

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): August 6, 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 August 6, 2024, Scorpius Holdings, Inc. (the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”) with ThinkEquity LLC (the “ThinkEquity”), as representative of the several underwriters named therein (the “Underwriters”), pursuant to which the Company agreed to issue and sell to the several Underwriters in a firm commitment public offering (the “Offering”) 12,500,000 shares (the “Shares”) of the Company’s common stock, par value \$0.002 per share (the “Common Stock”), or pre-funded warrants (the “Pre-Funded Warrants”) to purchase shares of Common Stock (the “Pre-Funded Warrant Shares”) in lieu thereof, at a purchase price of \$0.93 per Share and \$0.929814 per Pre-Funded Warrant (93% of the public offering price per Share or Pre-Funded Warrant).

On August 7, 2024, ThinkEquity provided the Company with a notice of termination of the Underwriting Agreement based on the suspension of the trading in the Company’s Common Stock on the NYSE American, LLC (“NYSE American”), and as result of the unexpected decision by the staff of the NYSE American with respect to its treatment of the announced public Offering by the Company.

The Shares, the Pre-Funded Warrants and the Pre-Funded Warrant Shares (collectively referred to as the “Securities”) are being offered by the Company pursuant to the Company’s Registration Statement on Form S-1 (File No. 333-280887), as amended to date, filed by the Company with the Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended (the “Securities Act”), that became effective on August 6, 2024. A new underwriting agreement will be entered into if a subsequent offering is consummated and the closing of the Offering is expected to occur on or about August 19, 2024. Trading of the Company’s Common Stock was halted by NYSE American as of August 7, 2024.

The foregoing does not purport to be a complete description of the Underwriting Agreement and is qualified in its entirety by reference to the full text of such document, which is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 1.02 Termination of Material Definitive Agreement

The information contained in Item 1.01 is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On August 9, 2024, the Company issued a press release announcing that Company has requested, and the NYSE American has approved, a financial viability exception to the NYSE American stockholder approval rules that would allow it to proceed with the closing of an underwritten public offering. The Company intends to pursue the sale of 12,500,000 shares of common stock (or Pre-Funded Warrants in lieu thereof), exclusive of the over-allotment option, at a price of \$1.00 per share (inclusive of the Pre-Funded Warrant exercise price). The Underwriting Agreement was terminated in connection with the Offering and a new underwriting agreement will be entered into if the offering is consummated. There can be no assurance that the Company will be able to consummate an offering under these terms or otherwise. The Company will adhere to all applicable provisions relating to the exemption, as outlined in Section 710 of the NYSE American Company Guide, and a closing is intended to occur ten days following the mailing of a notification letter to the Company’s stockholders.

The Audit Committee of the Company’s Board of Directors (the “Board”), composed solely of independent and disinterested members of the Board, determined that the delay associated with obtaining a stockholder vote prior to consummation of the Offering and the issuance of the Securities would seriously jeopardize the financial viability of the Company, and, on that basis, the Audit Committee expressly approved the Company’s reliance on the financial viability exception to the requirement to seek stockholder approval. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 7.01.

In accordance with NYSE American requirements, the Company will mail a letter to stockholders, not later than ten days prior to the anticipated closing of the issuance of the Securities, notifying them of its agreement with ThinkEquity, pursuant to an underwriting agreement, to, among other things, issue the Securities upon consummation of the Offering, without obtaining approval from its stockholders (the “Stockholder Letter”). A copy of the Stockholder Letter to be mailed is attached as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated by reference into this Item 7.01.

The information under this Item 7.01, including Exhibit 99.1 and 99.2, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) or otherwise subject to the liabilities of that section, and shall not be deemed to be incorporated by reference into the filings of the Company under the Securities Act or the Exchange Act.

Item 8.01. Other Events

On August 9, 2024, the Company issued a press release announcing that Company has requested, and the NYSE American has approved, a financial viability exception to the NYSE American stockholder approval rules that would allow it to proceed with the closing of an underwritten public offering. The Company intends to pursue the sale of 12,500,000 shares of common stock (or Pre-Funded Warrants in lieu thereof), exclusive of the over-allotment option, at a price of \$1.00 per share (inclusive of the Pre-Funded Warrant exercise price). The Underwriting Agreement was terminated in connection with the Offering and a new underwriting agreement will be entered into if the offering is consummated. There can be no assurance that the Company will be able to consummate an offering under these terms or otherwise. The Company will adhere to all applicable provisions relating to the exemption, as outlined in Section 710 of the NYSE American Company Guide, and a closing is intended to occur ten days following the mailing of a notification letter to the Company's stockholders.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
1.1	Form of Underwriting Agreement (incorporated by reference to Exhibit 1.2 to the Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on August 1, 2024 (333-280887))
99.1	Press Release, dated August 9, 2024
99.2	Stockholder Letter, dated August 9, 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: August 9, 2024

SCORPIUS HOLDINGS, INC.

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



Scorpius Holdings, Inc. Provides Update on Its Previously Announced Public Offering

DURHAM, N.C. – August 9, 2024 — Scorpius Holdings, Inc. (NYSE American: SCPX), (“Scorpius”, or the “Company”), an integrated contract development and manufacturing organization (CDMO), today announced a delay in its previously announced public offering. The Company has requested, and the NYSE has approved, a financial viability exception to the NYSE American shareholder approval rules that would allow it to proceed with the closing of an underwritten public offering. The Company intends to pursue the sale of 12,500,000 shares of common stock (or pre-funded warrants (“Pre-Funded Warrants”) in lieu thereof, exclusive of the over-allotment option) at a price of \$1.00 per share (inclusive of the Pre-Funded Warrant exercise price). The underwriting agreement was terminated in connection with the previously announced offering and a new underwriting agreement will be entered into if the offering is consummated. There can be no assurance that the Company will be able to consummate an offering under these terms or otherwise. The Company will adhere to all applicable provisions relating to the exemption, as outlined in Section 710 of the NYSE American Company Guide, and a closing is intended to occur ten days following the mailing of a notification letter to the Company’s shareholders.

The Company intends to use the net proceeds of the offering to fund working capital and for general corporate purposes.

ThinkEquity is acting as sole book-running manager for the offering.

A registration statement on Form S-1 (File No. 333-280887), as amended, including a preliminary prospectus, relating to the securities being offered was filed with the Securities and Exchange Commission (“SEC”) and became effective on August 6, 2024. This offering is being made only by means of a prospectus. Copies of the final prospectus, when available, may be obtained from ThinkEquity, 17 State Street, 41st Floor, New York, New York 10004. The final prospectus will be filed with the SEC and will be available on the SEC’s website located at <http://www.sec.gov>.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

About Scorpius Holdings, Inc.

Scorpius Holdings Inc. is an integrated large molecule 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, TX. 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 Statements

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 the repricing of the offering, the ability to consummate an offering under the specified terms or otherwise the timing and completion of the proposed offering and the intended use of proceeds. Important factors that could cause actual results to differ materially from current expectations include, among others, the ability to complete the proposed offering, and other factors described in the Company’s annual report on Form 10-K for the year ended December 31, 2023, subsequent quarterly report on Form 10-Q 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 press release on account of new information, future events, or otherwise, except as required by law.

For Investor Relations Inquiries:

David Waldman
+1 (919)-289-4017
investorrelations@nighthawkbio.com

August 8, 2024

Dear Shareholder,

I am pleased to announce that, to strengthen its balance sheet, Scorpius Holdings, Inc. (the “Company,” “Scorpius,” “we,” “our,” or “us”) has indicated its intent to consummate an underwritten public offering and raise approximately \$12,500,000 by selling 12,500,000 shares of common stock at a price of \$1.00 per share (or pre-funded warrants in lieu thereof). The securities will be registered on the Company’s registration statement on Form S-1 (File No. 333-280887). In order to complete the financing and issue the common stock and pre-funded warrants, the Company has requested and received confirmation from the NYSE American, LLC (“NYSE American”) that the NYSE American will not object to the Company’s reliance on the financial viability exception to the NYSE American’s shareholder approval policy described in more detail below.

Background

As previously disclosed in a Current Report on Form 8-K filed with the Securities and Exchange Commission on July 31, 2024 on a preliminary unaudited basis, for the quarter ended June 30, 2024, the Company expects to recognize between \$0.3 million and \$0.8 million of revenue. On a preliminary unaudited basis as of June 30, 2024, the Company expects its operating loss to be between \$8.6 million and \$9.1 million, and net loss before income taxes from continuing operations to be between \$9.2 million and \$9.7 million. At June 30, 2024, the Company’s cash and cash equivalents and short term investments was approximately \$1.5 million, and the Company will need to raise additional capital to fund its operations.

Revenue generated for the six months ended June 30, 2024, has been primarily derived from process development work and does not include revenue we anticipate generating from microbial cGMP manufacturing which we commenced in July 2024 or mammalian cGMP manufacturing which we anticipate commencing in the third quarter of 2024. The Company anticipates that cGMP manufacturing contracts will generally be larger than the process development contracts we have booked to date.

The estimates of revenue, operating loss, and net loss before income taxes from continuing operations are the Company’s preliminary estimates based on currently available information and are subject to completion of the Company’s financial closing procedures. They do not present all necessary information for an understanding of the Company’s financial condition as of June 30, 2024 or its results of operations for the three months ended June 30, 2024. The Company’s independent registered public accounting firm has not conducted an audit or review of and does not express an opinion or any other form of assurance with respect to, the preliminary unaudited revenue results. It is possible that the Company or its independent registered public accounting firm may identify items that require the Company to make adjustments to the preliminary estimates of revenue, operating loss, and net loss before income taxes from continuing operations set forth above. Accordingly, undue reliance should not be placed on the preliminary estimates.

Description of Financing

On August 6, 2024, the Company announced the pricing of an underwritten public offering of 12,500,000 shares of common stock (or pre-funded warrants (“Pre-Funded Warrants”) in lieu thereof) at a public offering price of \$1.00 per share (inclusive of the Pre-Funded Warrant exercise price) for gross proceeds to the Company of approximately \$12,500,000, before deducting underwriting discounts and offering expenses. In addition, the Company announced that it intended to grant the underwriters a 45-day option to purchase up to an additional 1,875,000 shares of common stock and/or Pre-Funded Warrants solely to cover over-allotments, if any. A registration statement on Form S-1 (File No. 333-280887), as amended, including a preliminary prospectus, relating to the securities being offered was filed with the Securities and Exchange Commission (the “Commission”) and became effective on August 6, 2024. The underwriting agreement was terminated in connection with the previously announced offering and a new underwriting agreement will be entered into if the offering is consummated.

The Company has requested, and the NYSE has approved, a financial viability exception to the NYSE American shareholder approval rules that would allow it to proceed with the closing of an underwritten public offering. The Company intends to pursue the sale of 12,500,000 shares of common stock (or pre-funded warrants (“Pre-Funded Warrants”) in lieu thereof, exclusive of the over-allotment option) at a price of \$1.00 per share (inclusive of the Pre-Funded Warrant exercise price). There can be no assurance that the Company will be able to consummate an offering under these terms or otherwise. The Company will adhere to all applicable provisions relating to the exemption, as outlined in Section 710 of the NYSE American Company Guide, and a closing is intended to occur ten days following the mailing of a notification letter to the Company’s shareholders. The offering is expected to close on or about August 21, 2024.

Notice of New York Stock Exchange Exception

Section 710 of the NYSE American Company Guide would normally require shareholder approval prior to the consummation of the financing. However, we requested and received confirmation from the NYSE American that the NYSE American will not object to the Company's reliance on the financial viability exception to the NYSE American's shareholder approval policy pursuant to Section 710 of the NYSE American Company Guide. The financial viability exception allows an issuer to issue securities upon application to the NYSE American when (1) the delay in securing shareholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance on the company on this exception is expressly approved by the audit committee of the company's board of directors.

As described above, prior to today's announcement, the Audit Committee of the Company's Board of Directors determined that the delay associated with obtaining a shareholder vote prior to the consummation of the financing would seriously jeopardize the financial viability of the Company and, on that basis, expressly approved reliance on the financial viability exception in order to consummate the financing and related transactions without delay.

On August 8, 2024, the NYSE American confirmed that it will not object to the Company's reliance on the financial viability exception, provided that the Company complies with the conditions of the exception provided for in Section 710 of the NYSE American Company Guide. **The Company is mailing this letter to all shareholders not later than 10 days prior to the anticipated closing of the financing to alert investors that the Company will not seek, and will not be required to seek, the shareholder approval that would otherwise be required under applicable NYSE American rules.** In addition to this notification, the Company has issued a press release publicly announcing the financing and is filing a Current Report on Form 8-K with the Commission. For copies of the definitive agreements relating to the financing, as well as information on related developments, please review our current and future reports on file with the Commission and available at www.sec.gov.

Forward-Looking Statements

Some of the statements contained in this letter to shareholders are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements relate to future events or our future performance and include statements about the adequacy, timing and structure of the proposed financing, whether the transactions contemplated thereunder will be completed, the Company's financial viability, as well as other statements that can be identified by the use of the forward-looking terminology such as "agree," "commit," "may," "will," "anticipate," "would," or similar terms, variations of such terms, or the negative of such terms. These forward-looking statements are based on the Company's current expectations and inherently involve significant risks and uncertainties.

Further description of risks that could cause actual events to differ from the outcomes predicted by the Company's forward-looking statements is set forth under the caption "Risk Factors" in the Company's annual report on Form 10-K and will be set forth under the Company's annual report on Form 10-K and quarterly reports on Form 10-Q with the Commission, and you should consider each of those factors when evaluating the forward-looking statements. These forward-looking statements speak only as of the date of this letter and the Company undertakes no duty or obligation to update any forward-looking statements contained in this letter as a result of new information, future events or changes in its expectations.

Thank you for your continued support of Scorpius.