

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): **March 11, 2023**

NightHawk Biosciences, 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 400
Morrisville, North Carolina 27560**

(Address of principal executive offices and zip code)

(919) 240-7133

(Registrant's telephone number including area code)

N/A

(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 | NHWK | 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 March 11, 2023, NightHawk Biosciences, Inc. (the "Company") entered into Amendment No. 5 dated March 11, 2023 ("Amendment No. 5") to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto ("Amendment No. 1") dated March 8, 2019, Amendment No. 2 thereto ("Amendment No. 2") dated March 10, 2020, Amendment No. 3 thereto ("Amendment No. 3") dated March 8, 2021, and Amendment No. 4 thereto ("Amendment No. 4") dated March 11, 2022 (collectively, the "Rights Agreement") by and between the Company and Continental Stock Transfer & Trust Company, as rights agent. Under the terms of Amendment No. 5, the expiration date of the Company's stockholder rights plan has been extended to March 11, 2024, or such earlier date that the Company redeems or exchanges the rights as described in the Rights Agreement.

A copy of Amendment No. 5 is attached as Exhibit 4.6 to this Current Report on Form 8-K and is incorporated by reference herein. A copy of the Rights Agreement as originally executed is included as Exhibit 4.1 to this Current Report on Form 8-K, Amendment No. 1 is included as Exhibit 4.2 to this Current Report on Form 8-K, Amendment No. 2 is included as Exhibit 4.3 to this Current Report on Form 8-K, Amendment No. 3 is included as Exhibit 4.4 to this Current Report on Form 8-K, and Amendment No. 4 is included as Exhibit 4.5 to this Current Report on Form 8-K and such agreements are incorporated herein by reference. The foregoing summary of Amendment No. 5 and the Rights Agreement are qualified in their entirety by reference to Exhibits 4.1, 4.2, 4.3, 4.4, 4.5 and 4.6.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.03 by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed with this Current Report on Form 8-K:

| Exhibit Number | Description |
|-----------------------|--|
| 4.1 | Rights Agreement dated as of March 11, 2018 by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 12, 2018 (File No. 001-35994)) |
| 4.2 | Amendment No. 1 to the Rights Agreement dated as of March 8, 2019 to the Rights Agreement dated March 11, 2018 by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 12, 2019 (File No. 001-35994)) |
| 4.3 | Amendment No. 2 to the Rights Agreement dated as of March 10, 2020 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Registration Statement on Form 8-A/A filed with the Securities and Exchange Commission on March 13, 2020 (File No. 001-35994)) |
| 4.4 | Amendment No. 3 to the Rights Agreement dated as of March 8, 2021 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, and Amendment No. 2 thereto, dated March 10, 2020, by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 12, 2021 (File No. 001-35994)) |
| 4.5 | Amendment No. 4 to the Rights Agreement dated as of March 11, 2022 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 11, 2022 (File No. 001-35994)) |
| 4.6 | Amendment No. 5 to the Rights Agreement dated as of March 11, 2023 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, and Amendment No. 4 thereto, dated March 11, 2022, by and between NightHawk Biosciences, Inc. and Continental Stock Transfer & Trust Company, as rights agent |
| 104 | Cover Page Interactive Data File (the cover page XBRL tags are 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: March 13, 2023

NightHawk Biosciences, Inc.

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

AMENDMENT NO. 5 TO RIGHTS AGREEMENT

This Amendment No. 5 (this “Amendment”) dated the 11th day of March, 2023 to the Rights Agreement, dated March 11, 2018, as amended by Amendment No. 1 thereto, dated March 8, 2019, as further amended by Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, and Amendment No. 4 thereto, dated March 11, 2022 (the “Agreement”), by and between NightHawk Biosciences, Inc. (formerly known as Heat Biologics, Inc.) (the “Company”) and Continental Stock Transfer & Trust Company, as Rights Agent (the “Rights Agent”). Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

WHEREAS, pursuant to Section 27 of the Agreement, the Company and the Rights Agent may, for so long as the Rights are redeemable, from time to time, change or supplement the provisions under the Rights Agreement as the Company may deem necessary or desirable, without the approval of any holders of the Rights;

WHEREAS, as of the date hereof, a Flip-In Event has not occurred and, as such, the Rights are presently redeemable;

WHEREAS, the Company desires to amend the Agreement to extend the final expiration date of the Rights from the Close of Business on March 11, 2023 to the Close of Business on March 11, 2024; and

WHEREAS, pursuant to Section 27 of the Agreement, the Company hereby directs the Rights Agent that the Rights Agreement shall be amended as set forth in this Amendment.

NOW THEREFORE, the Company and the Rights Agent agree to amend the Agreement as follows:

1. Section 7(a) of the Agreement is hereby amended and restated in its entirety to read as follows:

“Except as otherwise provided herein, the Rights shall become exercisable on the Distribution Date, and thereafter the registered holder of any Right Certificate (other than Right Certificates representing Rights that have become void pursuant to Section 11(a)(ii) hereof or that have been exchanged pursuant to Section 24 hereof) may, subject to Section 11(a)(ii) hereof and except as otherwise provided herein, exercise the Rights evidenced thereby in whole or in part upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the office or agency of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of shares of Common Stock (or other securities, cash or other assets, as the case may be) as to which the Rights are exercised, at any time which is both after the Distribution Date and prior to the time (the “Expiration Date”) that is the earliest of (i) the Close of Business on March 11, 2024, (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the “Redemption Date”), (iii) the closing of any merger or other acquisition transaction involving the Company pursuant to an agreement of the type described in Sections 1(d)(ii)(A)(z) and 13(f) at which time the Rights are terminated, or (iv) the time at which such Rights are exchanged as provided in Section 24 hereof.”

2. The Form of Rights Certificate attached as Exhibit A to the Agreement and the Summary of Rights to Purchase Shares of Common Stock of NightHawk Biosciences, Inc. attached as Exhibit B to the Agreement are each amended to replace each reference to “March 11, 2023” contained therein with “March 11, 2024”.

-
3. This Amendment shall be effective immediately as of the date first written above, and thereafter, all references to the Agreement shall be deemed to be references to the Agreement, as amended hereby.
 4. All other terms of the Agreement shall remain in full force and effect.
 5. The undersigned officer of the Company hereby certifies to the Rights Agent that the amendments to the Agreement set forth in this Amendment are in compliance with Section 27 of the Rights Agreement and the certification contained in this Section 7 shall constitute the certification required by Section 27 of the Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

NIGHTHAWK BIOSCIENCES, INC.

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

**CONTINENTAL STOCK TRANSFER &
TRUST COMPANY, as Rights Agent**

By: /s/ Stacy Aqui
Name: Stacy Aqui
Title: Vice President