

DERMA SCIENCES INC
Form 8-K/A
March 23, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K/A-3

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

Date of Report (Date of earliest event reported): January 9, 2004

Derma Sciences, Inc.

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction
of incorporation)

1-31070
(Commission
File Number)

23-2328753
(IRS employer
identification number)

214 Carnegie Center, Suite 100
Princeton, NJ 08540
(609) 514-4744
(Address including zip code and telephone
number, of principal executive offices)

Item 2. Acquisition or Disposition of Assets

Derma Sciences, Inc. (the Registrant), on January 9, 2004, purchased from Kimberly-Clark Corporation certain assets theretofore employed by Kimberly-Clark in the manufacture of wound care products (the Transaction). The Registrant filed its original and amended reports on Form 8-K relative to the Transaction on January 23, 2004, January 26, 2004 and February 5, 2004, respectively. The purpose of the present amended report is to file financial statements and exhibits relative to the Transaction pursuant to Item 7 of Form 8-K and Item 310(c) of Regulation S-B.

The wound care assets acquired by the Registrant did not constitute a separate entity, subsidiary or division of Kimberly-Clark. Furthermore, Kimberly-Clark has not maintained the distinct and separate accounts necessary to present full financial statements of the acquired wound care assets. Accordingly, the Registrant is providing statements of assets acquired and liabilities assumed and statements of revenues and costs of revenues relative to the wound care assets in lieu of the financial statements otherwise required by Regulation S-X.

Item 7. Financial Statements and Exhibits

(a) Statements of Assets Acquired and Liabilities Assumed and Statements of Revenues and Cost of Revenues.

The audited Statements of Assets Acquired and Liabilities Assumed as of December 31, 2002 and 2001 and the audited Statements of Revenues and Cost of Revenues for the year ended December 31, 2002 and 2001 of the Kimberly-Clark Wound Care Product Line are filed herewith as Exhibit 99.1.

The unaudited Statement of Assets Acquired and Liabilities Assumed as of September 30, 2003 and the Statements of Revenues and Cost of Revenues for the nine months ended September 30, 2003 and 2002 of the Kimberly-Clark Wound Care Product Line are filed herewith as Exhibit 99.2.

(b) Pro Forma financial Information.

The unaudited pro forma Consolidated Balance Sheet at September 30, 2003 and the Unaudited pro forma Consolidated Statements of Operations for the nine months ended September 30, 2003 and the year ended December 31, 2002 of the Registrant and the Kimberly-Clark Wound Care Product Line are filed herewith as Exhibit 99.3.

(c) Exhibits

23.1 Consent of Windham Brannon, P.C.

99.1 Audited Statements of Assets Acquired and Liabilities Assumed as of December 31, 2002 and 2001 and Revenues and Cost of Revenues for the year ended December 31, 2002 and 2001 of the Kimberly-Clark Wound Care Product Line.

99.2 Unaudited Statement of Assets Acquired and Liabilities Assumed as of September 30, 2003 and Statements of Revenues and Cost of Revenues for the nine months ended September 30, 2003 and 2002 of the Kimberly-Clark Wound Care Product Line.

99.3 Unaudited pro forma consolidated Balance Sheet at September 30, 2003 and Unaudited pro forma

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consolidated Statements of Operations for the nine months ended September 30, 2003 and the year ended December 31, 2002 of the Registrant and the Kimberly-Clark Wound Care Product Line.

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

DERMA SCIENCES, INC.

By: /s/ John E. Yetter

Date: March 22, 2004

John E. Yetter, CPA
Vice President and Chief Financial Officer

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replacement Options in exchange for the surrender of their Eligible Options. The surrendered Eligible Options will be cancelled immediately upon the expiration of this election period and the Replacement Options will be granted under the 2013 Plan, on the date of cancellation of the surrendered Eligible Options (the Option Exchange Date). The exercise price of the Replacement Options will be the closing price of our common stock on the Option Exchange Date. We expect the Option Exchange Date to occur on or about October 2, 2015. Eligible Participants, as well as stockholders and members of the public, are able to review the offer to exchange and other related documents filed by us with the SEC free of charge on the SEC's website at www.sec.gov.

Stockholder approval of the Option Exchange was required under the NYSE Rules and the terms of the 2013 Plan.

Overview

We have recently experienced a significant decline in our stock price and our stock price remains at a relatively low level compared to its previous price levels. As a result, our outstanding stock options have exercise prices significantly above the recent trading prices of our common stock. We believe these underwater stock options no longer provide meaningful compensatory opportunity to the option holders and, accordingly, are no longer effective as incentives to retain and motivate our key contributors. We believe that many option holders perceive these options to have little or no value, therefore reducing the options' value as a means to align the incentives of our key contributors with our stockholders. In addition, although these stock options are not likely to be exercised as long as our stock price is lower than the applicable exercise price, unless they are surrendered or cancelled they will remain outstanding with the potential to dilute stockholders' interests for up to the full term of the options, while delivering little or no retentive or incentive value.

The objective of our equity incentive programs has been, and continues to be, to link the personal interests of equity incentive plan participants to those of our stockholders, and we believe that the Option Exchange is an important component in our efforts to achieve that goal.

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Moreover, because of the large number of underwater options, granting additional, incremental equity awards without cancelling any previous awards would further increase our overhang and further dilute stockholder interests and increase our non-cash operating expenses because we would need to expense both the Replacement Options and any remaining unrecognized compensation expense related to the Legible Options, which would decrease our results of operations and could negatively affect our stock price.

We have granted options at varying times, having a broad range of exercise prices. As of September 1, 2015, options to purchase an aggregate of 491,034 shares of our common stock were outstanding under the 2013 Plans, and 2,887,691 shares of our common stock remained available for future issuance under the 2013 Plan. Of these, options to purchase an aggregate of 445,178 shares of our common stock were held by Eligible Participants and would be Eligible Options for purposes of the Option Exchange. All of the outstanding stock options under the 2013 Plans have a weighted average exercise price of \$24.24 and a weighted average remaining life of 2.7 years, while the Eligible Options have a weighted average exercise price of \$23.79 and a weighted average remaining life of 2.8 years.

Options granted under the 2010 Plan are not Eligible Options and cannot be exchanged in the Option Exchange.

None of the former executive officers and senior members of the Company who have departed in the recent months, including Jill Granoff, our former Chief Executive Officer, is eligible to participate in the Option Exchange. Our Interim Chief Executive Officer and Interim Chief Financial Officer are also not eligible to participate in the Option Exchange.

Summary of Material Terms of Option Exchange

Eligible Options

The Option Exchange will be open to all persons who hold Eligible Options. Eligible Options are options to purchase shares of our common stock:

granted under the 2013 Plan; and

held by an Eligible Participant who is still employed by us as an employee or executive officer as of the commencement of the Option Exchange and who remains employed by us through the Option Exchange Date.

The options granted under the 2010 Plan are not eligible options and cannot be exchanged in the Option Exchange.

Terms of the Option Exchange

If the Option Exchange is consummated, on the Option Exchange Date, each Eligible Option will be exchanged for the grant of a Replacement Option under the 2013 Plan. The terms of the Replacement Options are as follows:

One-for-One Exchange. Each Eligible Option tendered for exchange will be exchanged, on a one-for-one basis, for the grant of a Replacement Option to purchase the same number of shares of common stock as were subject to the Eligible Option. For example, if an Eligible Participant tenders an Eligible Option to purchase 1,000 shares of common stock for exchange, such Eligible Participant will receive a Replacement Option to purchase 1,000 shares of common stock.

New Grant Date. The grant date for the Replacement Options will be the Option Exchange Date.

New Exercise Price. Each Replacement Option will have an exercise price equal to the closing stock price of our common stock on the New York Stock Exchange on the Option Exchange Date.

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New Vesting Schedules. All Replacement Options will vest over four years, vesting on each of the first, second, third and fourth anniversaries of the Option Exchange Date, subject to your remaining continuously employed with the Company through each such vesting date. For example, an Eligible Option with a three-year vesting schedule vesting on November 1, 2015, November 1, 2016 and November 1, 2017 would be exchanged for a Replacement Option scheduled to vest over four years commencing from October 2, 2015, assuming the Option Exchange Date occurs on that date, with the first vesting date being October 2, 2016. Each Replacement Option will have the new vesting schedule regardless of whether the surrendered option was partially vested.

New Ten-Year Term. Each Replacement Option will have a ten-year term from the Option Exchange Date.

Non-Qualified Stock Options. Each Eligible Option is a non-qualified stock option under the Internal Revenue Code of 1986, as amended (the "Code") and each Replacement Option will continue to be treated under the Code as a non-qualified stock option following the Option Exchange.

Other Terms Governed by the 2013 Plan. The terms and conditions of the Replacement Options will, other than the terms discussed above, have terms and conditions substantially similar to the surrendered Eligible Options and will be governed by the terms and conditions of the 2013 Plan and the stock option agreements entered into thereunder evidencing such Replacement Options.

Eligibility

If implemented, the Option Exchange will be open to all persons who are employed by us on the date of commencement of the Option Exchange. To be an Eligible Participant, such persons must remain employed by us through the Option Exchange Date. As of September 1, 2015, we estimate there were approximately 55 Eligible Participants. If an option holder is no longer an employee with us for any reason on the Option Exchange Date, even if such option holder had elected to participate and had tendered the Eligible Options for exchange, such holder's tender will automatically be deemed withdrawn and the holder will not participate in the Option Exchange. Such option holder will retain the outstanding options in accordance with their original terms and conditions, and the holder may exercise them during a limited period of time following termination of service in accordance with their terms and to the extent that they are vested.

None of the former executive officers and senior members of the Company who have departed in the recent months, including Jill Granoff, our former Chief Executive Officer, Lisa Klinger, our former Chief Financial Officer, Karin Gregersen, our former President and Chief Creative Officer, our former general counsel and our former senior vice president of retail operations, is eligible to participate in the Option Exchange. Our Interim Chief Executive Officer and Interim Chief Financial Officer are also not eligible to participate in the Option Exchange.

Election to Participate

Participation in the Option Exchange will be voluntary. Under the Option Exchange, Eligible Participants will not be permitted to elect which of their Eligible Options they wish to exchange for Replacement Options on a grant-by-grant basis. Instead, Eligible Participants will be required to surrender all of their Eligible Options if they elect to participate in the Option Exchange.

Return of Eligible Options Surrendered

The Eligible Options surrendered for exchange will be cancelled and all shares of common stock that were subject to such surrendered Eligible Options will again become available for future awards under the 2013 Plan pursuant to the

terms of the 2013 Plan.

Although the final terms of the Option Exchange are expected to be materially similar to the terms described in this item, our Board may, in its sole discretion, change the terms of the Option Exchange to take into account a change in circumstances and may determine not to implement the Option Exchange.

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U.S. Federal Income Tax Consequences

The following is a summary of the anticipated material U.S. federal income tax consequences of participating in the Option Exchange. A more detailed summary of the applicable tax considerations to participating holders are provided in the Tender Documents filed with the SEC. The Option Exchange should be treated as a non-taxable exchange for U.S. federal income tax purposes, and we and our participating optionees should recognize no income for U.S. federal income tax purposes upon the issuance of the Replacement Options.

Accounting Impact

If the Option Exchange is not consummated, we will continue to be obligated to recognize approximately \$3.32 million of additional stock-based compensation expense with respect to Eligible Options over the remaining estimated life of the original awards, even if the stock options are never exercised. As a result of the Option Exchange, we believe we will incur approximately \$0.94 million in additional compensation expense attributable to the incremental fair value of the Replacement Options granted to Eligible Participants in exchange for surrendered Eligible Options, measured as of the date such awards are granted. The incremental compensation expense associated with the Replacement Options under the Option Exchange will be recognized over the expected life of the new awards. As a result of the Option Exchange, we would expect to recognize a total non-cash accounting charge of approximately \$4.26 million over the expected life of the Replacement Options.

Potential Modification to Terms to Comply with Governmental Requirements

The terms of the Option Exchange will be described in the Tender Documents filed with the SEC. Although we do not anticipate that the SEC would require us to modify the terms materially, it is possible that we will need to alter the terms of the Option Exchange to comply with potential SEC comments.

Benefits of the Option Exchange to Eligible Participants

Because the decision whether to participate in the Option Exchange is completely voluntary, we are not able to predict which Eligible Participants will participate.

Effect on Stockholders

The Option Exchange was designed to provide renewed incentives and motivate the Eligible Participants to continue to create stockholder value. We are unable to predict the precise impact of the Option Exchange on our stockholders because we are not able to predict which Eligible Participants will participate.

Based on the assumptions described above, if all Eligible Options are exchanged, options to purchase 445,178 shares of common stock will be surrendered and cancelled and Replacement Options covering an equal number of shares will be granted. Following the Option Exchange, if all Eligible Options are exchanged, options to purchase 445,178 shares will be outstanding, with a weighted average remaining term of 2.8 years. As of September 1, 2015, the total number of shares of our common stock outstanding was 36,775,443.

Options granted under the 2010 Plan are not Eligible Options and cannot be exchanged in the Option Exchange.

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ITEM 2

APPROVAL OF AMENDMENT TO 2013 EMPLOYEE STOCK PURCHASE PLAN

On September 1, 2015, the Board approved, upon recommendation of the Compensation Committee, the ESPP Amendment to allow the issuance of shares of common stock under the ESPP at a discount of 10% to market price at the end of the offer period. The Majority Stockholders approved the ESPP Amendment by written consent on the same day.

The ESPP was originally adopted by the Board on November 21, 2013 and was approved by the stockholders on the same date. Set forth below are the summary of the ESPP Amendment and the summary of the material terms of the ESPP as currently in effect. The summary of the ESPP is not intended to be exhaustive and is qualified in its entirety by the terms of the ESPP, as amended, a copy of which is attached hereto as Appendix A. No offering period has been authorized to commence to date under the ESPP.

The ESPP Amendment

The ESPP Amendment will allow the issuance of shares of common stock under the ESPP at a discount of 10% to market price of such shares at the end of the offer period. The ESPP originally allowed issuance of shares of common stock at a discount of 5% to market price of such shares (i) at the end of the offer period or (ii) on the first day of the offer period, whichever was lower.

The ESPP Amendment also added that the ESPP Committee (as defined below) may limit the aggregate payroll deductions per option period as well as the maximum number of shares to be purchased by each participant per option period to the extent that such limitations are lower than the thresholds under the ESPP.

Summary of Material Terms of ESPP

General

Our ESPP is designed to encourage employees to become stockholders and to increase their ownership of our common stock to align their interests with stockholders. The ESPP is designed to qualify as an employee stock purchase plan under Section 423 of the Code.

Eligibility

Any full-time or part-time employee of the Company or its subsidiary who customarily works for the Company for a minimum of twenty hours a week (each an ESPP Eligible Employee) is eligible to participate in the ESPP. As of September 1, 2015, the Company had approximately 491 ESPP Eligible Employees.

Administration

Our Board or a subcommittee thereof (the ESPP Committee) has the authority to administer the ESPP and the ESPP Committee shall have the authority to administer the ESPP and to make and adopt rules and regulations not inconsistent with the provisions of the ESPP or the Code. The ESPP Committee may from time to time delegate some or all authority to an employee as a plan manager. The compensation committee of the Board (the Compensation Committee) acts as the ESPP Committee.

Common Stock Issuance Under the ESPP

The maximum number of shares of common stock of the Company available for sale under the ESPP is 1,000,000 shares, of which up to 500,000 shares may be purchased under the ESPP per offering period. These shares may be newly issued shares, existing treasury shares or new purchases in the open market, as determined by the ESPP Committee in its sole discretion.