

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**

May 30, 2008

Date of Report (Date of earliest event reported)

Discovery Laboratories, Inc.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

000-26422

(Commission File Number)

94-3171943

(IRS Employer
Identification Number)

**2600 Kelly Road, Suite 100
Warrington, Pennsylvania 18976**
(Address of principal executive offices)

(215) 488-9300

(Registrant's telephone number, including area code)

(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))
-

Item 1.01. Amendment of a Material Agreement.

On May 30, 2008, Discovery Laboratories, Inc. (the “Company”) entered into a First Amendment to Credit and Security Agreement (the “Amendment”) with GE Business Financial Services Inc. (formerly known as Merrill Lynch Business Financial Services Inc.) (“GE”), to amend the Credit and Security Agreement dated as of May 21, 2007 between the parties (the “Credit Facility”).

The Credit Facility provided for up to \$12.5 million to fund the Company’s capital programs. The Credit Facility expires on May 31, 2008, subject to a best efforts undertaking by GE to extend the draw down period beyond the expiration date for an additional six months. As of March 31, 2008, approximately \$5.2 million was outstanding under the Credit Facility (\$2.8 million classified as current liabilities and \$2.4 million as long-term liabilities) and \$4.9 million remained available for use, subject to the conditions of the Credit Facility.

Under the terms of the Amendment, the Company and GE have agreed to extend the term of the Credit Facility for an additional period of six months for the purpose of funding the Company’s anticipated capital investments for that period, up to \$300,000. In consideration of the extension, the Company has agreed to pay GE’s legal fees and expenses of up to \$2,000 and a non-refundable consent fee of \$1,500. All other terms and conditions under the Credit Facility remain unchanged.

Under the Credit Facility, the minimum advance is \$100,000. Interest on each advance accrues at a fixed rate per annum equal to LIBOR plus 6.25%, determined on the funding date of such advance. Principal and interest on all advances will be payable in equal installments on the first business day of each month. The Company may prepay advances, in whole or in part, at any time, subject to a prepayment penalty, which, depending on the period of time elapsed from the closing of the Facility, will range from 4% to 1%.

The Company may use the Credit Facility to finance (a) new property and equipment, and (b) up to approximately \$1.7 million “Other Equipment” and related costs, which may include leasehold improvements, intangible property such as software and software licenses, specialty equipment, a pre-payment to pay down the outstanding obligations under a previous arrangement, and “soft costs” related to financed property and equipment (including, without limitation, taxes, shipping, installation and other similar costs). Advances to finance the acquisition of new property and equipment are amortized over a period of 36 months; the advance related to the prepayment of the Company’s previous arrangement is amortized over a period of 27 months; and Other Equipment and related costs is amortized over a period of 24 months. In addition, the Company’s obligations under the Credit Facility are secured by a security interest in (a) the financed property and equipment, including the property and equipment financed under the Company’s prior arrangement at the time of the prepayment, and (b) as Supplemental Collateral, all of the Company’s intellectual property, subject to limited exceptions set forth in the Credit Facility. Under the Credit Facility, the Supplemental Collateral will be released on the earlier to occur of (i) receipt by us of FDA approval of the Company’s NDA for Surfaxin for the prevention of Respiratory Distress Syndrome (RDS) in premature infants, or (ii) the date on which the Company shall have maintained over a continuous 12-month period ending on or after March 31, 2008, measured at the end of each calendar quarter, a minimum cash balance equal to our projected cash requirements for the following 12-month period.

The description of the terms and conditions of the Credit Facility and the Amendment and the rights and obligations of the Company in connection therewith are qualified by reference in their entirety to the definitive terms and conditions of the Credit Facility and the Amendment. The form of the Amendment is attached hereto as Exhibit 10.1.

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company’s filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

10.1 First Amendment to Credit and Security Agreement (the "Amendment") dated May 30, 2008, between the Company and GE Business Financial Services Inc.

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.

Discovery Laboratories, Inc.

By: /s/ Robert J. Capetola

Robert J. Capetola, Ph.D.
President and Chief Executive Officer

Date: May 30, 2008

FIRST AMENDMENT
TO CREDIT AND SECURITY AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AND SECURITY AGREEMENT (this "**Agreement**") is made as of May 30, 2008 by and between **DISCOVERY LABORATORIES, INC.**, a Delaware corporation ("**Borrower**"), and **GE BUSINESS FINANCIAL SERVICES INC.** (formerly known as Merrill Lynch Business Financial Services Inc.) ("**Lender**").

Recitals

A. Lender and Borrower have entered into that certain Credit and Security Agreement dated as of May 21, 2007 (as the same may from time to time be amended, modified, supplemented or restated, the "**Credit Agreement**"). Lender has extended credit to Borrower for the purposes permitted in the Credit Agreement.

B. Borrower has requested that Lender amend the Credit Agreement as more fully set forth herein. Lender has agreed to so amend certain provisions of the Credit Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Agreement, including its preamble and recitals, shall have the meanings given to them in the Credit Agreement.

2. Amendments to Credit Agreement.

2.1 Section 1(a) (Availability). Section 1(a) of the Credit Agreement is hereby amended by adding the following sentence immediately after the last sentence of the Section:

Notwithstanding the foregoing, the aggregate principal amount of Equipment Advances made during the period commencing on May 30, 2008 and ending on the last day of the Draw Period shall not exceed Three Hundred Thousand Dollars (\$300,000).

2.2 Section 12 (Definitions and Rules of Construction). The following term and its definition in Section 12 of the Credit Agreement are amended and restated in their entirety as follows:

"**Draw Period**" is the period of time from May 21, 2007 through the earlier to occur of (a) November 30, 2008, or (b) a Default.

2.3 Notices. The addresses of Lender for all notices, requests and other communications are hereby changed to the following:

GE Business Financial Services Inc.
c/o GE Healthcare Financial Services, Inc., LSF
83 Wooster Heights Road, Fifth Floor
Danbury, Connecticut 06810
Attention: Senior Vice President of Risk
Phone: (203) 205-5200
Facsimile: (203) 205-2192

With a copy to:

GE Business Financial Services Inc.
c/o GE Healthcare Financial Services, Inc.
Two Bethesda Metro Center, Suite 600
Bethesda, Maryland 20814
Attention: General Counsel
Phone: (301) 961-1640
Facsimile: (301) 664-9866

3. Limitation of Amendments.

3.1 The amendments set forth in Section 2 above are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Financing Document, or (b) otherwise prejudice any right or remedy which Lender may now have or may have in the future under or in connection with any Financing Document.

3.2 This Agreement shall be construed in connection with and as part of the Financing Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Financing Documents, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Lender to enter into this Agreement, Borrower hereby represents and warrants to Lender as follows:

4.1 Immediately after giving effect to this Agreement (a) the representations and warranties contained in the Financing Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Default or Event of Default has occurred and is continuing;

4.2 Borrower has the power and due authority to execute and deliver this Agreement and to perform its obligations under the Credit Agreement, as amended hereby;

4.3 The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Credit Agreement, as amended hereby, have been duly authorized by all necessary action on the part of Borrower;

4.4 The organizational documents of Borrower most recently delivered to Lender remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

4.5 The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Credit Agreement, as amended hereby, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any material contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Credit Agreement, as amended hereby, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made;

4.7 This Agreement has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.

6. Consent Fee. Borrower hereby agrees to pay to Lender a non-refundable consent fee in the amount of One Thousand Five Hundred Dollars (\$1,500) in connection with the amendments set forth herein to be paid by wire transfer on or before the date hereof.

7. Effectiveness. This Agreement shall be deemed effective upon (a) the due execution and delivery to Lender of this Agreement by each party hereto and (b) Borrower's payment of the Consent Fee.

8. Attorneys' Fees and Expenses. Borrower hereby agrees to pay all of Lender's legal fees and expenses in connection with the negotiation and preparation of this Agreement in an amount not to exceed \$2,000. The foregoing cap on legal fees and expenses relates only to the negotiation and preparation of this Agreement, and not to any other legal fees or expenses related to the Loan.

9. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of New York.

10. Integration. This Agreement and the Financing Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, and negotiations between the parties about the subject matter of this Agreement, and the Financing Documents merge into this Agreement and the Financing Documents.

[Signature page follows immediately.]

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

BORROWER:

DISCOVERY LABORATORIES, INC.

By: /s/ John G. Cooper

Name: John G. Cooper
Title: Executive Vice President and Chief Financial Officer

LENDER:

GE BUSINESS FINANCIAL SERVICES INC.
(formerly known as Merrill Lynch Business Financial Services Inc.)

By: /s/ Scott R. Towers

Name: Scott R. Towers
Title: Its Duly Authorized Signatory
