

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Nuo Therapeutics, Inc.

Form: 8-K

Date Filed: 2018-09-05

Corporate Issuer CIK: 1091596

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): September 4, 2018

Nuo Therapeutics, Inc.

(Exact name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-32518
(Commission
File Number)

23-3011702
(IRS Employer
Identification No.)

207A Perry Parkway, Suite 1, Gaithersburg, MD 20877

(Address of Principal Executive Offices) (Zip Code)

(240) 499-2680

(Registrant's telephone number, including area code)

N/A

(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 5.03. Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year.

On September 5, 2018, Nuo Therapeutics, Inc. (the “Company”) filed with the Secretary of State of the State of Delaware a Certificate of Amendment (the “Amendment”) to its Second Amended and Restated Certificate of Incorporation for purposes of increasing the number of authorized shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”), from 31,500,000 shares to 100,000,000 shares. The amendment became effective on September 5, 2018 at 4 p.m. Eastern Time. A copy of the Certificate of Amendment is attached to this Current Report on Form 8-K as Exhibit 3.1, and is incorporated herein by reference.

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

On August 28, 2018, the Company filed with the Securities and Exchange Commission a Definitive Schedule 14A Consent Solicitation Statement (the “Consent Solicitation”) and thereafter mailed the Consent Solicitation to the Company’s stockholders of record as of August 10, 2018 (the “Record Date”).

The Consent Solicitation solicited written consents of the Company’s stockholders approving and authorizing the Amendment.

As of the Record Date, the Company had 23,722,400 shares of Common Stock and 29,038 shares of its Series A preferred stock, par value \$0.0001 per share (the “Series A Preferred Stock”), issued and outstanding. Accordingly, the votes or written consents of stockholders holding at least 11,933,796 shares of the issued and outstanding Common Stock or at least 11,788,606 shares of the issued and outstanding Common Stock and all 29,038 shares of the issued and outstanding Series A Preferred Stock (the latter representing 145,190 votes), were necessary to approve the Amendment.

As of September 4, 2018, the Company had received the written consent of more than a majority of the voting power of its capital stock outstanding as of the Record Date in favor of the Amendment and, accordingly, terminated the Consent Solicitation period.

The final vote tabulation on the Amendment prior to termination of the Consent Solicitation period was as follows:

<u>Consent (For)</u>	<u>Consent Withheld (Against)</u>	<u>Abstain</u>
17,707,813	0	0

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No. Exhibit Description

3.1 [Certificate of Amendment to Second Amended and Restated Certificate of Incorporation](#)

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.

Nuo Therapeutics, Inc.

By: /s/ David E. Jordan
David E. Jordan
Chief Executive Officer and
Chief Financial Officer

Date: September 5, 2018

**CERTIFICATE OF AMENDMENT
TO THE
SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
NUO THERAPEUTICS, INC.**

Nuo Therapeutics, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), DOES HEREBY CERTIFY AS FOLLOWS:

FIRST: The Second Amended and Restated Certificate of Incorporation of the Corporation (the "**Certificate of Incorporation**") was filed with the Secretary of State of the State of Delaware on May 5, 2016.

SECOND: That the Board of Directors of the Corporation, by unanimous resolution adopted at a meeting, adopted the following amendment to the Certificate of Incorporation:

Section 4.1 of the Certificate of Incorporation is hereby amended and restated in its entirety as follows:

Section 4.1 Authorized Capital Stock.

The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 101,000,000 shares, consisting of 100,000,000 shares of common stock, par value \$0.0001 per share (the "**Common Stock**"), and 1,000,000 shares of preferred stock, par value \$0.0001 per share (the "**Preferred Stock**").

THIRD: That said amendment has been consented to and authorized by the Board of Directors of the Corporation and the holders of the necessary number of shares of the issued and outstanding stock of the corporation entitled to vote by written consent given in accordance with the provisions of Section 228 and 242 of the General Corporation Law of the State of Delaware.

FOURTH: This Certificate of Amendment shall become effective as of September 5, 2018 at 4:00 p.m. Eastern Time.

IN WITNESS WHEREOF, Nuo Therapeutics, Inc. has caused this Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation to be duly executed in its name and on its behalf by its Chief Executive Officer this 5th day of September, 2018.

Nuo Therapeutics, Inc.

By: /s/ David Jorden

Name: David Jorden

Title: Chief Executive Officer