
**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: December 27, 2016
(Date of earliest event reported)**

ENTEROMEDICS INC.

(Exact name of registrant as specified in its charter)

Commission File Number: 1-33818

Delaware
(State or other jurisdiction of incorporation)

48-1293684
(IRS Employer Identification No.)

2800 Patton Road, St. Paul, Minnesota 55113
(Address of principal executive offices, including zip code)

(651) 634-3003
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the 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 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))
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Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On December 27, 2016, the Company filed its Sixth Amended and Restated Certificate of Incorporation (the “6th A&R Certificate”) with the Secretary of State of the State of Delaware to effect a one (1) for seventy (70) reverse split of the Company’s outstanding common stock, \$0.01 par value per share (the “Reverse Stock Split”). In connection with the Reverse Stock Split, proportional adjustments were also made to the Company’s outstanding stock options and warrants. The Reverse Stock Split did not affect the par value of the Company’s stock or the number of shares of common stock or preferred stock authorized by the 6th A&R Certificate.

The Reverse Stock Split became effective after the close of market on December 27, 2016 and was effective for trading purposes upon the commencement of trading on December 28, 2016, at which point the Company’s common stock began trading on a split adjusted basis on the NASDAQ Capital Market.

The 6th A&R Certificate also incorporates the increase in the number of shares of the Company’s common stock authorized for issuance to 300 million shares that was approved by the Company’s stockholders on December 12, 2016. The increase in the Company’s authorized shares of common stock was previously effected by that certain Certificate of Amendment to the Company’s Fifth Amended and Restated Certificate of Incorporation (the “5th A&R Certificate”) filed with the Secretary of State of Delaware on December 12, 2016 and previously disclosed on a Current Report on Form 8-K on December 13, 2016. No other changes were made to the Company’s 5th A&R Certificate by the 6th A&R Certificate.

A copy of the 6th A&R Certificate is attached as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 8.01 Other Events.

As described under Item 5.03 above, on December 27, 2016 the Company effected a one (1) for seventy (70) reverse split of its common stock. As previously disclosed on a Current Report on Form 8-K filed on December 13, 2016, the Company’s stockholders approved the amendment of its Fifth Amended and Restated Certificate of Incorporation at a special meeting held on December 12, 2016 in order to (i) effect a reverse split of the common stock at the discretion of the Company’s Board of Directors and (ii) increase the shares of common stock authorized for issuance to 300 million shares. Effective as of December 23, 2016, the Board of Directors selected the one (1) for seventy (70) reverse stock split ratio and authorized the implementation of the Reverse Stock Split.

As a result of the Reverse Stock Split, every seventy (70) shares of pre-reverse stock split common stock of the Company was combined and reclassified into one (1) share of common stock of the Company and proportional adjustments were made to the Company’s outstanding stock options and warrants. The Company did not issue any fractional shares as a result of the Reverse Stock Split. Instead, fractional shares of common stock were rounded up to the nearest whole share and fractional stock options and warrants were rounded down to the nearest whole share. After the Reverse Stock Split, the Company’s common stock has a new CUSIP number: 29365M505, but the par value and other terms of the common stock were not affected by the Reverse Stock Split.

The Company’s transfer agent, Wells Fargo Bank N.A., is acting as exchange agent for the Reverse Stock Split and will send instructions to stockholders of record regarding the exchange of certificates for common stock.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>
3.1

<u>Description</u>
Sixth Amended and Restated Certificate of Incorporation.

SIGNATURE

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.

ENTEROMEDICS INC.

By: /s/ Scott P. Youngstrom
Scott P. Youngstrom
Chief Financial Officer and Chief Operating Officer

Date: December 28, 2016

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3.1	Sixth Amended and Restated Certificate of Incorporation.

**SIXTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ENTEROMEDICS INC.**

December 27, 2016

EnteroMedics Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (as amended from time to time, the "General Corporation Law"), does hereby certify as follows:

FIRST: The name of the corporation is EnteroMedics Inc. and the name under which the corporation was originally incorporated is EnteroMedics Inc.

SECOND: The date of filing the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware was July 22, 2004.

THIRD: This Sixth Amended and Restated Certificate of Incorporation, having been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law and by the written consent of a majority of the stockholders of this corporation in accordance with Section 228 of the General Corporation Law, restates and integrates and further amends the provisions of the original Certificate of Incorporation as amended or supplemented heretofore. As so restated and integrated and further amended, the Sixth Amended and Restated Certificate of Incorporation of the corporation (the "Amended and Restated Certificate of Incorporation") reads as follows:

**ARTICLE I
NAME**

The name of the corporation (hereinafter called the "Corporation") is EnteroMedics Inc.

**ARTICLE II
REGISTERED OFFICE**

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, 19801 and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**ARTICLE IV
CAPITAL STOCK**

1. Authorized Stock. The Corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock, par value \$0.01 per share, and Common Stock, par value \$0.01 per share. The total number of shares of Preferred Stock authorized is 5,000,000. The total number of shares of Common Stock authorized is 300,000,000.

2. Common Stock.

All shares of Common Stock shall be identical and shall entitle the holders thereof to the same rights and privileges. Subject to the rights of the holders of any series of Preferred Stock, and subject to any other provisions of this Amended and Restated Certificate of Incorporation, holders of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock of any corporation or property of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor. When and as dividends are declared on the Common Stock, whether payable in cash, in property or in securities of the Corporation, the holders of the Common Stock shall be entitled to share equally, share for share, in such dividends.

Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, after the payment in full of all amounts to which the holders of each series, if any, of the Preferred Stock shall be entitled, the remaining assets of the Corporation to be distributed ratably to the holders of the stock of the Corporation shall be distributed ratably among the holders of the shares of Common Stock, together with the holders of the shares of any class of stock on a parity with the Common Stock. For purposes of this paragraph, unless otherwise provided with respect to any series of Preferred Stock, the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the assets of the Corporation or a consolidation or merger of the Corporation with one or more other corporations (whether or not the Corporation is the corporation surviving such consolidation or merger) shall not be deemed to be a liquidation, dissolution or winding up, either voluntary or involuntary.

The holders of shares of the Common Stock shall be entitled to vote on all matters to be voted on by the stockholders of the Corporation; *provided, however*; that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock). On all matters to be voted on by the holders of the Common Stock, the holders shall be entitled to one vote in person or by proxy for each share thereof held of record.

Subject to the rights of the holders of any series of Preferred Stock, stockholders of the Corporation shall not have any preemptive rights to subscribe for, purchase or receive any part of any new or additional issue of stock of the Corporation and no stockholder will be entitled to cumulate votes at any election of directors.

3. **Preferred Stock.** The Board of Directors is authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of shares of Preferred Stock from time to time in one or more series, and, by filing a certificate pursuant to the applicable law of the State of Delaware (each a "Preferred Stock Designation"), to establish the number of shares to be included in each such series, and to fix the voting powers (if any), designations, powers, preferences, and relative, participating, optional or other rights, if any, of the shares of each such series, and any qualifications, limitations and restrictions thereof. The shares of Preferred Stock of any one series shall be identical with each other in all respects except as to the dates from and after which dividends thereon shall cumulate, if cumulative.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- (a) the designation of the series, which may be by distinguishing number, letter or title;
- (b) the number of the shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares of such series then outstanding);
- (c) whether dividends, if any, shall be cumulative or noncumulative and the dividend rate of the series;
- (d) the dates at which dividends, if any, shall be payable;
- (e) the redemption rights and price or prices, if any, for shares of the series;
- (f) the terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;
- (g) the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (h) whether the shares of the series shall be convertible or exchangeable into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series or of such other security, the conversion price or prices or exchange rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made;
- (i) restrictions on the issuance of shares of the same series or of any other class or series;
- (j) the voting rights, if any, of the holders of shares of the series; and
- (k) such other powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof as the Board of Directors shall determine.

4. Reverse Stock Split. Effective as of December 27, 2016 at 5:01 p.m. Eastern Time (the “Effective Time”), each seventy (70) shares of Common Stock, par value \$0.01 (the “Old Common Stock”) either issued and outstanding or held by the Corporation in treasury stock immediately prior to the Effective Time shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock, par value \$0.01 per share (the “New Common Stock”). The Corporation shall, through its transfer agent, provide a book-entry statement reflecting the number of shares of New Common Stock to which the holder is entitled following a reverse stock split to holders of Old Common Stock. From and after the Effective Time, certificates representing shares of Old Common Stock are hereby canceled and shall represent only the right of holders thereof to receive New Common Stock. The Corporation shall not issue fractional shares of New Common Stock. The reverse stock split shall not increase or decrease the amount of stated capital or paid-in surplus of the Corporation, provided that any fractional share that would otherwise be issuable as a result of the reverse stock split shall be rounded up to the nearest whole share of New Common Stock. From and after the Effective Time, the term “New Common Stock” as used in this Article IV shall mean common stock as provided in the Sixth Amended and Restated Certificate of Incorporation.

ARTICLE V BYLAWS

In furtherance and not in limitation of the powers conferred by statute and except as provided herein or in the bylaws, the Board of Directors shall have the power to adopt, amend, repeal or otherwise alter, from time to time, the bylaws without any action on the part of the stockholders in accordance with the bylaws; *provided, however*, that any bylaws made by the Board of Directors and any and all powers conferred by any of said bylaws may be amended, altered or repealed by the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (“Voting Stock”), voting together as a single class.

ARTICLE VI LIMITATION OF DIRECTORS’ LIABILITY; INDEMNIFICATION

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. Each person who is or was a director or officer of the Corporation, and each person who serves or served at the request of the Corporation as a director or officer of another enterprise, shall be indemnified by the Corporation in accordance with, and to the fullest extent authorized by, the General Corporation Law.

If the General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article VI by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE VII ELECTION OF DIRECTORS

The election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE VIII BOARD OF DIRECTORS

1. Business and Quorum. The business of the Corporation shall be managed by or under the direction of the Board of Directors. A majority of the whole Board of Directors shall constitute a quorum for the transaction of business. Any director may tender his resignation at any time.

2. Number, Classes and Term. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be established exclusively by the Board of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the Board of Directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The terms of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years at the annual meeting of stockholders in 2008. The term office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years at the annual meeting of stockholders in 2009. The term of office for the Class III directors shall expire and Class III directors shall be elected for a full term of three years at the annual meeting in 2010. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. The Board of Directors is authorized to assign members of the Board of Directors already in office to Class I, Class II or Class III.

Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. If the number of directors is hereafter changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, except as may be expressly provided as to any directors who may be elected by the holders of any series of Preferred Stock.

3. Removal of Directors. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time, only for cause, and only by the affirmative vote of the holders of at least a majority of the Voting Stock.

4. Vacancies. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, or other cause may be filled only by a majority vote of the directors then in office, though less than a quorum, and shall not be filled by the stockholders, with the director so elected to serve for the remainder of the term of the director being replaced or, in the case of an additional director, for the remainder of the term of the class to which the director has been assigned. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**ARTICLE IX
STOCKHOLDER ACTION BY WRITTEN CONSENT**

Action shall be taken by the stockholders of the Corporation only at annual or special meetings of the stockholders, and stockholders may not act by written consent. Special meetings of the stockholders, for any purpose or purposes prescribed in the notice of the meeting, may be called by (a) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption) or (b) the Chairman of the Board, and shall be held at such place, on such date, and at such time as they shall fix. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice.

**ARTICLE X
AMENDMENT**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation; *provided, however*, that no Preferred Stock Designation shall be amended after the issuance of any shares of the series of Preferred Stock created thereby, except in accordance with the terms of such Preferred Stock Designation and the requirements of applicable law.

[Signature Page Follows]

