcing the departure of the Company's President, Research and Development and Chief Scientific Officer.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of South San Francisco, State of California, on February 25, 2004.

EXELIXIS, INC.

By: /s/ GEORGE A. SCANGOS, PH.D.

George A. Scangos, Ph.D.
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report on Form 10-K/A has been signed by the following persons on behalf of the Registrant and of the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|-------------------|
| <u>/s/ GEORGE A. SCANGOS, PH.D.</u> George A. Scangos, Ph.D. | President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i> | February 25, 2004 |
| <u>*</u> Frank Karbe | Chief Financial Officer <i>(Principal Financial/Accounting Officer)</i> | February 25, 2004 |
| <u>*</u> | Chairman of the Board of Directors | February 25, 2004 |
| <u>Stelios Papadopoulos, Ph.D.</u> <u>*</u> | Director | February 25, 2004 |
| <u>Charles Cohen, Ph.D.</u> <u>*</u> | Director | February 25, 2004 |
| <u>Jason S. Fisherman, M.D.</u> <u>*</u> | Director | February 25, 2004 |

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| Signature | Title | Date |
|--|----------|-------------------|
| Jean-Francois Formela, M.D. * | Director | February 25, 2004 |
| Vincent Marchesi, M.D., Ph.D. * | Director | February 25, 2004 |
| Frank McCormick, Ph.D. * | Director | February 25, 2004 |
| Lance Willsey, M.D. | | |
| *By: /s/ GEORGE A. SCANGOS, PH.D. George A. Scangos, Ph.D. <i>Attorney-in-Fact</i> | | |

INDEX TO EXHIBITS

| Exhibit Number | Description |
|----------------|---|
| 2.1 | Share Exchange and Assignment Agreement, dated April 23, 2001, by and among Exelixis, Inc. and the Artemis stockholders named therein(1) |
| 2.2 | Agreement and Plan of Merger and Reorganization, dated as of November 19, 2001, by and among Exelixis, Inc., Bluegreen Acquisition Sub, Inc. and Genomica Corporation.(2) |
| 2.3 | Agreement of Merger, dated as of June 28, 2002, between Exelixis, Inc. and Genomica Corporation.(12) |
| 3.1 | Amended and Restated Certificate of Incorporation of Exelixis, Inc.(3) |
| 3.2 | Amended and Restated Bylaws of Exelixis, Inc.(3) |
| 4.1 | Specimen Common Stock Certificate.(3) |
| 4.2 | Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999 among Exelixis, Inc. and Certain Stockholders of Exelixis, Inc.(3) |
| 4.3 | Warrant, dated August 17, 1998, to purchase 125,796 post-split shares of Exelixis, Inc. Series A preferred stock in favor of Comdisco, Inc.(3) |
| 4.4 | Warrant, dated August 17, 1998, to purchase 15,365 post-split shares of Exelixis, Inc. Series A preferred stock in favor of Greg Stento.(3) |
| 4.5 | Warrant, dated January 24, 1996, to purchase 267,857 post-split shares of Exelixis, Inc. Series B convertible stock in favor of MMC/GATX Partnership No. 1.(3) |
| 4.6 | Warrant, dated September 25, 1997, to purchase 63,750 post-split shares of Exelixis, Inc. common stock in favor of MMC/GATX Partnership No. 1.(3) |
| 4.7 | Warrant, dated November 15, 1999, to purchase 9,000 post-split shares of Exelixis, Inc. common stock in favor of Bristow Investments, L.P.(3) |
| 4.8 | Warrant, dated November 15, 1999, to purchase 101,250 post-split shares of Exelixis, Inc. common stock in favor of Slough Estates USA, Inc.(3) |
| 4.9 | Warrant, dated November 15, 1999, to purchase 2,250 post-split shares of Exelixis, Inc. common stock in favor of Laurence and Magdalena Shushan Trust.(3) |
| 4.10 | Warrant, dated April 1, 2000, to purchase 70,875 shares of Exelixis, Inc. common stock in favor of Slough Estates USA, Inc.(4) |
| 4.11 | Warrant, dated April 1, 2000, to purchase 6,300 shares of Exelixis, Inc. common stock in favor of Bristow Investments, L.P.(4) |
| 4.12 | Warrant, dated April 1, 2000, to purchase 1,575 shares of Exelixis, Inc. common stock in favor of Laurence and Magdalena Shushan Family Trust.(4) |
| 4.13 | Form of Convertible Promissory Note, dated May 22, 2001 by and between Exelixis, Inc. and Protein Design Labs, Inc.(5) |
| 4.14 | Form of Note Purchase Agreement, dated May 22, 2001 by and between Exelixis, Inc. and Protein Design Labs, Inc.(5) |

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| Exhibit Number | Description |
|-------------------|--|
| 10.1 | Form of Indemnity Agreement.(3) |
| 10.2* | 1994 Employee, Director and Consultant Stock Plan.(3) |
| 10.3* | 1997 Equity Incentive Plan.(3) |
| 10.4* | 2000 Equity Incentive Plan.(3) |
| 10.5* | 2000 Non-Employee Directors' Stock Option Plan.(3) |
| 10.6* | 2000 Employee Stock Purchase Plan.(3) |
| 10.7 | Agritope, Inc. 1997 Stock Award Plan.(6) |
| 10.8** | Collaboration Agreement, dated December 16, 1999, between Exelixis, Inc., Bayer Corporation and Genoptera LLC.(3) |
| 10.9** | Operating Agreement, dated December 15, 1999, between Exelixis, Inc., Bayer Corporation and Genoptera LLC.(3) |
| 10.10 | Cooperation Agreement, dated September 15, 1998, between Exelixis, Inc. and Artemis Pharmaceuticals GmbH.(3) |
| 10.11 | Sublease Agreement, dated June 1, 1997, between Arris Pharmaceutical Corporation and Exelixis, Inc.(3) |
| 10.12 | Lease, dated May 12, 1999, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc.(3) |
| 10.13 | First Amendment to Lease, dated March 29, 2000, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc.(4) |
| 10.14 | Master Lease Agreement, dated August 2, 2000, between Comdisco, Inc. and Exelixis, Inc.(7). |
| 10.15 | Addendum, dated as of August 31, 2000, to the Master Lease Agreement.(7) |
| 10.16 | Amendment No. 1 to the Master Lease Agreement, dated August 2, 2000, between Comdisco, Inc. and Exelixis, Inc.(7) |
| 10.17 | Purchase-Leaseback Agreement, dated August 2, 2000, between Comdisco, Inc. and Exelixis, Inc.(7) |
| 10.18 | Master Services Agreement, dated November 15, 1999, between Artemis Pharmaceuticals GmbH and Exelixis, Inc.(3) |
| 10.19** | Research Collaboration and Technological Transfer Agreement, dated September 14, 1999, between Bristol-Myers Squibb Company and Exelixis, Inc.(3) |
| 10.20** | Corporate Collaboration Agreement, dated February 26, 1999, between Pharmacia & Upjohn AB and Exelixis, Inc.(3) |
| 10.21** | Amendment to Corporate Collaboration Agreement, dated October, 1999, between Pharmacia & Upjohn AB and Exelixis, Inc.(3) |
| 10.22** | Mechanism of Action Collaboration Agreement, dated July 11, 2000 between Exelixis, Inc. and Dow AgroSciences LLC.(8) |
| 10.24* | Employment Agreement, dated September 13, 1996, between George Scangos, Ph.D. and Exelixis, Inc.(3) |
| 10.25* | Employment Agreement, dated April 14, 1997, between Geoffrey Duyk, M.D., Ph.D. and Exelixis, Inc.(3) |
| 10.26* | Employment Agreement, dated October 19, 1999, between Glen Y. Sato, Chief Financial Officer and Vice President, Legal Affairs and Exelixis, Inc.(3) |
| 10.27 | Master Lease Agreement, dated April 9, 2001, between GE Capital Corporation and Exelixis, Inc.(9) |
| 10.28** | Collaboration Agreement, dated May 22, 2001, by and between Exelixis, Inc. and Protein Design Labs, Inc.(5) |
| 10.29 | Form of Stock Purchase Agreement, dated as of July 17, 2001, by and between Exelixis, Inc. and Bristol-Myers Squibb Company.(14) |
| 10.30** | Cancer Collaboration Agreement, dated July 17, 2001, by and between Exelixis, Inc. and Bristol-Myers Squibb Company.(10) |
| 10.31** | License Agreement, dated July 17, 2001, by and between Exelixis, Inc. and Bristol-Myers Squibb Company.(10) |
| 10.32 | Sublease, dated March 8, 2002, by and between Tularik, Inc. and Exelixis, Inc.(11) |
| 10.33 | Sublease, dated April 12, 2002, by and between Toshiba America Medical Systems, Inc. and Exelixis, Inc.(12) |
| 10.34 | Loan and Security Agreement, dated May 22, 2002, by and between Silicon Valley Bank and Exelixis, Inc.(12) |
| 10.35 | Software License and Asset Acquisition Agreement, dated April 4, 2002, by and between Visualize, Inc. and Exelixis, Inc.(12) |
| 10.36** | Product Development and Commercialization Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc.(13) |
| 10.37** | Stock Purchase and Stock Issuance Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc.(13) |
| 10.38** | Loan and Security Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc.(13) |
| 10.39 | Lease Amendment, dated November 7, 2002, by and between Pacific Realty Associates, L.P. and Exelixis, Inc.(15) |
| 10.40 | Employment Agreement, dated January 4, 2002, between Robert Myers and Exelixis, Inc.(15) |
| 10.41** | Amended and Restated Cancer Collaboration Agreement, dated as of December 15, 2003, by and between Exelixis, Inc. and Bristol-Myers Squibb Company. |
| 21.1 | Subsidiaries of Exelixis, Inc.(16) |
| 23.1 | Consent of Ernst & Young LLP, Independent Auditors.(16) |
| 24.1 | Power of Attorney (contained on signature page).(16) |
| 31.1 | Certification required by Rule 13a-14(a) or Rule 15d-14(a) |

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|---------|---|
| 31.2 | Certification required by Rule 13a-14(a) or Rule 15d-14(a) |
| 32.1*** | Certification by the Chief Executive Officer and the Chief Financial Officer of Exelixis, Inc., as required by Rule 13a-14(b) or 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C.1350)(16) |

*
Management contract or compensatory plan.

**
Confidential treatment granted for certain portions of this exhibit.

This certification accompanies this Annual Report on Form 10-K/A, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of this Annual Report on Form 10-K/A), irrespective of any general incorporation language contained in such filing.

1.
Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on May 15, 2001 and incorporated herein by reference.

2.
Filed as an Annex A to Exelixis, Inc.'s Registration Statement on Form S-4 (File No. 333-74120), as filed with the Securities and Exchange Commission on November 29, 2001 and incorporated herein by reference.

3.
Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-1 (File No. 333-30978), as filed with the Securities and Exchange Commission on February 7, 2000, as amended, and incorporated herein by reference.

4.
Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2000, filed with the Securities Exchange Commission on May 15, 2000 and incorporated herein by reference.

5.
Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, as filed with the Securities and Exchange Commission on August 14, 2001 and incorporated herein by reference.

6.
Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-8 (File No. 333-52434), as filed with the Securities Exchange Commission on December 21, 2000 and incorporated herein by reference.

7.
Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2000, filed with the Securities Exchange Commission on November 14, 2000 and incorporated herein by reference.

8.
Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2000, filed with the Securities and Exchange Commission on August 14, 2000 and incorporated herein by reference.

9.
Filed as a Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2001, filed with the Securities and Exchange Commission on May 15, 2001 and incorporated herein by reference.

10.
Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2001, filed with the Securities and Exchange Commission on November 14, 2001 and incorporated herein by reference.

11.
Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2002, filed with the Securities and Exchange Commission on May 13, 2002 and incorporated herein by reference.

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12. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2002, filed with the Securities and Exchange Commission on August 6, 2002 and incorporated herein by reference.
 13. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, filed with the Securities and Exchange Commission on November 8, 2002 and incorporated herein by reference.
 14. Filed as an Exhibit to Exelixis' Registration Statement on Form S-3 (File No. 333-68436), as filed with the Securities and Exchange Commission on August 27, 2001 and incorporated herein by reference.
 15. Filed as an Exhibit to Exelixis' Annual Report on Form 10-K for the year ended December 31, 2002, filed with the Securities and Exchange Commission on March 7, 2003 and incorporated herein by reference.
 16. Filed as an Exhibit to Exelixis' Annual Report on Form 10-K for the year ended December 31, 2003, filed with the Securities and Exchange Commission on February 20, 2004 and incorporated herein by reference.
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