

FEMALE HEALTH CO
Form 8-K
May 20, 2016

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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): May 18, 2016

THE FEMALE HEALTH COMPANY

(Exact name of registrant as specified in its charter)

Wisconsin

(State or other jurisdiction of incorporation)

1-13602
(Commission File Number)

515 North State Street

39-1144397
(I.R.S. Employer I.D. Number)

60654

Edgar Filing: FEMALE HEALTH CO - Form 8-K

Suite 2225

Chicago, Illinois

(Address of Principal Executive Offices)

(Zip Code)

312-595-9123

(Registrant's telephone number, including area code)

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 1.01 Entry into a Material Definitive Agreement.

On May 18, 2016, The Female Health Company (FHC) entered into a First Amendment to Lock-Up Agreement (the Amendments) with each of Harry Fisch, M.D., Mitchell Steiner, M.D. and the K&H Fisch Family Partners LLC (collectively, the Lock-Up Parties). FHC had previously entered into a Lock-Up Agreement each of the Lock-Up Parties on April 5, 2016, concurrent with the execution of an Agreement and Plan of Merger (the Merger Agreement) among FHC, Badger Acquisition Sub, Inc., a Delaware corporation and wholly-owned subsidiary of FHC (FHC Delaware Sub), Blue Hen Acquisition, Inc., a Delaware corporation and wholly-owned subsidiary of FHC (APP Merger Sub), and Aspen Park Pharmaceuticals, Inc., a Delaware corporation (APP), as described in the Current Report on Form 8-K filed by FHC on April 6, 2016. Pursuant to the Merger Agreement, upon the terms and subject to the satisfaction or waiver of the conditions therein, FHC will be reincorporated in Delaware through the merger of FHC with and into FHC Delaware Sub (the Reincorporation Merger) with FHC Delaware Sub continuing as the surviving corporation (FHC Delaware) and immediately after the Reincorporation Merger APP will become a wholly-owned subsidiary of FHC Delaware through the merger of APP Merger Sub with and into APP (the APP Merger) and together with the Reincorporation Merger, the Mergers) with APP continuing as the surviving corporation.

The Amendments expand the voting agreement provisions of the Lock-Up Agreements by requiring each Lock-Up Party to vote all shares of the combined company following the Mergers owned by such stockholder or over which such stockholder has voting control in favor of all persons nominated by the combined company s nominating and corporate governance committee for election as directors at the 2017 annual meeting of stockholders of the combined company and the 2018 annual meeting of stockholders of combined company. A form of the Amendments is attached as Exhibit 99.1 to this report.

Forward-Looking Statements

This report and the attached Exhibit contain forward-looking statements, including those regarding the proposed merger transaction between FHC and APP and the integration of our two businesses. These statements are subject to known and unknown risks, uncertainties and assumptions, and if any such risks or uncertainties materialize or if any of the assumptions prove incorrect, our actual results could differ materially from those expressed or implied by such statements. These risks and uncertainties include but are not limited to: the risk that the proposed transaction may not be completed in a timely manner or at all; the satisfaction of conditions to completing the transaction, including the ability to secure approval by a two-thirds vote of FHC s shareholders; risks that the proposed transaction could disrupt current plans and operations; costs, fees and expenses related to the proposed transaction; risks related to the development of APP s product portfolio, including regulatory approvals and time and cost to bring to market; risks relating to the ability of the combined company to obtain sufficient financing on acceptable terms when needed to fund development and company operations; the risk that, even if it is completed, we may not realize the expected benefits from the transaction; and other risks described in FHC s filings with the Securities and Exchange Commission (SEC), including our Annual Report on Form 10-K for the year ended September 30, 2015 and our Quarterly Reports on Form 10-Q for the quarters ended December 31, 2015 and March 31,

2016. These documents are available on the SEC Filings section of our website at <http://fhcinvestor.com>. All forward-looking statements are based on information available to us as of the date hereof, and FHC does not assume any obligation and does not intend to update any forward-looking statements, except as required by law.

Additional Information about the Proposed Transaction and Where You Can Find It

FHC plans to file a proxy statement with the SEC relating to a solicitation of proxies from its shareholders in connection with a special meeting of shareholders of FHC to be held for the purpose of voting on matters relating to the proposed transaction. BEFORE MAKING ANY VOTING DECISION WITH RESPECT TO THE PROPOSED TRANSACTION, FHC SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT AND OTHER RELEVANT MATERIALS WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.

The proxy statement and other relevant materials, and any other documents filed by FHC with the SEC, may be obtained free of charge at the SEC's website at www.sec.gov. In addition, shareholders of FHC may obtain free copies of the documents filed with the SEC by contacting FHC's Chief Financial Officer at (312) 595-9123, or by writing to Chief Financial Officer, The Female Health Company, 515 North State Street, Suite 2225, Chicago, Illinois 60654.

Interests of Certain Participants in the Solicitation

FHC and its executive officers and directors may be deemed to be participants in the solicitation of proxies from the shareholders of FHC in favor of the proposed transaction. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement and other relevant materials to be filed with the SEC when they become available.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibit is filed herewith:

Exhibit 99.1 Form of First Amendment to Lock-Agreement.

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.

THE FEMALE HEALTH COMPANY

Date: May 20, 2016

BY /s/ Michele Greco
Michele Greco, Executive Vice President and
Chief Financial Officer