

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): **July 15, 2024**

Scorpius Holdings, Inc.

(Exact name of registrant as specified in charter)

Delaware

(State or other jurisdiction of incorporation)

001-35994

(Commission File Number)

26-2844103

(IRS Employer Identification No.)

627 Davis Drive, Suite 300

Morrisville, North Carolina 27560

(Address of principal executive offices and zip code)

(919) 240-7133

(Registrant's telephone number including area code)

(Former Name and Former Address)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of 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(b) 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0002 par value per share	SCPX	NYSE American LLC
Common Stock Purchase Rights		NYSE American LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by checkmark 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 1.01. Entry into a Material Definitive Agreement.

On July 16, 2024, Scorpius Holdings, Inc. (the “Company”) entered into an Amendment, effective July 1, 2024 (the “Amendment”), to the 1% non-convertible promissory note, dated May 1, 2024, in the principal amount of \$750,000 (the “Note”), issued to Elusys Holdings Inc., a Delaware corporation, which is a company controlled by the Company’s Chairman, Chief Executive Officer and President, Jeffrey Wolf.

The Amendment provides that the maturity date of the Note is extended to July 31, 2024 and provides that the Note is secured by a lien on the Company’s assets, subordinate to any secured lien that may be requested by a lender in connection with debt.

The foregoing description of the Amendment is qualified in its entirety by reference to the full text of the Amendment, a copy of which is attached hereto as Exhibit 4.1 and is incorporated herein in its entirety by reference.

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

To the extent required by Item 2.03 of Form 8-K, the information regarding the Note contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

Item 3.03. Material Modification to Rights of Security Holders.

To the extent required by Item 3.03 of Form 8-K, the information regarding the Reverse Stock Split (as defined below) contained in Item 5.03 of this Current Report on Form 8-K is incorporated by reference herein.

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

On July 15, 2024, at the Company’s 2024 Annual Meeting of Stockholders (the “2024 Annual Meeting”), the Company’s stockholders voted to approve an amendment (the “Plan Amendment”) to the Company’s 2018 Stock Incentive Plan (the “Plan”) to increase the number of shares of common stock available for grant under the Plan by 30,000,000 shares. A summary of the material terms of the Plan and the Plan Amendment is incorporated herein by reference from pages 18-25 of the Company’s definitive proxy statement filed with the Securities and Exchange Commission on June 17, 2024 (the “Proxy Statement”).

The foregoing description of the Plan Amendment is qualified in its entirety by reference to the full text of the Plan Amendment, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein in its entirety by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.*Reverse Split*

On July 15, 2024, the Company’s stockholders approved a proposal at the 2024 Annual Meeting to amend the Company’s Third Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”) to effect a reverse stock split of the Company’s common stock, par value \$0.0002 per share (the “Common Stock”), at a ratio of between 1-for-5 to 1-for-200, with the ratio within such range to be determined at the discretion of the Company’s Board of Directors (the “Board”), without reducing the authorized number of shares of Common Stock. Following the 2024 Annual Meeting, the Board approved a final split ratio of 1-for-200. Following such approval, on July 17, 2024, the Company filed an amendment to the Certificate of Incorporation (the “Charter Amendment”) with the Secretary of State of the State of Delaware to effect the reverse stock split, with an effective time of 11:01 p.m. Eastern Time on July 17, 2024 (the “Reverse Stock Split”).

Split Adjustment; Treatment of Fractional Shares

As a result of the 1:200 Reverse Stock Split, each 200 pre-split shares of Common Stock outstanding will automatically combine into one new share of Common Stock without any action on the part of the holders, and the number of outstanding shares of Common Stock will be reduced from 98,827,831 shares to 494,138 shares (subject to rounding of fractional shares, which will be paid in cash). Proportional adjustments will also be made to the number of shares of Common Stock issuable upon exercise or conversion of the Company’s outstanding equity awards and warrants, as well as the applicable exercise price.

No fractional shares will be issued in connection with the Reverse Stock Split. In lieu of fractional shares, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the reclassification and combination following the effective time of the Reverse Stock Split (after taking into account all fractional shares of Common Stock otherwise issuable to such holder) shall be entitled to receive a cash payment equal to the number of shares of the Common Stock held by such stockholder before the Reverse Stock Split that would otherwise have been exchanged for such fractional share interest multiplied by the average closing sales price of the Common Stock as reported on the OTC Markets for the ten days preceding July 17, 2024. Holders of as many as 199 shares of Common Stock would be eliminated as a result of the cash payment in lieu of any issuance of fractional shares or interests in connection with the Reverse Stock Split.

Trading Symbol; New CUSIP

After the Reverse Stock Split and beginning at the open of market on July 18, 2024, the trading symbol for the Common Stock will be “SCPXD.” After 20 business days, the trading symbol will be changed back to “SCPX.” The new CUSIP number for the Common Stock following the Reverse Stock Split is 42237K508.

Certificate of Amendment

The description of the Charter Amendment set forth above does not purport to be complete and is qualified in its entirety by the full text of the Charter Amendment, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

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

On July 15, 2024, at the Company’s 2024 Annual Meeting, the Company’s stockholders voted on six proposals, each of which is listed below and described in more detail in the Proxy Statement. As of June 13, 2024, the record date for the 2024 Annual Meeting, there were a total of 98,827,831 shares of the Company’s Common Stock outstanding and entitled to vote at the 2024 Annual Meeting. At the 2024 Annual Meeting, 39,307,518 shares of Common Stock were present in person or by proxy and, therefore, a quorum was present.

The voting results for each item of business voted upon at the 2024 Annual Meeting were as follows:

Proposal 1 - Election of Directors Proposal

The following four (4) individuals were elected as directors, to serve until the 2025 Annual Meeting of Stockholders and until their respective successors have been duly elected and qualified with the following votes:

Name of Director	Votes For	Withheld	Broker Non-Votes
1. Jeffrey Wolf	10,533,782	6,255,225	22,518,511
2. John Monahan, Ph.D.	11,496,250	5,292,757	22,518,511
3. Edward B. Smith, III	11,445,329	5,343,678	22,518,511
4. John Prendergast, Ph.D.	11,505,958	5,283,049	22,518,511

Proposal 2 – Auditor Ratification Proposal

The stockholders ratified the appointment of BDO USA, P.C. as the Company’s independent registered public accounting firm for the year ending December 31, 2024, based on the votes set forth below:

Votes For	Votes Against	Abstentions	Broker Non-Votes
33,774,952	4,384,394	1,148,172	---

Proposal 3 – Plan Increase Proposal

The stockholders approved an amendment to the Company’s 2018 Stock Incentive Plan to increase the number of shares of Common Stock available for grant under the Plan by an additional 30,000,000 shares of Common Stock, based on the votes set forth below:

Votes For	Votes Against	Abstentions	Broker Non-Votes
9,227,288	7,368,376	193,343	22,518,511

Proposal 4 – Reverse Stock Split Proposal

The stockholders approved an amendment to the Company’s Third Amended and Restated Certificate of Incorporation, as amended, to effect, at the discretion of the Company’s Board, a reverse stock split of the Company’s issued and outstanding Common Stock at a ratio of 1-for-5 to 1-for-200, with the ratio within such range to be determined by the Board, based on the votes set forth below:

Votes For	Votes Against	Abstentions	Broker Non-Votes
27,476,626	11,341,384	489,508	---

Proposal 5 – Note Conversion Proposal

The stockholders approved the issuance of up to 20,781,771 shares of Common Stock to Elusys Holdings Inc., an entity controlled by Jeffrey Wolf, upon the conversion of the Amended and Restated Convertible Promissory Note issued to Elusys Holdings Inc. on May 1, 2024, based on the votes set forth below:

Votes For	Votes Against	Abstentions	Broker Non-Votes
10,555,438	6,018,496	215,073	22,518,511

Proposal 6 –Adjournment Proposal

The stockholders approved an adjournment of the Annual Meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event there were not sufficient votes in favor of Proposals 3, 4 and/or 5, based on the votes set forth below. However, such an adjournment was not necessary in light of the approval of Proposals 3, 4 and 5 at the 2024 Annual Meeting.

Votes For	Votes Against	Abstentions	Broker Non-Votes
24,774,752	12,796,264	1,736,502	---

Item 7.01. Other Events.

In addition, on July 17, 2024, the Company issued a press release relating to the Reverse Stock Split described in this Current Report on Form 8-K. A copy of the press release attached as Exhibit 99.1 to this report is being furnished and incorporated by reference into this Item 7.01 and shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of Section 18. Furthermore, the information contained in this Item 7.01 and the accompanying exhibit shall not be deemed to be incorporated by reference in any filing under the Securities Act of 1933, as amended, unless specifically identified therein as being incorporated therein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
3.1	Certificate of Amendment of the Company’s Third Amended and Restated Certificate of Incorporation, filed with the Secretary of State of Delaware on July 17, 2024
4.1	Amendment dated July 16, 2024 to Promissory Note dated May 1, 2024
10.1	Amendment No. 5 to Nighthawk Biosciences, Inc. 2018 Stock Incentive Plan
99.1	Press Release date July 17, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

Dated: July 18, 2024

SCORPIUS HOLDINGS, INC.

By: /s/ Jeffrey Wolf
Name: Jeffrey Wolf
Title: Chairman, President and
Chief Executive Officer

**CERTIFICATE OF AMENDMENT
OF THE
THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SCORPIUS HOLDINGS, INC.**

Scorpius Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), does hereby certify:

1. The Board of Directors of the Corporation has duly adopted a resolution pursuant to Section 242 of the General Corporation Law of the State of Delaware setting forth a proposed amendment to the Third Amended and Restated Certificate of Incorporation of the Corporation (the “**Restated Certificate**”) and declaring said amendment to be advisable. The requisite stockholders of the Corporation have duly approved said proposed amendment in accordance with Section 242 of the General Corporation Law of the State of Delaware. The amendment amends the Restated Certificate of the Corporation as follows:

2. Article IV is hereby amended to add the following paragraph immediately after the first paragraph of Article IV:

“Upon this Certificate of Amendment to the Restated Certificate becoming effective pursuant to the General Corporation Law of the State of Delaware (the “**Effective Time**”) the shares of the Corporation’s Common Stock, par value \$0.0002 per share, issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time shall be reclassified as and combined into a smaller number of shares such that every Two Hundred (200) shares of issued and outstanding Common Stock immediately prior to the Effective Time are automatically combined into one (1) validly issued, fully paid and nonassessable share of Common Stock, par value \$0.0002 per share (the “**Reverse Stock Split**”). Notwithstanding the immediately preceding sentence, no fractional shares shall be issued and, in lieu thereof, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the reclassification and combination following the Effective Time (after taking into account all fractional shares of Common Stock otherwise issuable to such holder) shall be entitled to receive a cash payment equal to the number of shares of the Common Stock held by such stockholder before the Reverse Stock Split that would otherwise have been exchanged for such fractional share interest multiplied by the average of the last sale reported of the Common Stock on the OTC Markets for each of the ten (10) days preceding the Effective Time.

Each stock certificate or book-entry position that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate or book-entry position shall have been reclassified and combined (as well as the right to receive cash in lieu of fractional shares of Common Stock after the Effective Time).”

3. This Certificate of Amendment shall be effective at 11:01 p.m. Eastern Time on July 17, 2024.

IN WITNESS WHEREOF, this Corporation has caused this Certificate of Amendment of the Restated Certificate to be signed by the undersigned duly authorized officer, this 16th day of July, 2024.

SCORPIUS HOLDINGS, INC.

By: /s/ Jeffrey Wolf
Name: Jeffrey Wolf
Title: Chairman and Chief Executive Officer

AMENDMENT TO PROMISSORY NOTE

This Amendment (this “Amendment”) dated July 16, 2024 and effective as of the 1st day of July, 2024, to the Promissory Note, dated May 1, 2024 (the “Note”), issued to Elusys Holdings Inc. (the “Holder”) by Scorpius Holdings, Inc. (the “Company”). Capitalized terms used herein without definition shall have the meanings assigned in the Warrant.

WHEREAS, the Company and the Holder desire to amend the Note to extend the Maturity Date and afford the Holder the benefit of a subordinated security interest in the Company’s assets to secure payment of the Note.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to amend the Warrant as follows:

1. **Amendment.**

Section 2. Maturity is hereby deleted in its entirety and replaced with the following:

“On July 31, 2024 (the “Maturity Date”), the entire outstanding Principal Amount and all accrued interest of this Note shall become fully due and payable at the request of Holder.”

Section 4. Miscellaneous is hereby amended by the addition of the following new sub-section, (i) Creation of Security Interest:

“(i) Creation of Security Interest. To secure the payment and performance in full of all the Company’s obligations under this Note (the “Obligations”), the Company hereby grants Holder a continuing security interest in, and pledges to the Holder the Collateral (as defined below), wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof; provided, that this Note and the security interest granted hereby is subordinate in all respects to any and all future secured financings by the Company. Upon payment in full in cash of the Obligations, Holder shall, at the sole cost and expense of the Company, release its liens in the Collateral and all rights therein shall revert to the Company. Upon the Company’s entry into any new secured financing, the Holder shall execute any and all documents as may be requested by the lender to evidence the subordination of this Note and the security interest granted hereby to the new secured financing. The Company hereby authorizes Holder to file such financing statements and/or take any other action required to perfect its security interests in the Collateral, without notice to the Company, with all appropriate jurisdictions to perfect or protect Holder’s interest or rights in the Collateral and under this Note. For the purposes hereof, “Collateral” shall mean any and all properties, rights and assets of the Company.

2. **Severability**. The provisions of this Amendment are severable and if any part of it is found to be unenforceable the other paragraphs shall remain fully valid and enforceable.

3. **No Other Amendments; Confirmation**. All other terms of the Note shall remain in full force and effect. The Note, as amended by this Amendment, constitutes the entire agreement between the parties with respect to the subject matter thereof.

4. **Counterparts**. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument.

5. **Governing Law**. This Amendment is made and shall be construed and performed under the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof.

IN WITNESS WHEREOF, the Company and Holder have caused this Amendment to be executed by an officer thereunto duly authorized as of July 16, 2024.

SCORPIUS HOLDINGS, INC.

By: /s/ William Ostrander
Name: William Ostrander
Title: Chief Financial Officer

ELUSYS HOLDINGS INC.

By: /s/ Jeffrey Wolf
Name: Jeffrey Wolf
Title: Chief Financial Officer

**AMENDMENT NO. 5 TO THE
NIGHTHAWK BIOSCIENCES, INC.
2018 STOCK INCENTIVE PLAN**

Effective Date: July 15, 2024

WHEREAS, the Board of Directors (the “Board”) of Scorpius Holdings, Inc. (the “Company”) heretofore established the NightHawk Biosciences, Inc. 2018 Stock Incentive Plan (the “Plan”); and

WHEREAS, the Board desires to amend the Plan to increase the maximum number of shares of common stock of the Company available for grants of Awards thereunder (as of the date of this amendment, previously adopted the Plan) by an additional 30,000,000 shares of common stock to 38,857,141 shares of common stock; and

WHEREAS, the Board desires to further amend the Plan to reflect the change in the name of NightHawk Biosciences, Inc. to Scorpius Holdings, Inc.; and

WHEREAS, pursuant to Section 15 of the Plan, the Board has the right to amend the Plan with respect to certain matters, provided that any material increase in the number of Shares available under the Plan shall be subject to stockholder approval; and

WHEREAS, the Board has approved and authorized this Amendment No. 5 to the Plan and has recommended that the stockholders of the Company approve this Amendment No. 5;

NOW, THEREFORE, BE IT RESOLVED, that the Plan is hereby amended, subject to and effective as of the date of stockholder approval hereof, in the following particulars:

1. The name of the Plan is hereby amended to be the “Scorpius Holdings, Inc. 2018 Stock Incentive Plan”.
2. Subject to approval of the Company’s stockholders, Section 4(a) of the Plan is hereby amended by increasing the share references in such section by an additional 30,000,000 shares of common stock to 38,857,141 shares of common stock, so that Section 4(a), as amended and restated, reads in its entirety as follows:

“(a) Shares Available for Awards. The maximum aggregate number of shares of Company Stock reserved for issuance under the Plan (all of which may be granted as Incentive Stock Options), as of July 15, 2024, shall be 38,857,141 shares. Shares reserved under the Plan may be authorized but unissued Company Stock or authorized and issued Company Stock held in the Company’s treasury. The Committee may direct that any stock certificate evidencing shares issued pursuant to the Plan shall bear a legend setting forth such restrictions on transferability as may apply to such shares pursuant to the Plan.”
3. Except as specifically set forth herein, the terms of the Plan shall be and remain unchanged, and the Plan as amended shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Amendment No. 5.

SCORPIUS HOLDINGS, INC.

By: /s/ Jeffrey Wolf
Name: Jeffrey Wolf
Title: Chairman, President and
Chief Executive Officer
Dated: July 15, 2024

Scorpius Holdings Announces Reverse Stock Split

Durham, NC – July 17, 2024 –Scorpius Holdings, Inc (NYSE American: SCPX) (“Scorpius” or “the Company”), an integrated contract development and manufacturing organization (“CDMO”), today announced that the Company’s Board of Directors approved a 1-for-200 reverse stock split (the “Reverse Stock Split”) of the Company’s common stock (the “Common Stock”), to increase the selling price of the Company’s Common Stock in order to regain compliance with the requirements and policies of the NYSE American. However, there can be no assurance that the Reverse Stock Split will increase the Company’s stock price sufficiently in order to meet any requirements and policies of the NYSE American.

The Reverse Stock Split will take legal effect at 11:01 P.M. Eastern Time on July 17, 2024 and the Company's Common Stock will open for trading on the OTC Markets on July 18, 2024 on a post-split basis, under the existing ticker symbol "SCPX" but with new CUSIP number 42237K508.

At Scorpius Holdings, Inc’s Annual Meeting of Shareholders (the “Annual Meeting”) held on July 15, 2024, the Company’s stockholders approved a proposal to amend the Company’s certificate of incorporation to effect a reverse stock split of its Common Stock at a ratio of between 1-for-5 to 1-for-200, with the ratio within such range to be determined at the discretion of the Company’s Board. Following the Annual Meeting, the Board approved a final split ratio of 1-for-200. Following the Reverse Stock Split, the ownership percentage of each stockholder will remain unchanged, other than with respect to fractional shares.

Additional details regarding the Company’s Reverse Stock Split can be found in the Current Report on Form 8-K that the Company will file with the SEC.

Scorpius Holdings, Inc.

Scorpius Holdings, Inc. is an integrated contract development and manufacturing organization (CDMO) focused on rapidly advancing biologic and cell therapy programs to the clinic and beyond. Scorpius offers a broad array of analytical testing, process development, and manufacturing services to pharmaceutical and biotech companies at its state-of-the-art facilities in San Antonio, Texas. With an experienced team and new, purpose-built U.S. facilities, Scorpius is dedicated to transparent collaboration and flexible, high-quality biologics biomanufacturing. For more information, please visit www.scorpiusbiologics.com.

Forward-Looking Statement

This release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. In some cases, forward-looking statements can be identified by terminology such as "may," "should," "potential," "continue," "expects," "anticipates," "intends," "plans," "believes," "estimates," and similar expressions, and include statements regarding regaining compliance with the requirements and policies of the NYSE American. Important factors that could cause actual results to differ materially from current expectations include, among others, the ability of the Company to successfully appeal the determination to the Exchange’s Listing Qualifications Panel and have its Common Stock remain listed and recommence trading on the NYSE American; the Company’s financing needs; its cash balance being sufficient to sustain operations and its ability to raise capital when needed; the Company’s ability to leverage fixed costs and achieve long-term profitability; the Company’s ability to obtain regulatory approvals or to comply with ongoing regulatory requirements; regulatory limitations relating to the Company’s ability to successfully promote its services and compete as a pure-play CDMO; and other factors described in the Company’s annual report on Form 10-K for the year ended December 31, 2023, subsequent quarterly reports on Form 10-Qs and any other filings the Company makes with the SEC. The information in this presentation is provided only as of the date presented, and the Company undertakes no obligation to update any forward-looking statements contained in this presentation on account of new information, future events, or otherwise, except as required by law.

Media and Investor Relations Contact

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