

BIOTIME INC
Form 10-K/A
May 01, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

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

For the fiscal year ended December 31, 2018

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 1-12830

BioTime, Inc.

(Exact name of registrant as specified in its charter)

California **94-3127919**
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)

1010 Atlantic Avenue, Suite 102

Alameda, California 94501

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code **(510) 521-3390**

Securities registered under Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|-----------------------------------|-------------------|---|
| Common stock, no par value | BTX | NYSE American |

Securities registered under 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 every Interactive Data File required to be submitted 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 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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

| | |
|-------------------------|---------------------------|
| Large accelerated filer | Accelerated filer |
| Non-accelerated filer | Smaller reporting company |
| | 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 to Section 13(a) of the Exchange Act.

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

The approximate aggregate market value of voting common shares held by non-affiliates computed by reference to the price at which common shares were last sold as of June 30, 2018 was \$176.7 million. Shares held by each executive officer and director and by each person who beneficially owns more than 5% of the outstanding common shares have been excluded in that such persons may under certain circumstances be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of common shares outstanding as of April 22, 2019 was 149,642,861.

Documents Incorporated by Reference

None.

EXPLANATORY NOTE

This Amendment No. 2 on Form 10-K/A (this “Amendment”) amends the Annual Report on Form 10-K for the fiscal year ended December 31, 2018 (the “Original Report”) of BioTime, Inc. (the “Company”), as filed with the Securities and Exchange Commission (“SEC”) on March 14, 2019, as amended by Amendment No. 1 on Form 10-K/A (the “First Amendment”) filed with the SEC on April 30, 2019. This Amendment is being filed solely to amend Item 13 of Part III of the First Amendment to correct a typographical error relating to the members of the Company’s board of directors who were directors of Asterias Biotherapeutics, Inc. (“Asterias”) prior to the Company’s acquisition of Asterias on March 8, 2019. Except as set forth above, this Amendment does not amend, modify, or otherwise update any other information in the Original Report or the First Amendment. Accordingly, this Amendment should be read in conjunction with the Original Report, the First Amendment and with the Company’s filings with the SEC subsequent to the filing of the Original Report and the First Amendment. In addition, this Amendment does not reflect events that may have occurred after the date the Original Report was filed with the SEC or after the date the First Amendment was filed with the SEC.

Because no financial statements of the registrant have been included in this Amendment and this Amendment does not contain or amend any disclosure with respect to Items 307 and 308 of Regulation S-K, paragraphs 3, 4 and 5 of the new certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 have been omitted.

References to “BioTime”, “Company,” “we” and “our” means BioTime, Inc. and its subsidiaries and affiliates unless the context otherwise indicates. Capitalized terms used in this Amendment but not defined in this Amendment, have the meanings given to them in the Original Report or the First Amendment, as applicable.

PART III

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Related Transactions

Since July 1, 2009, Alfred D. Kingsley has made available to us the use of approximately 900 square feet of office space in New York City. We pay the office building owner \$5,050 per month for the use of the space.

Shared Facilities and Services Agreement with OncoCyte and AgeX

During 2018 and 2017, we invoiced OncoCyte \$1.6 million each year for certain “Use Fees” and other charges under the terms of a Shared Facilities and Services Agreement (the “Shared Facilities Agreement”) between BioTime and OncoCyte. Under the Shared Facilities Agreement, BioTime allows OncoCyte to use BioTime’s premises and equipment located at Alameda, California for the sole purpose of conducting business. BioTime also provides accounting, billing, bookkeeping, payroll, treasury, payment of accounts payable, and other similar administrative services to OncoCyte. BioTime may also provide the services of attorneys, accountants, and other professionals who may also provide professional services to BioTime and its other subsidiaries. BioTime also has provided OncoCyte with the services of laboratory and research personnel, including BioTime employees and contractors, for the performance of research and development work for OncoCyte at the premises.

BioTime charges OncoCyte a “Use Fee” for services provided and usage of BioTime facilities, equipment, and supplies. For each billing period, BioTime prorates and allocates to OncoCyte costs incurred, including costs for services of BioTime employees and use of equipment, insurance, leased space, professional services, software licenses, supplies and utilities. The allocation of costs depends on key cost drivers, including actual documented use, square footage of facilities used, time spent, costs incurred by BioTime for OncoCyte, or upon proportionate usage by BioTime and OncoCyte, as reasonably estimated by BioTime. BioTime, at its discretion, has the right to charge OncoCyte a 5% markup on such allocated costs. In addition to the Use Fees, OncoCyte will reimburse BioTime for any out of pocket costs incurred by BioTime for the purchase of office supplies, laboratory supplies, and other goods and materials and services for the account or use of OncoCyte.

BioTime entered into a similar Shared Facilities Agreement with AgeX in 2018 and we invoiced them \$0.6 million for Use Fees and expenses for that period.

BioTime also had a similar Shared Facilities Agreement with Asterias and during 2017 we invoiced Asterias \$0.1 million for Use Fees and expenses. This Agreement did not extend into 2018.

Our Chairman, Mr. Kingsley, one of our directors, Michael H. Mulroy, and an officer of Broadwood, were directors of Asterias prior to our acquisition of Asterias on March 8, 2019. All of our directors and executive officers, and beneficial owners of more than 5% of our outstanding common stock (“5% Shareholders”) as reported in our Amendment No. 1 on Form 10-K/A filed with the SEC on April 30, 2019, in the aggregate beneficially owned approximately 10.2% of the outstanding shares of Asterias common stock as of December 31, 2018, and approximately 10.2% of the outstanding shares of Asterias common stock immediately prior to the acquisition on March 8, 2019.

Mr. Kingsley and Cavan Redmond are directors of OncoCyte. Broadwood beneficially owns more than 10% of the outstanding common stock of OncoCyte, and all of our directors and executive officers and 5% Shareholders as reported in this Amendment No. 1 on Form 10-K, including Neal C. Bradsher who may be deemed to beneficially own the shares owned by Broadwood, in the aggregate beneficially own approximately 18.9% of the outstanding shares of OncoCyte common stock as of April 22, 2019. The fact that certain of our executive officers and directors own shares of OncoCyte common stock should not be considered to mean that they constitute or are acting in concert as a “group” with respect to those shares or that they otherwise share power or authority to vote or dispose of the shares that each of them own.

Related Person Transaction Policy

We have adopted a Related Person Transaction Policy that applies to transactions exceeding \$120,000 in which any of our officers, directors, beneficial owners of more than 5% of our common shares, or any member of their immediate family, has a direct or indirect material interest, determined in accordance with the policy (a “Related Person Transaction”). A Related Person Transaction must be reported to our outside legal counsel, our Chief Operating Officer, and our Chief Financial Officer, and will be subject to review and approval by our Audit Committee prior to effectiveness or consummation, to the extent practical. In addition, any Related Person Transaction that is ongoing in nature will be reviewed by the Audit Committee annually to ensure that the transaction has been conducted in accordance with any previous approval and that all required disclosures regarding the transaction are made.

As appropriate for the circumstances, the Audit Committee will review and consider:

the interest of the officer, director, beneficial owner of more than 5% of our common shares, or any member of their immediate family (“Related Person”) in the Related Person Transaction;

the approximate dollar value of the amount involved in the Related Person Transaction;

the approximate dollar value of the amount of the Related Person’s interest in the transaction without regard to the amount of any profit or loss;

whether the transaction was undertaken in the ordinary course of our business;

whether the transaction with the Related Person is proposed to be, or was, entered into on terms no less favorable to us than terms that could have been reached with an unrelated third party;

the purpose of, and the potential benefits to the transaction to us; and

any other information regarding the Related Person Transaction or the Related Person in the context of the proposed transaction that would be material to investors in light of the circumstances of the particular transaction.

The Audit Committee will review all relevant information available to it about a Related Person Transaction. The Audit Committee may approve or ratify the Related Person Transaction only if the Audit Committee determines that, under all of the circumstances, the transaction is in, or is not in conflict with, our best interests. The Audit Committee may, in its sole discretion, impose such conditions as it deems appropriate on us or the Related Person in connection with approval of the Related Person Transaction.

A copy of our Related Person Transaction Policy can be found on our website at www.biotimeinc.com.

Director Independence

Our Board has determined that Deborah Andrews, Don M. Bailey, Neal C. Bradsher, Stephen C. Farrell, Michael H. Mulroy, Cavan Redmond, and Angus C. Russell qualify as “independent” in accordance with Section 803(A) of the NYSE American Company Guide. The members of our Audit Committee meet the additional independence standards under Section 803(B)(2) of the NYSE American Company Guide and Section 10A-3 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the members of our Compensation Committee meet the additional independence standards under Section 805(c)(1) of the NYSE American Company Guide. Our independent directors received no compensation or remuneration for serving as directors except as disclosed under “Director Compensation” in Item 11. None of these directors, nor any of the members of their families, have participated in any transaction with

us that would disqualify them as “independent” directors under the standards described above.

SIGNATURES

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

BIOTIME, INC.

Date: May 1, 2019 By: */s/ Brian M.
Culley*
Brian M. Culley
Chief Executive
Officer

