

Semler Scientific, Inc.
Form 8-K
November 29, 2016

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): November 23, 2016

SEMLER SCIENTIFIC, INC.

(Exact name of registrant as specified in its charter)

Delaware

001-36305

26-1367393

(Commission File Number) (IRS Employer Identification No.)

(State or other jurisdiction of
incorporation)

2330 NW Everett St.

97210

Portland, Oregon

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(877) 774-4211**

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))

Item 5.07. Submission of Matters to a Vote of Security Holders.

On November 23, 2016, Semler Scientific, Inc. (the “Company”) held its Annual Meeting of the Stockholders (the “Annual Meeting”) at the offices of Cooley LLP, 101 California Street, Floor 5, San Francisco, California 94111. At the Annual Meeting, the Company’s stockholders voted on two proposals, each of which is described in more detail in the Company’s definitive proxy statement on Schedule 14A filed with the U.S. Securities and Exchange Commission on October 21, 2016. The following is a brief description of each matter voted upon and the certified results, including the number of votes cast for and against each matter and, if applicable, the number of abstentions and broker non-votes with respect to each matter.

Proposal 1. Stockholders elected each of the following nominees to serve as Class I Directors on the Company’s board of directors (the “Board”) until the Company’s 2019 Annual Meeting of Stockholders or until his respective successor has been duly elected and qualified. The voting results for each of the nominees were as follows:

Director Name	Votes For	Votes Against	Votes Withheld	Broker Non-Votes	Percentage of Votes in Favor	
Arthur “Abbie” Leibowitz, M.D., F.A.A.P.	2,899,441	200	217,476	981,263	93.02	%
Wayne T. Pan, M.D., Ph.D.	2,890,466	9,175	217,476	981,263	92.73	%

Proposal 2. Stockholders ratified the selection by the Audit Committee of the Board of BDO USA, LLP as the Company’s independent registered public accounting firm for the year ending December 31, 2016. The voting results were as follows:

Votes For	Votes Against	Abstentions	Percentage of Votes in Favor	
4,098,301	0	79	100.00	%

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SEMLER SCIENTIFIC, INC.

By: /s/ Douglas Murphy-Chutorian
Name: Douglas Murphy-Chutorian

Title: Chief Executive Officer

Date: November 29, 2016

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65 These forward-looking statements are not guarantees of future performance. Factors that could cause actual results to differ materially from those projected in our forward-looking statements include the following: our ability to raise additional capital when needed; market acceptance of our technologies and products, and for products incorporating our technologies; the failure of our commercial partners to perform as expected under our agreements; our ability to identify parties interested in paying any amounts or amounts we deem desirable for the purchase or license of intellectual property assets; our or our customers' failure to perform under open purchase orders; our financial and technical resources relative to those of our competitors; our ability to keep up with rapid technological change; government regulation of our technologies; our ability to enforce our intellectual property rights and protect our proprietary technologies; the ability to obtain additional contract awards and to develop partnership opportunities; the timing of commercial product launches and delays in product development; the ability to achieve key technical milestones in key products; dependence on third parties to develop, manufacture, sell and market our products; potential product liability claims; and other factors set forth in the section entitled "Risk Factors" below, and in the documents incorporated by reference into this prospectus. These factors are not intended to represent a complete list of the general or specific factors that may affect us. It should be recognized that other factors, including general economic factors and business strategies, may be significant, now or in the future, and the factors set forth in this prospectus may affect us to a greater extent than indicated. All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements set forth in or incorporated into this prospectus. Except as required by law, we undertake no obligation to update any forward-looking statement, whether as a result of new information, future events or otherwise.

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RISK FACTORS

An investment in our securities involves a high degree of risk. You should carefully consider all of the information in this prospectus, including the risks and uncertainties described below, and all other information included or incorporated by reference in this prospectus, before you decide whether to purchase our securities. The risks and uncertainties we describe are not the only ones facing us. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. If any of these risks were to occur, our business, financial condition or results of operations would likely suffer. In that event, the trading price of our common stock could decline and you could lose all or part of your investment.

Risks Related to Our Common Stock and this Offering

We have broad discretion in the use of the net proceeds from this offering and may not use them effectively.

Our management will have broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not necessarily improve our results of operations or enhance the value of our common stock. Our failure to apply these funds effectively could have a material adverse effect on our business, financial condition, operating results and cash flow, and could cause the price of our common stock to decline.

If you purchase the common stock sold in this offering, you will experience immediate and substantial dilution in your investment. You will experience further dilution if we issue additional equity securities in future fundraising transactions.

Since the price per share of our common stock being offered is substantially higher than the net tangible book value per share of our common stock, you will suffer substantial dilution with respect to the net tangible book value of the common stock you purchase in this offering. Based on our net tangible book value as of March 31, 2018, if you purchase shares of common stock in this offering, you will suffer immediate and substantial dilution of \$1.04 per share with respect to the net tangible book value of the common stock. See the section entitled "Dilution" elsewhere in this prospectus for a more detailed discussion of the dilution you will incur if you purchase common stock in this offering.

If we issue additional common stock, or securities convertible into or exchangeable or exercisable for common stock following the expiration of the lock-up agreement we entered into with the underwriters as described in the section entitled "Underwriting" elsewhere in this prospectus, our stockholders, including investors who purchase shares of common stock in this offering, could experience additional dilution, and any such issuances may result in downward pressure on the price of our common stock.

Future sales of shares by existing stockholders could cause our stock price to decline.

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares of common stock intend to sell shares, could reduce the market price of our common stock.

As of March 31, 2018, we had outstanding options to purchase an aggregate of 4,972,720 shares of our common stock, of which approximately 2,769,407 were exercisable at a weighted average exercise price of \$3.32 per share, and outstanding warrants to purchase an aggregate of 1,973,000 shares of our common stock, all of which are exercisable at a weighted average exercise price of \$2.47 per share. The exercise of such outstanding options and warrants will result in further dilution of your investment. If our existing stockholders sell substantial amounts of our common stock

in the public market, or if the public perceives that such sales could occur, this could have an adverse impact on the market price of our common stock, even if there is no relationship between such sales and the performance of our business.

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We do not currently intend to pay dividends on our common stock, and any return to investors is expected to come, if at all, only from potential increases in the price of our common stock.

At the present time, we intend to use available funds to finance our operations. Accordingly, while payment of dividends rests within the discretion of our board of directors, no cash dividends on our common shares have been declared or paid by us and we have no intention of paying any such dividends in the foreseeable future. Any return to investors is expected to come, if at all, only from potential increases in the price of our common stock.

USE OF PROCEEDS

We estimate that the net proceeds to us from this offering will be approximately \$16.6 million (or approximately \$19.1 million if the underwriters' over-allotment option is exercised in full), in each case after deducting the underwriting discount and estimated offering expenses payable by us.

We anticipate that the net proceeds from the sale of the securities offered under this prospectus will be used for general corporate purposes, which may include, but are not limited to, working capital and capital expenditures. Pending the application of the net proceeds, we expect to invest the proceeds in investment-grade, interest-bearing instruments or other securities.

DESCRIPTION OF SECURITIES WE ARE OFFERING

We are offering 14,400,000 shares of our common stock. We have granted the underwriters an option to purchase up to 2,160,000 additional shares of our common stock to cover over-allotments, if any.

Our Certificate of Incorporation, as amended, authorizes us to issue 150,000,000 shares of common stock, \$0.001 par value per share, and 25,000,000 shares of preferred stock, \$0.001 par value per share. As of March 31, 2018, there were 78,613,343 shares of common stock, and no shares of preferred stock, outstanding.

Common Stock. All outstanding common stock is, and any stock issued under this prospectus will be duly authorized, fully paid and nonassessable. Subject to the rights of the holders of our outstanding preferred stock, holders of common stock:

are entitled to any dividends validly declared;

will share ratably in our net assets in the event of a liquidation; and

are entitled to one vote per share.

The common stock has no conversion rights. Holders of common stock have no preemption, subscription, redemption, or call rights related to those shares.

American Stock Transfer & Trust Company is the transfer agent and registrar for our common stock.

Preferred Stock. The Board of Directors has the authority, without further action by the shareholders, to issue shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions thereof, including

dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of such series. The issuance of preferred stock could adversely affect the voting power of holders of our common stock and the likelihood that such holders will receive dividend payments and payments upon liquidation may have the effect of delaying, deferring or preventing a change in control of MicroVision, which could depress the market price of our common stock. We currently have no shares of preferred stock outstanding.

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If you invest in our securities, your interest will be diluted by an amount equal to the difference between the public offering price and the net tangible book value per share of our common stock after this offering. We calculate net tangible book value per share by dividing our net tangible book value (total assets less intangible assets and total liabilities) by the number of outstanding shares of common stock.

Our net tangible book value at March 31, 2018 was approximately \$2.7 million, or approximately \$0.03 per share of common stock. After giving effect to the sale of 14,400,000 shares of common stock at the public offering price of \$1.25 per share, and after deduction of the discount and estimated offering expenses payable by us, our adjusted net tangible book value at March 31, 2018 would have been approximately \$19.3 million, or approximately \$0.21 per share. This represents an immediate increase in as-adjusted net tangible book value of \$0.17 per share to existing shareholders and an immediate and substantial dilution of \$1.04 per share to new investors. The following table illustrates this per share dilution:

Public offering price per share	\$ 1.25
Net tangible book value per share at March 31, 2018	\$ 0.03
Increase in net tangible book value per share attributable to this offering	\$ 0.17
As-adjusted net tangible book value per share as of March 31, 2018, after giving effect to this offering	\$ 0.21
Dilution per share to new investors in this offering	\$ 1.04

The information above assumes that the underwriters do not exercise their over-allotment option. If the underwriters exercise their over-allotment option in full, the as-adjusted net tangible book value after this offering would be approximately \$0.23 per share, representing an increase in net tangible book value of approximately \$0.19 per share to existing shareholders and immediate dilution in net tangible book value of approximately \$1.02 per share to new investors purchasing our common stock in this offering at the public offering price.

The table and discussion above are based on 78,613,343 shares of our common stock outstanding as of March 31, 2018 and excludes, as of that date, the following:

4,972,720 shares of our common stock issuable upon exercise of outstanding options, of which approximately 2,769,407 were exercisable at a weighted average exercise price of \$3.32 per share, under our 2013 Incentive Plan, as amended, or the Incentive Plan, and our Independent Director Stock Option Plan;

185,000 shares of our common stock underlying unvested stock awards;

1,973,000 shares of our common stock issuable upon exercise of outstanding warrants, all of which were exercisable at a weighted average exercise price of \$2.47 per share; and

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2,227,672 shares of our common stock reserved for issuance pursuant to the Incentive Plan.

To the extent that any of the outstanding warrants or options are exercised, there will be further dilution to new investors. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity securities, the issuance of these securities could result in further dilution to our stockholders.

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We have entered into an underwriting agreement with Ladenburg Thalmann & Co. Inc, acting as the representative of the several underwriters named below, with respect to the shares of common stock subject to this offering. Subject to certain conditions, we have agreed to sell to the underwriters, and the underwriters have severally agreed to purchase, the number of shares of common stock provided below opposite their respective names. The underwriters' obligations are several, which means that each underwriter is required to purchase a specific number of shares, but is not responsible for the commitment of any other underwriter to purchase shares. The underwriters are committed to purchase and pay for all of the shares if any are purchased, other than those shares covered by the over-allotment option described below.

Underwriters	Number of Shares
Ladenburg Thalmann & Co. Inc.	10,800,000
H.C. Wainwright & Co., LLC	1,800,000
Northland Securities, Inc.	1,800,000

The underwriters have advised us that they propose to offer the shares of common stock to the public at a price of \$1.25 per share. The underwriters propose to offer the shares of common stock to certain dealers at the same price less a concession of not more than \$0.046875 per share. After the offering, these figures may be changed by the representative.

The shares sold in this offering are expected to be ready for delivery against payment in immediately available funds on or about June 14, 2018, subject to customary closing conditions. The underwriters may reject all or part of any order.

We have granted to the underwriters an option to purchase up to an additional 2,160,000 shares of common stock from us at the same price to the public, and with the same underwriting discount, as set forth on the cover page of this prospectus. The underwriters may exercise this option, in whole or in part, any time during the 30-day period after the date of this prospectus, but only to cover over-allotments, if any. If the underwriters exercise this option, each underwriter will be obligated, subject to certain conditions, to purchase a number of additional shares proportionate to that underwriter's initial purchase commitment as indicated in the table above.

Commissions and Discounts

The table below summarizes the underwriting discount that we will pay to the underwriters. These amounts are shown assuming both no exercise and full exercise of the over-allotment option. In addition to the underwriting discount, we have agreed to pay up to \$100,000 of the fees and expenses of the underwriters, which may include the fees and expenses of counsel to the underwriters. The fees and expenses of the underwriters that we have agreed to reimburse are not included in the underwriting discounts set forth in the table below. The underwriters have not received and will not receive from us any other item of compensation or expense in connection with this offering considered by the Financial Industry Regulatory Authority, Inc., or FINRA, to be underwriting compensation under its rules. The underwriting discount and other items of compensation the underwriters will receive were determined through arms length negotiations between us and the representative.