

BIODELIVERY SCIENCES INTERNATIONAL INC
Form 8-K
April 11, 2019

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): April 11, 2019

BioDelivery Sciences International, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

4131 ParkLake Ave., Suite #225

001-31361
(Commission

File Number)

35-2089858
(IRS Employer

Identification No.)

27612

Raleigh, NC
(Address of principal executive offices) **(Zip Code)**
Registrant's telephone number, including area code: 919-582-9050

Not Applicable

(Former name or former address, if changed since last report)

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:

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))
Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

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 pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On April 11, 2019, BioDelivery Sciences International, Inc., a Delaware corporation (the Company), entered into an underwriting agreement (the Underwriting Agreement) with Broadfin Healthcare Master Fund, Ltd. (the Selling Stockholder) and Cantor Fitzgerald & Co. and SunTrust Robinson Humphrey, Inc., as representatives of the underwriters named therein (collectively, the Underwriters), related to a public offering (the Offering) by the Company and the Selling Stockholder of 12,000,000 shares of the Company's common stock, \$0.001 par value per share (the Common Stock), at a public offering price of \$5.00 per share (the Offering Price) of which 10,000,000 are being offered and sold by the Company. The net proceeds to the Company, after deducting the underwriting discount and estimated expenses associated with the Offering, are expected to be approximately \$47.5 million. The Selling Stockholder has granted the Underwriters an option for a period of 30 days to purchase up to an additional 1,800,000 shares of common stock at the public offering price, less the underwriting discount and commissions. The Company will not receive any proceeds from a sale of the shares by the Selling Stockholder. The closing of the Offering is expected to occur on or about April 15, 2019, subject to the satisfaction of customary closing conditions.

The Common Stock is being offered and sold pursuant to a prospectus dated January 18, 2019 and a prospectus supplement dated April 11, 2019, in connection with a takedown from the Company's shelf registration statement on Form S-3 (Registration No. 333-228292) (as amended, the Registration Statement), which became effective on February 7, 2019.

The Underwriting Agreement contains customary representations, warranties, covenants, conditions to closing, indemnification and other obligations of the parties and termination provisions. The foregoing description of the Underwriting Agreement does not purport to be complete and is qualified in its entirety by reference to the text of the Underwriting Agreement, which is included as Exhibit 1.1 to this Current Report on Form 8-K and incorporated by reference herein.

The Underwriting Agreement has been filed with this Current Report on Form 8-K to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties.

A copy of the legal opinion of Goodwin Procter LLP, relating to the validity of the shares issued in the Offering, is filed as Exhibit 5.1 to this Current Report on Form 8-K and is filed with reference to, and is hereby incorporated by reference into, the Registration Statement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

| Exhibit No. | Description |
|-------------|--|
| 1.1 | <u>Underwriting Agreement, dated April 11, 2019, between the Company, Broadfin Healthcare Master Fund, Ltd., and Cantor Fitzgerald & Co. and SunTrust Robinson Humphrey, Inc., as representatives of the underwriters party thereto.</u> |
| 5.1 | <u>Opinion of Goodwin Procter LLP.</u> |

23.1

Consent of Goodwin Procter LLP (included in its opinion filed as Exhibit 5.1).

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

Date: April 11, 2019

**BIODELIVERY SCIENCES INTERNATIONAL,
INC.**

By: /s/ Mary Theresa Coelho
Mary Theresa Coelho
Chief Financial Officer and Treasurer