

SOLTA MEDICAL INC
Form 10-K/A
April 13, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

Amendment No. 1

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For fiscal year ended December 31, 2010

Commission File Number: 001-33123

SOLTA MEDICAL, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of

68-0373593
(I.R.S. Employer

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incorporation or organization)

25881 Industrial Boulevard,

Identification No.)

Hayward, California 94545

(510) 782-2286

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:

| Title of Each Class | Name of Each Exchange on Which Registered |
|--|---|
| Common Stock, \$0.001 par value per share | The NASDAQ Stock Market, Inc. |
| Securities Registered Pursuant to Section 12(g) of the Act: None | |

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period than the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act (check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the registrant's common stock, held by non-affiliates of the registrant as of June 30, 2010 (which is the last business day of registrant's most recently completed second fiscal quarter) based upon the closing price of such stock on the NASDAQ Global Market on that date, was approximately \$69.7 million. For purposes of this disclosure, shares of common stock held by entities and individuals who own 5% or more of the outstanding common stock and shares of common stock held by each officer and director have been excluded in that such persons may be deemed to be "affiliates" as that term is defined under the Rules and Regulations of the Securities Exchange Act of 1934. This determination of affiliate status is not necessarily conclusive.

The number of shares of Registrant's common stock issued and outstanding as of February 28, 2011 was 60,139,364.

DOCUMENTS INCORPORATED BY REFERENCE

Part III incorporates by reference certain information from the registrant's definitive proxy statement for the 2010 Annual Meeting of Stockholders.

Explanatory Note

This Amendment No. 1 to the Annual Report on Form 10-K/A (this Amendment) of Solta Medical, Inc. (Solta Medical) for the fiscal year ended December 31, 2010 is being filed solely to amend a typographical error in Exhibit 32.1 Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350 and Securities Exchange Act Rule 13a-14(b) (Exhibit 32.1) of Solta Medical's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 16, 2011 (the Original Filing). This Amendment corrects the period covered by Solta Medical's Annual Report on Form 10-K referenced in Exhibit 32.1. No other changes have been made to the Original Filing and it is not reproduced in this Amendment. This Amendment does not reflect any events that have occurred subsequent to the Original Filing.

The registrant hereby amends and restates the following exhibit in section (a)(3) of Item 15. Exhibits and Financial Statement Schedules of the Form 10-K as follows:

| Exhibit Number | Description |
|-----------------------|---|
| 32.1 | Amended and Restated Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350 and Securities Exchange Act Rule 13a-14(b). |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 on Form 10K/A for the fiscal year ended December 31, 2010 to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Hayward, State of California, on the 13th day of April 2011.

SOLTA MEDICAL, INC.

By: /s/ STEPHEN J. FANNING
Stephen J. Fanning

President and Chief Executive Officer

Exhibit Index to Form 10K/A

Exhibit

| Number | Description |
|----------------------|---|
| 2.1 ⁴ | Agreement and Plan of Merger and Reorganization dated as of July 7, 2008 by and among the Registrant, Relay Acquisition Company, LLC and Reliant Technologies, Inc. |
| 2.2 ¹² | Agreement and Plan of Merger dated as of February 22, 2010 by and among Solta Medical, Inc., Apollo ATC Merger Corp., Aesthera Corporation and Dana Mead as Holder Representative. |
| 3.1 ¹ | Amended and Restated Certificate of Incorporation of the Registrant as currently in effect. |
| 3.2 ⁶ | Certificate of Ownership and Merger of Solta Medical, Inc. dated as of January 12, 2009. |
| 3.3 ¹ | Bylaws of the Registrant as currently in effect. |
| 4.1 ¹ | Specimen Common Stock certificate of the Registrant. |
| 4.2 ¹ | Amended and Restated Investor Rights Agreement dated March 12, 2002 by and among the Registrant and certain stockholders. |
| 4.3 ¹¹ | Form of Registration Rights Agreement dated January 2010 by and among the Registrant and certain shareholders. |
| 4.4 ¹³ | Registration Rights Agreement by and among Solta Medical, Inc. and certain investors, dated as of January 8, 2010. |
| 4.5 ¹³ | Form of Warrant to Purchase Common Stock. |
| 4.6 ¹² | Registration Rights Agreement by and among Solta Medical, Inc. and certain investors, dated as of February 22, 2010. |
| 4.7 ¹² | Lock-Up Agreement by and among Solta Medical, Inc. and certain investors, dated February 22, 2010. |
| 10.1 ¹ | Form of Indemnification Agreement for directors and executive officers. |
| 10.2 ¹ | 1997 Stock Option Plan. |
| 10.3 ¹ | 2006 Equity Incentive Plan. |
| 10.4 ¹ | 2006 Employee Stock Purchase Plan. |
| 10.5 ¹ | Sublease Agreement dated September 7, 2004 by and between the Registrant and iAnywhere Solutions, Inc. for office space located at 25881 and 25901 Industrial Boulevard, Hayward, California and exhibits thereto. |
| 10.6 ¹ | Development and Supply Agreement dated October 1, 1997 by and between the Registrant and Stellartech Research Corporation and the amendments thereto. |
| 10.7 ¹ | Service Agreement dated January 14, 2003 by and between the Registrant and Stellartech Research Corporation. |
| 10.8 ¹ | Patent License and Settlement Agreement dated June 3, 2005 by and between the Registrant and Syneron. |
| 10.9 ¹ | Restated and Amended Consulting Agreement dated July 30, 1998 by and between the Registrant and Edward W. Knowlton, M.D. and the amendments thereto. |
| 10.10 ¹ | Restated and Amended Intellectual Property Assignment and License Agreement dated July 30, 1998 by and between the Registrant and Edward W. Knowlton, M.D. |
| 10.11 ¹ | Employment Agreement dated January 7, 2005 by and between the Registrant and Stephen J. Fanning. |
| 10.12 ¹ | Severance Benefit Plan effective as of February 1, 2005. |
| 10.13 ² | Form of Notice of Grant for, and Terms and Conditions of, Restricted Stock Units under the 2006 Equity Incentive Plan. |
| 10.14 ² | Form of Notice of Grant for, and Terms and Conditions of, Restricted Stock under the 2006 Equity Incentive Plan. |
| 10.15 ² | Form of Notice of Grant for, and Terms and Conditions of, Stock Options under the 2006 Equity Incentive Plan. |
| 10.16 ³ | Employment Agreement dated November 5, 2007 by and between the Registrant and John F. Glenn. |
| 10.17 ⁵ | Form of Change of Control and Severance Agreement for Chief Executive Officer. |
| 10.18 ⁵ | Form of Change of Control and Severance Agreement for Chief Financial Officer and Chief Operating Officer. |
| 10.19 ⁵ | Form of Change of Control and Severance Agreement for Vice Presidents. |
| 10.20 ⁹ | Customer Agreement between the Registrant and Bear Stearns, a division of J.P. Morgan Chase originally dated as of June 5, 2007. |
| 10.21 ⁷ | Loan and Security Agreement, dated as of March 9, 2009, by and between Registrant and Silicon Valley Bank. |
| 10.22 ⁷ | Unconditional Guaranty, dated as of March 9, 2009, by Reliant Technologies, LLC in favor of Silicon Valley Bank. |
| 10.23 ⁷ | Security Agreement, dated as of March 9, 2009, by and between Reliant Technologies LLC and Silicon Valley Bank. |
| 10.24 ⁸ | First Amendment to Loan and Security Agreement between Registrant and Silicon Valley Bank dated March 30, 2009. |
| 10.25 ¹⁰ | Second Amendment to Loan and Security Agreement between Registrant and Silicon Valley Bank dated June 30, 2009. |
| 10.26 ¹³ | Form of Securities Purchase Agreement dated as of January 7, 2010. |
| 10.27 ¹⁴ | Third Amendment to Loan and Security Agreement between Solta Medical, Inc. and Silicon Valley Bank dated March 31, 2010. |
| 10.28 ^{15*} | Amendment to Non-Competition and Non-Solicitation Agreement, Change of Control and Severance Agreement and Letter Agreement; Release of Claims, dated as of September 15, 2010 by and between Leonard C. DeBenedictis and the Company, and the Non-Competition and Non-Solicitation Agreement, dated as of July 6, 2008 by and between Leonard C. DeBenedictis and the Company. |
| 10.29 ¹⁷ | Fourth Amendment to Loan and Security Agreement between Solta Medical, Inc. and Silicon Valley Bank dated October 15, 2010. |
| 21.1 ¹⁷ | List of Subsidiaries. |
| 22.1 ¹⁶ | Published Report regarding matters submitted to vote of security holders. |

Exhibit

| Number | Description |
|--------------------|---|
| 23.1 ¹⁷ | Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm. |
| 23.2 ¹⁷ | Consent of Deloitte & Touche LLC, Independent Registered Public Accounting Firm. |
| 24.1 ¹⁷ | Power of Attorney (see page 92). |
| 31.1 ¹⁷ | Certification of Chief Executive Officer under Securities Exchange Act Rule 13a-14(a). |
| 31.2 ¹⁷ | Certification of Chief Financial Officer under Securities Exchange Act Rule 13a-14(a). |
| 31.3 | Certification of Chief Executive Officer under Securities Exchange Act Rule 13a-14(a). |
| 31.4 | Certification of Chief Financial Officer under Securities Exchange Act Rule 13a-14(a). |
| 32.1 | Amended and Restated Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350 and Securities Exchange Act Rule 13a-14(b). |

* Portions of this exhibit have been omitted pending a determination by the Securities and Exchange Commission as to whether these portions should be granted confidential treatment.

¹ Incorporated by reference from our Registration Statement on Form S-1 (Registration No. 333-136501), which was declared effective on November 9, 2006.

² Incorporated by reference from our Current Report on Form 8-K dated February 13, 2007.

³ Incorporated by reference from our Current Report on Form 8-K dated January 4, 2008.

⁴ Incorporated by reference from our Current Report on Form 8-K/A dated July 11, 2008.

⁵ Incorporated by reference from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2008.

⁶ Incorporated by reference from our Current Report on Form 8-K dated January 12, 2009.

⁷ Incorporated by reference from our Current Report on Form 8-K dated March 9, 2009.

⁸ Incorporated by reference from our Current Report on Form 8-K dated March 25, 2009.

⁹ Incorporated by reference from our Annual Report on Form 10-K dated March 31, 2009.

¹⁰ Incorporated by reference from our Current Report on Form 8-K dated June 30, 2009.

¹¹ Incorporated by reference from our Current Report on Form 8-K dated January 7, 2010.

¹² Incorporated by reference from our Registration Statement on Form S-3 (Registration No. 333-165618) filed with the Securities and Exchange Commission on March 22, 2010, as amended.

¹³ Incorporated by reference from our Current Report on Form 8-K filed with the Securities and Exchange Commission on January 8, 2010.

¹⁴ Incorporated by reference from our Current Report on Form 8-K filed with the Securities and Exchange Commission on April 5, 2010.

¹⁵ Incorporated by reference from our Quarterly Report on Form 10Q dated November 3, 2010.

¹⁶ Incorporated by reference from our Current Report on Form 8-K dated June 3, 2010.

¹⁷ Incorporated by reference from our Annual Report on Form 10-K dated March 16, 2011.