

TESARO, Inc.
Form 8-K
January 22, 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): **January 22, 2019**

TESARO, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(state or other jurisdiction of
incorporation)

001-35587
(Commission
File Number)

27-2249687
(I.R.S. Employer
Identification No.)

1000 Winter Street
Waltham, Massachusetts
(Address of principal executive offices)

02451
(Zip Code)

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Registrant's telephone number, including area code: (339) 970-0900

(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 (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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Introductory Note.

As previously disclosed in the Current Report on Form 8-K filed with the Securities and Exchange Commission (the "SEC") by TESARO, Inc., a Delaware corporation (the "Company"), on December 3, 2018, the Company entered into an Agreement and Plan of Merger, dated December 3, 2018 (the "Merger Agreement"), with GlaxoSmithKline plc, a public limited company organized under the laws of England and Wales ("Parent"), and Parent's indirect wholly-owned subsidiary, Adriatic Acquisition Corporation, a Delaware corporation ("Purchaser"). Pursuant to the Merger Agreement, on December 14, 2018, Purchaser commenced a tender offer (the "Offer") to acquire all of the issued and outstanding shares of common stock, par value \$0.0001 per share, of the Company ("Shares"), for \$75.00 per Share (the "Offer Price"), net to the holder in cash, without interest, subject to any withholding taxes required by applicable law, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 14, 2018 (as amended or supplemented), and the related Letter of Transmittal.

The Offer, as extended, expired at 6:00 P.M., Eastern Time, on January 18, 2019 (the "Expiration Time"). The Computershare Trust Company, N.A., the depository for the Offer, advised Parent and Purchaser that, as of the Expiration Time, 50,118,797 Shares were tendered pursuant to the Offer, which represented approximately 82.8% of the issued and outstanding Shares as calculated in accordance with the Merger Agreement. The number of Shares tendered satisfied the Minimum Tender Condition (as defined in the Merger Agreement). All conditions to the Offer having been satisfied or waived, Purchaser, on January 22, 2019, accepted for payment all such Shares validly tendered and not properly withdrawn pursuant to the Offer on or prior to the Expiration Time and made payment for such Shares.

On January 22, 2019, as a result of its acceptance of, and payment for, the Shares tendered in the Offer, Purchaser acquired a sufficient number of Shares to complete the merger of Purchaser with and into the Company (the "Merger") without a vote of the stockholders of the Company pursuant to Section 251(h) of the General Corporation Law of the State of Delaware (the "DGCL"). Accordingly, following consummation of the Offer, Parent and Purchaser effected the Merger pursuant to Section 251(h) of the DGCL. In the Merger, each Share that was issued and outstanding immediately prior to the effective time of the Merger (the "Effective Time") (other than (1) Shares owned by Parent, Purchaser or the Company or any direct or indirect wholly-owned subsidiary of Parent, Purchaser or the Company, including all Shares held by the Company as treasury stock, or (2) Shares that are held by any stockholder who is entitled to demand and properly demands appraisal pursuant to, and who complies in all respects with the provisions of, Section 262 of the DGCL with respect to such Shares) was converted into the right to receive an amount in cash equal to the Offer Price, payable net to the holder in cash, without interest, subject to any withholding taxes required by applicable law, at the Effective Time.

Pursuant to the Merger Agreement, each option to acquire Shares, other than awards under the Company's 2012 Employee Stock Purchase Plan (the "ESPP") (each such option, a "Company Stock Option"), that was outstanding and unvested immediately prior to the Effective Time vested in full at the Effective Time. Each Company Stock Option that was outstanding immediately prior to the Effective Time that had an exercise price per Share that was less than the \$75.00 per Share (the "Merger Consideration"), payable net to the holder in cash, without interest, subject to any withholding taxes required by applicable law, was cancelled, and, in exchange therefor, the former holder of such cancelled Company Stock Option is entitled to receive (without interest) an amount in cash (less applicable withholding of taxes required by applicable law) equal to the product of (i) the total number of Shares subject to the unexercised portion of such Company Stock Option immediately prior to the Effective Time multiplied by (ii) the excess of the Merger Consideration over the applicable exercise price per Share under such Company Stock Option. Each Company Stock Option that was outstanding immediately prior to the Effective Time that had an exercise price per Share that was greater than or equal to the Merger Consideration was cancelled at the Effective Time, and the holder of such Company Stock Option is not entitled to receive any payment in exchange for the cancellation of the Company Stock Option.

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Pursuant to the Merger Agreement, each equity award or right measured by the value of Shares (or pursuant to which Shares may be delivered) (including deferred units or similar rights or awards of non-employee directors), other than an award under the ESPP and a Company Stock Option (collectively, Company Equity Awards) that was outstanding and unvested immediately prior to the Effective Time vested in full at the Effective Time. Each Company Equity Award that was outstanding immediately prior to the Effective Time was cancelled, and the former holder of such cancelled Company Equity Award is entitled, in exchange therefor, to receive (without interest) an amount in cash (less applicable withholding of taxes required by applicable law) equal to the

SIGNATURES

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.

TESARO, Inc.

By:

/s/ William J. Mosher
William J. Mosher
Vice President and Secretary

Dated: January 22, 2019