

RIO TINTO PLC
Form SC 13G/A
February 06, 2019

gb0007188757_020619.txt

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13G

Under the Securities Exchange Act of 1934

(Amendment No: 9)

RIO TINTO PLC

(Name of Issuer)

Common Stock

(Title of Class of Securities)

B02T7C5

(SEDOL Number)

December 31, 2018

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

- Rule 13d-1(b)
- Rule 13d-1(c)
- Rule 13d-1(d)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SEDOL No. B02T7C5

(1) Names of reporting persons. BlackRock, Inc.

(2) Check the appropriate box if a member of a group

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

- (a) []
- (b) [X]

(3) SEC use only

(4) Citizenship or place of organization

Delaware

Number of shares beneficially owned by each reporting person with:

(5) Sole voting power

91095442

(6) Shared voting power

0

(7) Sole dispositive power

100165055

(8) Shared dispositive power

0

(9) Aggregate amount beneficially owned by each reporting person

100165055

(10) Check if the aggregate amount in Row (9) excludes certain shares

(11) Percent of class represented by amount in Row 9

7.8%

(12) Type of reporting person

HC

Item 1.

Item 1(a) Name of issuer:

RIO TINTO PLC

Item 1(b) Address of issuer's principal executive offices:

6 Street Jamess Square.
London United Kingdom SW1Y 4AD

Item 2.

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

2(a) Name of person filing:

BlackRock, Inc.

2(b) Address or principal business office or, if none, residence:

BlackRock, Inc.
55 East 52nd Street
New York, NY 10055

2(c) Citizenship:

See Item 4 of Cover Page

2(d) Title of class of securities:

Common Stock

2(e) SEDOL No.:

See Cover Page

Item 3.

If this statement is filed pursuant to Rules 13d-1(b), or 13d-2(b) or (c), check whether the person filing is a:

- Broker or dealer registered under Section 15 of the Act;
- Bank as defined in Section 3(a)(6) of the Act;
- Insurance company as defined in Section 3(a)(19) of the Act;
- Investment company registered under Section 8 of the Investment Company Act of 1940;
- An investment adviser in accordance with Rule 13d-1(b)(1)(ii)(E);
- An employee benefit plan or endowment fund in accordance with Rule 13d-1(b)(1)(ii)(F);
- A parent holding company or control person in accordance with Rule 13d-1(b)(1)(ii)(G);
- A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);
- A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940;
- A non-U.S. institution in accordance with Rule 240.13d-1(b)(1)(ii)(J);
- Group, in accordance with Rule 240.13d-1(b)(1)(ii)(K). If filing as a non-U.S. institution in accordance with Rule 240.13d-1(b)(1)(ii)(J), please specify the type of institution:

Item 4. Ownership

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

Amount beneficially owned:

100165055

Percent of class

7.8%

Number of shares as to which such person has:

Sole power to vote or to direct the vote

91095442

Shared power to vote or to direct the vote

0

Sole power to dispose or to direct the disposition of

100165055

Shared power to dispose or to direct the disposition of

0

Item 5.

Ownership of 5 Percent or Less of a Class. If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than 5 percent of the class of securities, check the following [].

Item 6. Ownership of More than 5 Percent on Behalf of Another Person

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than 5 percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Various persons have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of the common stock of
RIO TINTO PLC.

No one person's interest in the common stock of
RIO TINTO PLC

is more than five percent of the total outstanding common shares.

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company or Control Person.

See Exhibit A

Item 8. Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to Rule 13d-1(b) (ii) (J), so indicate under Item 3(j) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to Rule 13d-1(c) or Rule 13d-1(d), attach an exhibit stating the identity of each member of the group.

Item 9. Notice of Dissolution of Group

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity.

See Item 5.

Item 10. Certifications

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

Signature.

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: February 6, 2019
BlackRock, Inc.

Signature: Spencer Fleming

Name/Title Attorney-In-Fact

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

Exhibit A

Subsidiary

BlackRock Life Limited
BlackRock International Limited
BlackRock Advisors, LLC
BlackRock (Netherlands) B.V.
BlackRock Institutional Trust Company, National Association
BlackRock Asset Management Ireland Limited
BlackRock Financial Management, Inc.
iShares (DE) I Investmentaktiengesellschaft mit Teilgesellsc
BlackRock Japan Co., Ltd.
BlackRock Asset Management Schweiz AG
BlackRock Investment Management, LLC
BlackRock Investment Management (UK) Limited
BlackRock Mexico Operadora
BlackRock Asset Management Canada Limited
BlackRock Asset Management Deutschland AG
BlackRock (Luxembourg) S.A.
BlackRock Investment Management (Australia) Limited
BlackRock Advisors (UK) Limited
BlackRock Fund Advisors
BlackRock Asset Management North Asia Limited
BlackRock (Singapore) Limited
BlackRock Fund Managers Ltd

*Entity beneficially owns 5% or greater of the outstanding shares of the security class being reported on this Schedule 13G.

Exhibit B

POWER OF ATTORNEY

The undersigned, BLACKROCK, INC., a corporation duly organized under the laws of the State of Delaware, United States (the "Company"), does hereby make, constitute and appoint each of Christopher Meade, Daniel Waltcher, Una Neary, Richard Cundiff, Charles Park, Enda McMahon, Arlene Klein, Con Tzatzakis, Karen Clark, David Maryles, Daniel Ronnen, John Stelley, Daniel Riemer, Elizabeth Kogut, Maureen Gleeson, Daniel Kalish and Spencer Fleming acting severally, as its true and lawful attorneys-in-fact, for the purpose of, from time to time, executing in its name and on its behalf, whether the Company individually or as representative of others, any and all documents, is acting

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

certificates, instruments, statements, other filings and amendments to the foregoing (collectively, "documents") determined by such person to be necessary or appropriate to comply with ownership or control-person reporting requirements imposed by any United States or non-United States governmental or regulatory authority, including without limitation Forms 3, 4, 5, 13D, 13F, 13G and 13H and any amendments to any of the foregoing as may be required to be filed with the Securities and Exchange Commission, and delivering, furnishing or filing any such documents with the appropriate governmental, regulatory authority or other person, and giving and granting to each such attorney-in-fact power and authority to act in the premises as fully and to all intents and purposes as the Company might or could do if personally present by one of its authorized signatories, hereby ratifying and confirming all that said attorney-in-fact shall lawfully do or cause to be done by virtue hereof. Any such determination by an attorney-in-fact named herein shall be conclusively evidenced by such person's execution, delivery, furnishing or filing of the applicable document.

This power of attorney shall expressly revoke the power of attorney dated 8th day of December, 2015 in respect of the subject matter hereof, shall be valid from the date hereof and shall remain in full force and effect until either revoked in writing by the Company, or, in respect of any attorney-in-fact named herein, until such person ceases to be an employee of the Company or one of its affiliates.

IN WITNESS WHEREOF, the undersigned has caused this power of attorney to be executed as of this 2nd day of January, 2019.

BLACKROCK, INC.

By: /s/ Daniel Waltcher
Name: Daniel Waltcher
Title: Deputy General Counsel

s of shares of Preferred Stock have the right to vote with holders of shares of the Common Stock, voting together as one class on all other matters, with each share of Preferred Stock entitling the holder thereof to cast that number of votes per share as is equal to the aggregate number of shares of Common Stock into which it is then convertible, using the market value of the Common Stock on the date of the Preferred Stock Agreement as the conversion price; provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b), no holder (together with such holder's attribution parties) is permitted to have a number of votes in excess of such aggregate number of votes granted to the holders of 19.99% of the shares of Common Stock then outstanding (including any votes with respect to any shares of Common Stock and Preferred Stock beneficially owned by the holder or such holder's attribution parties).

Voluntary Conversion

Each share of Preferred Stock is initially convertible into nine shares of Common Stock at an effective conversion price of \$0.185 per share (based on an original price per Preferred Share of \$1.665), provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b) any conversion of Preferred Stock by a holder into shares of the Common Stock would be prohibited if, as a result of such conversion, the holder, together with such holder's attribution parties, would beneficially own more than 19.99% of the total number of shares of the Common Stock issued and outstanding after giving effect to such conversion. Subject to certain limited exceptions, the shares of Preferred Stock cannot be offered, pledged or sold by Sagard for one year from the date of issuance. The conversion price is subject to certain adjustments in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization.

Mandatory Conversion

The shares of Preferred Stock will be mandatorily converted upon the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Preferred Stock at a conversion price of \$0.185 per share. In each case, shares of Common Stock will be held in abeyance to the extent necessary to satisfy limitations on beneficial ownership as described under *Voluntary Conversion* above.

Optional Redemption

At any time after the first anniversary of the issuance of the Preferred Shares, so long as certain call conditions specified in the Certificate of Designation have been satisfied, the Company shall have the right to offer to redeem shares of Preferred Stock at a share price equal to two times the original share issue price of the Preferred Shares. The Company is only permitted to exercise this right to redeem two times, the first of which must be for an aggregate redemption price of \$9,199,001 and the second of which must be for all remaining shares of Preferred Stock remaining. If a holder of Preferred Shares fails to accept the Company's redemption offer, such holder's shares of Preferred Stock shall be automatically converted into shares of Common Stock pursuant to the terms of *Mandatory Conversion* as described above.

Mandatory Redemption

If (i) the Company's consolidated net revenues attributable to the Mytesi products (*Mytesi Revenues*) for the six-month period ended March 31, 2021 are less than \$22 million, (ii) the average volume-weighted average price of the Common Stock for the thirty days immediately prior to the Measurement Date (as defined below) is less than \$1.00 or (iii) the Company fails to file with the U.S. Securities and Exchange Commission (the *SEC*) on or before June 30, 2021 its quarterly report on Form 10-Q for the three months ended March 31, 2021, then the holders of at least a majority of shares of Preferred Stock then outstanding may require the Company to redeem all shares of Preferred Stock then outstanding at a per share purchase price equal to \$2.3057. For purposes of the foregoing sentence, *Measurement Date* means the later of (x) April 30, 2021 and (y) the date on which the Company files its quarterly report on Form 10-Q for the three months ended March 31, 2021 (but in no event later than June 30, 2021).

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

The mandatory redemption right described above shall terminate if, prior to the Measurement Date, both (i) the Mytesi Revenues for any six-month period ending at the end of a calendar quarter are equal to or exceed \$22 million and (ii) the average volume-weighted average price of the Common Stock for the thirty days immediately preceding the end of such calendar quarter is equal to or greater than \$1.00.

Fundamental Change

The Certificate of Designation provides the holders of Preferred Stock with a right to require the Company to repurchase shares of Preferred Stock at a price to be calculated pursuant to the terms of the Certificate of Designation upon the occurrence of any of the following events (each a Fundamental Change):

(X) (a) any person or group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), other than certain Permitted Holders (and/or any direct transferee of shares of Preferred Stock from any Permitted Holder) (as defined in the Certificate of Designation), (i) shall have acquired beneficial ownership of more than fifty percent (50%) or more on a fully diluted basis of the voting and/or economic interest in the capital stock of the Company (or surviving entity in a merger or consolidation, if applicable) or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Company's Board of Directors (or similar governing body); or (b) the occurrence of any change of control or similar event under any agreements relating to any indebtedness of the Company or its subsidiaries; or

(Y) except in the case of a Deemed Liquidation Event (as defined in the Certificate of Designation and described below) in which holders of Preferred Stock receive, concurrently with the consummation of such Deemed Liquidation Event, a cash payment pursuant to Sections 2.1 and 2.4 of the Certificate of Designation in full, in an amount equal to the Fundamental Change Price as defined in the Certificate of Designation that would otherwise be payable, the Company or any of its subsidiaries enters into any transaction of merger or consolidation (except that a person may be merged with or into the Company or another wholly-owned subsidiary thereof so long as the Company or another wholly-owned subsidiary is the continuing or surviving person), or conveys, sells, leases, subleases (as lessor or sublessor), exchanges, transfers or otherwise disposes of, in one transaction or a series of transactions, all or substantially all of the consolidated business, assets or property of the Company and its subsidiaries.

The Fundamental Change Price for each share of Preferred Stock, as of any date, shall be calculated as the sum of (i) the amount payable in respect of such share under Section 2.1 of the Certificate of Designation in the event of a Liquidation Event as of such date, plus (ii) any and all accrued and unpaid dividends upon the Preferred Stock, whether or not declared, as of the date of the Fundamental Change, plus (iii) the Participation Amount as defined in the Certificate of Designation.

Merger or Liquidation

Subject to the Fundamental Change provision described above, under the terms of the Certificate of Designation, upon merger or consolidation resulting in a change of control, sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company, of substantially all of the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of Napo (as defined below) (or any successor in interest) or one or more other subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries (collectively, a Deemed Liquidation), liquidation, dissolution or winding up of the Company as determined under the Certificate (collectively, a Liquidation Event), each share of Preferred Stock will be entitled to a preference of \$1.665 per share (or the equivalent of \$0.185 per share on an as-converted to Common Stock basis) plus a participation right described below. Thereafter, the holders of Common Stock then outstanding shall be entitled to receive an amount per share of Common Stock (in stock or cash as determined under the Certificate of Designation) equal to \$0.185 (as adjusted for stock splits, reverse splits, stock dividends, reclassifications, recapitalizations and/or other similar events). Thereafter, all of the remaining assets of the Company and/or proceeds from a Deemed Liquidation or Liquidation Event, as applicable, will in general be divided pro rata among the holders of the shares of Preferred Stock and the shares of Common Stock, on an as

converted basis (all as more fully specified and calculated under the Certificate of Designation).

Covenants

Pursuant to the terms of the Preferred Stock as provided in the Certificate of Designation, so long as any shares of Preferred Stock are outstanding, the Company may not agree, among other things, without the prior written consent or vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, to: (a) amend, alter, repeal or waive any provision of the Certificate of Designation, (b) amend, alter or repeal any provision of the Company's charter documents in a manner that would adversely affect the powers, privileges, preferences or rights of the Preferred Stock, (c) create additional classes or series of capital stock having rights, preferences or privileges senior to or pari passu with the Preferred Stock or (d) increase or decrease the authorized number of shares of Preferred Stock.

So long as Sagard or its affiliates own at least 35% of the shares of Preferred Stock that were originally issued, the Certificate of Designation provides that the Company may not, among other things, without the prior written consent or vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, (a) authorize or issue any capital stock of any subsidiary which is not wholly-owned by the Company, (b) declare or pay dividends on the Company's equity securities or redeem any of the Company's equity securities, (c) incur, guarantee or assume any indebtedness, subject to certain limited exceptions, (d) grant or incur any lien, subject to certain limited exceptions, (e) enter into any transaction for the acquisition of all or substantially of the equity interests or assets of another person, subject to certain limited exceptions (f) make any investments, subject to certain limited exceptions or (g) enter into any transactions with the Company's affiliates, subject to certain limited exceptions.

Registration Rights Agreement

In connection with the Preferred Stock Offering, the Company entered into a Registration Rights Agreement with Sagard (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, Sagard and any transferee or assignee whom Sagard or such transferee or assignee assigns its rights under the Registration Rights Agreement (collectively, the "Investors") is entitled to certain shelf and piggyback registration rights with respect to the Conversion Shares, subject to the limitations set forth in the Registration Rights Agreement. Pursuant to the Registration Rights Agreement, the Company will file a registration statement on Form S-3 with the SEC no later than the earlier of (i) ninety (90) days prior to the first anniversary of the closing of the Preferred Stock Offering and (ii) thirty (30) days after the occurrence of an event described in Section 4.2(c) of the Preferred Stock Purchase Agreement (such event, an "Early Filing Trigger"), to register for resale the Conversion Shares that are issuable upon the conversion of the Preferred Shares issued at closing, and any additional shares of Common Stock as may become issuable with respect to such securities as a result of stock splits, stock dividends or similar transactions (the "Registrable Securities"). The Company shall use its reasonable best efforts to have such registration statement declared effective by the SEC no later than the earlier of (1) the first anniversary of the closing of the Preferred Stock Offering and (2) sixty (60) days after an Early Filing Trigger. If, despite the Company's use of reasonable best efforts, the Company is not permitted to include all such Registrable Securities in such registration statement, the Company is obligated to file a registration statement covering the portion of Registrable Securities permitted to be registered, and, as soon as practicable thereafter, but in any event not later than fifteen (15) days after the necessity therefor arises, amend such registration statement or file a new additional registration statement, or both, so as to cover at least 100% of the aggregate number of the Registrable Securities required to be registered thereunder as of the trading day immediately preceding the date of the filing of such amendment or new registration statement.

If, at any time prior to the date that Investors have sold all of the Registrable Securities, there is not an effective Registration Statement covering all of the Registrable Securities and the Company has filed, or is preparing to file, with the SEC a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8, then the Company will send to each Investor reasonable prior written notice of such determination and if, within ten (10) days after receipt of such notice, any such Investor shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Investor requests to be registered, subject to customary underwriter cutbacks applicable to all holders of registration rights, which customary underwriter cutbacks shall be applied pursuant to the terms of the Registration Rights Agreement.

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

If the Company fails to comply with specified provisions in the Registration Rights Agreement, including if a registration statement is not filed with the SEC as required by the Registration Rights Agreement (each, a "Registration Default"), then the Company has agreed to pay each Investor liquidated damages, for each 30-day period (or portion thereof) after the date of such failure until it is cured, an amount in cash equal to one-half percent (0.5%) of the product of (i) the aggregate number of Registrable Securities held by such Investor that are not eligible for resale as a result of such Registration Default and (ii) the per share purchase price paid by Sagard for such Registrable Securities, with late payments accruing interest at a rate of eighteen percent (18%) per annum (or such lesser maximum amount that is permitted to be paid by applicable law), compounding on each payment date.

The foregoing summary descriptions of the Certificate of Designation, the Preferred Stock Purchase Agreement and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the Certificate of Designation, the Preferred Stock Purchase Agreement and the Registration Rights Agreement, which are attached as Exhibits 3.1, 10.1 and 10.2 hereto, respectively, and incorporated herein by reference.

Common Stock Offering

Concurrently with the consummation of the Preferred Stock Offering, the Company entered into share purchase agreements with certain institutional investors (collectively, the *Common Stock Purchase Agreements*), pursuant to which the Company issued approximately \$5.0 million of Common Stock (the *Common Shares*) to such investors at a price of \$0.17 per share (the *Common Stock Offering*). The Company intends to use the proceeds from the Common Stock Offering for to repay certain aged payables relating to the Company's acquisition of Napo Pharmaceuticals, Inc. (*Napo*) in July 2017. The Common Stock Purchase Agreements provide for customary representations, warranties and covenants among the parties. The Company also agreed to file a registration statement on Form S-3 with the SEC no later than 30 days following the date of the Common Stock Purchase Agreements to register for resale the Common Shares.

The offer and sale of the Common Shares in the Common Stock Offering will not be registered under the Securities Act in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

The foregoing summary description of the Common Stock Purchase Agreements does not purport to be complete and is qualified in its entirety by reference to the form of Common Stock Purchase Agreement, which is attached as Exhibit 10.3 hereto and incorporated herein by reference.

Services Agreement

On March 23, 2018, the Company entered into a management services agreement with Sagard Capital Partners Management Corp. (*SCPM*), an affiliate of Sagard, pursuant to which SCPM will provide certain consulting and management advisory services to the Company over a three-year period (the *Initial Term*) for an annual fee of \$450,000, which fees will be paid in equal installments over the Initial Term beginning in the second year of the Initial Term (the *Services Agreement*). The Services Agreement may be terminated earlier than the initial three-year term (i) upon mutual consent of the parties, (ii) by either party following a breach of the Services Agreement by the other party that remains uncured following 30 days' written notice thereof, (iii) in SCPM's sole discretion with 10 days' prior written notice, or (iv) upon the consummation of a Deemed Liquidation (so long as all accrued and unpaid fees payable thereunder as of such termination have been paid in full) or a Fundamental Change in which all of the Company's shares of Preferred Stock are repurchased by the Company.

The foregoing summary description of the Service Agreement does not purport to be complete and is qualified in its entirety by reference to the Service Agreement, which is attached as Exhibit 10.4 hereto and incorporated herein by reference.

CVP Note Offering

Securities Purchase Agreement

On March 21, 2018, the Company entered into a securities purchase agreement (the *Securities Purchase Agreement*) with Chicago Venture Partners, L.P. (*CVP*), pursuant to which the Company issued to CVP a promissory note (the *Note*) in the aggregate principal amount of \$1,090,340.91 for an aggregate purchase price of \$750,000 (the *CVP Note Offering*). The Note carries an original issue discount of \$315,340.91,

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

and the initial principal balance also includes \$25,000 to cover CVP's transaction expenses. The Company will use the proceeds to fully repay certain prior secured and unsecured indebtedness. The Note bears interest at the rate of 8% per annum and matures on September 21, 2019.

Under the Securities Purchase Agreement, the Company is subject to certain covenants, including the obligations of the Company to: (i) timely file all reports required to be filed under Sections 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) and not terminate its status as an issuer required to file reports under the Exchange Act; (ii) maintain listing of the Company's common stock on a securities exchange; (iii) avoid trading in the Company's common stock from being suspended, halted, chilled, frozen or otherwise ceased; (iv) not issue any variable securities (i.e., Company securities that (a) have conversion rights of any kind in which the number of shares that may be issued pursuant to the conversion right varies with the market price of the Company's common stock or (b) are or may become convertible into shares of the Company's common stock with a conversion price that varies with the market price of such stock) that generate gross cash proceeds to the Company of less than the lesser of \$1 million and the then-current outstanding balance of the Note without CVP's prior consent; (v) not grant a security interest in its assets without CVP's prior consent; (vi) not issue any shares of common stock to certain institutional investors; (vii) repay the Hercules Loan (as defined below) on or before March 26, 2018; (viii) repay all outstanding amounts owed to certain noteholders within five trading days of the date of issuance of the Note; (ix) not incur any debt other than in the ordinary course of business, and in no event greater than \$10,000, without CVP's prior consent; and (x) other customary covenants and obligations, for which the Company's failure to comply may be subject to certain liquidated damages. The Hercules Loan was repaid in full on March 23, 2018, simultaneously with the closing of the Preferred Stock Offering.

In addition, beginning seven months from the effective date of the Note (the *Effective Date*) or at any time after the *Effective Date* if the Company breaches any of the covenants set forth in the Securities Purchase Agreement, CVP has the right to redeem all or any portion of the outstanding balance of the Note in cash or as otherwise mutually agreed upon between the parties.

Since the Redemption Start Condition (i.e., the Company raised at least \$12 million in equity after the issuance date of the Note) was satisfied by April 1, 2018 as a result of the consummation of the Preferred Stock Offering and Common Stock Offering, the Company and CVP agreed to amend the Note and that certain Secured Convertible Promissory Note in the original amount of \$2,155,000 issued by Company in favor of CVP on June 29, 2017 (the *June 2017 Note*), that certain Secured Promissory Note in the original amount of \$1,587,500 issued by Company in favor of CVP on December 8, 2017 (the *December 2017 Note*) and that certain Secured Promissory Note in the original amount of \$2,240,909 issued by the Company in favor of CVP on February 26, 2018 (the *February 2018 Note*, and together with the *June 2017 Note* and the *December 2017 Note*, the *Prior Notes*) to limit the aggregate amount that CVP is permitted to redeem on a monthly basis to \$500,000, which amount is the maximum aggregate redemption amount for the *Prior Notes* and the *Note* collectively. Upon the occurrence of a breach of any of the covenants set forth in Section 4 of the Securities Purchase Agreement, the foregoing amendments shall immediately and automatically terminate and shall be deemed void ab initio and of no further force or effect.

The Note was offered and sold pursuant to an exemption from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

The Securities Purchase Agreement and the other transaction documents and obligations of the Company thereunder are subject in all respects to the terms of that certain subordination agreement and right to purchase debt (the *Subordination Agreement*) that the Company entered into with CVP with Hercules Capital, Inc. (*Hercules*) on June 29, 2017. The *Subordination Agreement* was terminated on March 23, 2018 in connection with the Company's repayment in full of the *Hercules Loan* upon the consummation of the *CVP Note Offering*.

Security Agreement

The Company also entered into a security agreement (the *Security Agreement*) with CVP, pursuant to which CVP will receive a security interest in substantially all of the Company's assets. Pursuant to the terms of the *Security Agreement*, CVP's security interest becomes effective upon CVP's purchase of the Company's outstanding obligations under that certain loan and security agreement, dated August 18, 2015, between the Company and Hercules Capital, Inc. (as amended, the *Hercules Loan*) or upon such time that the *Hercules Loan* is otherwise repaid in full. Upon the consummation of the *CVP Note Offering*, the Company repaid the *Hercules Loan* in full, and CVP's security interest in substantially all of the Company's assets became effective.

The Note, the Securities Purchase Agreement and the Security Agreement are filed as Exhibits 4.1, 10.5 and 10.6, respectively, to this Current Report on Form 8-K, and such documents are incorporated herein by reference. The foregoing is only a brief description of the material terms of the Note, the Securities Purchase Agreement and the Security Agreement, does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to such exhibits.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 2.03 in its entirety.

Item 3.03 Material Modification of Rights of Security Holders.

In connection with the Preferred Stock Offering, on March 22, 2018, the Company filed the Certificate of Designation with the Secretary of State of the State of Delaware, establishing and designating the rights, powers and preferences of the Preferred Stock. The Certificate of Designation became effective with the Secretary of the State of Delaware upon filing. Additional information required to be disclosed under this Item 3.03 is set forth in Item 1.01 above and is incorporated by reference into this Item 3.03.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(d) Election of New Director.

On March 19, 2018, the Board of Directors (the Board) of the Company, by resolution as contemplated in the Company's bylaws, increased the size of the Board from seven to nine directors. In connection therewith, and to fill one of the two newly created vacancies, the Board appointed Jeffrey C. Johnson, age 46, to serve as a Class III director of the Company until the 2018 annual

meeting of stockholders or until his successor is elected and qualified, which appointment became effective as of the consummation of the Preferred Stock Offering. Mr. Johnson was also appointed by the Board to serve as a member of its Compensation Committee.

Accordingly, the current composition of the Board's committees is as follows:

Audit Committee: Messrs. Bochnowski, Micek and Qiu, Dr. Yang and Dr. Azhir

Compensation Committee: Messrs. Bochnowski, Kamphuis, Micek and Johnson and Dr. Azhir

Nominating Committee: Messrs. Bochnowski, Kamphuis and Micek

Mr. Johnson is a partner at Sagard Holdings, ULC and an investment manager at SCPM. He previously served as portfolio manager and senior analyst at Evercore Asset Management. He also serves on the board of directors of Peak Achievement Athletics and previously served on the board of directors of Vein Clinics of America. Mr. Johnson received his M.B.A. in Finance and Accounting from the Kellogg School of Management in 1999.

Item 5.03 Amendments to the Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information required to be disclosed under this Item 5.03 is set forth in Items 1.01 and 3.03 above and is incorporated by reference into this Item 5.03.

Item 8.01 Other Events.

On March 26, 2017, the Company issued a press release announcing the closing of the Preferred Stock Offering and the Common Stock Offering. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Edgar Filing: RIO TINTO PLC - Form SC 13G/A

Exhibit No.	Description
3.1	<u>Certificate of Designation of Series A Convertible Participating Preferred Stock</u>
4.1	<u>Secured Promissory Note, dated March 21, 2018, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P.</u>
10.1	<u>Series A Preferred Stock Purchase Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and Sagard Capital Partners, L.P.</u>
10.2	<u>Registration Rights Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and Sagard Capital Partners, L.P.</u>
10.3	<u>Form of Common Stock Purchase Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and the purchasers named therein.</u>
10.4	<u>Management Services Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and Sagard Capital Partners Management Corp.</u>
10.5	<u>Securities Purchase Agreement, dated March 21, 2018, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P.</u>
10.6	<u>Security Agreement, dated March 21, 2018, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P.</u>
99.1	<u>Press Release, dated March 26, 2018.</u>

SIGNATURES

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

JAGUAR HEALTH, INC.

By: /s/ Karen S. Wright
Name: Karen S. Wright
Title: Chief Financial Officer

Date: March 27, 2018