

CANCERVAX CORP
Form 8-K
November 08, 2004

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**UNITED STATES
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): **November 3, 2004**

CANCERVAX CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

0-50440
(Commission
File Number)

52-2243564
(IRS Employer
Identification No.)

**2110 Rutherford Road,
Carlsbad, CA**
(Address of Principal Executive
Offices)

92008
(Zip Code)

Registrant's telephone number, including area code: **(760) 494-4200**

(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))

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Item 3.03. Modifications to Rights of Security Holders and Item 5.03 Amendments to Articles of Incorporation or Bylaws.

On November 3, 2004 the Board of Directors of CancerVax Corporation adopted a Stockholder Rights Plan (the Rights Plan).

In connection with the Rights Plan, the Board of Directors of CancerVax declared a dividend of one preferred share purchase right (the Rights) for each outstanding share of common stock, par value \$0.00004 per share (the Common Shares), of CancerVax outstanding at the close of business on November 15, 2004 (the Record Date). Each Right will entitle the registered holder thereof, after the Rights become exercisable and until November 15, 2014 (or the earlier redemption, exchange or termination of the Rights), to purchase from CancerVax one one-thousandth (1/1000th) of a share of Series A Junior Participating Preferred Stock, par value \$0.00004 per share (the Preferred Shares), at a price of \$95.00 per one one-thousandth (1/1000th) of a Preferred Share, subject to certain anti-dilution adjustments (the Purchase Price). Until the earlier to occur of (i) ten (10) days following a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the Common Shares (an Acquiring Person) or (ii) ten (10) business days (or such later date as may be determined by action of the Board of Directors prior to such time as any person or group of affiliated persons becomes an Acquiring Person) following the commencement or announcement of an intention to make a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 15% or more of the Common Shares (the earlier of (i) and (ii) being called the Distribution Date), the Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the Record Date, by such Common Share certificate. The Rights will be transferred with and only with the Common Shares until the Distribution Date or earlier redemption or expiration of the Rights. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights (Right Certificates) will be mailed to holders of record of the Common Shares as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights. The Rights will at no time have any voting rights.

Each Preferred Share purchasable upon exercise of the Rights will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment of \$1.00 per share but will be entitled to an aggregate dividend of 1,000 times the dividend, if any, declared per Common Share. In the event of liquidation, dissolution or winding up of CancerVax, the holders of the Preferred Shares will be entitled to a preferential liquidation payment of \$1,000 per share plus any accrued but unpaid dividends but will be entitled to an aggregate payment of 1,000 times the payment made per Common Share. Each Preferred Share will have 1,000 votes and will vote together with the Common Shares. Finally, in the event of any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 1,000 times the amount received per Common Share. Preferred Shares will not be redeemable. These rights are protected by customary anti-dilution provisions. Because of the nature of the Preferred Share s dividend, liquidation and voting rights, the value of one one-thousandth of a Preferred Share purchasable upon exercise of each Right should approximate the value of one Common Share.

In the event that a Person becomes an Acquiring Person or if CancerVax were the surviving corporation in a merger with an Acquiring Person or any affiliate or associate of an Acquiring Person and the Common Shares were not changed or exchanged, each holder of a Right, other than Rights that are or were acquired or beneficially owned by the Acquiring Person (which Rights will thereafter be void), will thereafter have the right to receive upon exercise that number of Common Shares having a market value of two times the then current Purchase Price of one Right. In the event that, after a person has become an Acquiring Person, CancerVax were acquired in a merger or other business combination transaction or more than 50% of its assets or earning power were sold, proper provision shall be made so that each holder of a Right shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price of the Right, that number of shares of common stock of the acquiring company which at the time of

such transaction would have a market value of two times the then current Purchase Price of one Right.

At any time after a Person becomes an Acquiring Person and prior to the earlier of one of the events described in the last sentence in the previous paragraph or the acquisition by such Acquiring Person of 50% or more of the then

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outstanding Common Shares, the Board of Directors may cause CancerVax to exchange the Rights (other than Rights owned by an Acquiring Person which have become void), in whole or in part, for Common Shares at an exchange rate of one Common Share per Right (subject to adjustment).

The Rights may be redeemed in whole, but not in part, at a price of \$0.01 per Right (the Redemption Price) by the Board of Directors at any time prior to the time that an Acquiring Person has become such. The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

The Rights will expire on November 15, 2014 (unless earlier redeemed, exchanged or terminated). Mellon Investor Services LLC is the Rights Agent.

The Purchase Price payable, and the number of one one-thousandths of a Preferred Share or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Shares, (ii) upon the grant to holders of the Preferred Shares of certain rights or warrants to subscribe for or purchase Preferred Shares or convertible securities at less than the current market price of the Preferred Shares or (iii) upon the distribution to holders of the Preferred Shares of evidences of indebtedness, cash, securities or assets (excluding regular periodic cash dividends at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of CancerVax for the four quarters ended immediately prior to the payment of such dividend, or dividends payable in Preferred Shares (which dividends will be subject to the adjustment described in clause (i) above)) or of subscription rights or warrants (other than those referred to above).

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of CancerVax beyond those as an existing stockholder, including, without limitation, the right to vote or to receive dividends.

Any of the provisions of the Rights Agreement dated as of November 3, 2004 between CancerVax and the Rights Agent (the Rights Agreement) may be amended by the Board of Directors of CancerVax for so long as the Rights are then redeemable, and after the Rights are no longer redeemable, CancerVax may amend or supplement the Rights Agreement in any manner that does not adversely affect the interests of the holder of the Rights.

One Right will be distributed to stockholders of CancerVax for each Common Share owned of record by them on November 15, 2004. As long as the Rights are attached to the Common Shares, CancerVax will issue one Right with each new Common Share so that all such shares will have attached Rights. The Company has agreed that, from and after the Distribution Date, CancerVax will initially reserve 75,000 Preferred Shares for issuance upon exercise of the Rights.

The Rights are not being distributed in response to any specific effort to acquire control of CancerVax. The Rights are designed to assure that all CancerVax stockholders receive fair and equal treatment in the event of any proposed takeover of CancerVax and to guard against partial tender offers, open market accumulations and other potentially abusive tactics to gain control of CancerVax, while not foreclosing a fair acquisition bid for CancerVax.

On November 8, 2004, a Certificate of Designations (the Certificate of Designations) setting forth the terms of the Preferred Shares was filed with the Delaware Secretary of State.

The Certificate of Designations setting forth the terms of the Preferred Shares and the Rights Agreement specifying the terms of the Rights are attached hereto as Exhibits 3.3 and 4.1, respectively, and the text of the press release

announcing the declaration of the Rights is attached hereto as Exhibit 99.1. The foregoing summary is qualified by reference to the Certificate of Designations and the Rights Agreement, which are incorporated herein by reference.

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Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

Exhibit No.	Description
3.3	Certificate of Designations for Series A Junior Participating Preferred Stock of CancerVax Corporation.
4.1	Rights Agreement, dated as of November 3, 2004, between CancerVax Corporation and Mellon Investor Services LLC, which includes the form of Certificate of Designations of the Series A Junior Participating Preferred Stock of CancerVax Corporation as Exhibit A, the form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C.
99.1	Press release dated November 4, 2004.

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