

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

November 16, 2018

Date of Report (Date of earliest event reported)

Windtree Therapeutics, 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))

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

Emerging growth company

If an emerging growth company, indicate by check mark 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.**

Effective as of November 19, 2018 (the “**Effective Date**”), Windtree Therapeutics, Inc. (the “**Company**”) entered into a Loan Agreement (“**Loan Agreement**”) with LPH Investments Ltd., a Cayman Islands company organized and existing under the laws of Cayman Islands (“**LPH**”), and an affiliate of Lee’s Pharmaceutical Holdings Limited. Under the Loan Agreement, LPH agreed to lend the Company \$350,000 (the “**Loan**”) to support the Company’s operations while the Company seeks to complete a strategic transaction (as defined in the Loan Agreement, the “**Strategic Transaction**”). The Loan, which was funded in a single installment by wire transfer on November 19, 2018, will accrue interest at a rate of 6% per annum and will mature upon the earlier of (i) the closing date for the Strategic Transaction on terms defined in the Loan Agreement, or (ii) March 31, 2019. If the Company is unable to complete the Strategic Transaction for any reason, based on the Company’s resources currently available to it, it likely will have insufficient resources to repay the Loan and may be forced to curtail some or all of its activities, and, ultimately, may be compelled to cease operations.

The Company agreed to secure its obligations with respect to the Loan under a previously-executed Security Agreement with LPH (the “**Security Agreement**”) dated March 1, 2018, pursuant to which the Company had granted to LPH a security interest in substantially all of the Company’s assets.

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

The information set forth in Item 1.01 above is incorporated by reference.

The foregoing descriptions of the Loan Agreement and Security Agreement do not purport to be complete and are qualified in their entirety by reference to the agreements. A copy of the Loan Agreement is attached hereto as Exhibit 10.1 to this Current Report on Form 8-K. A copy of the Security Agreement was filed as Exhibit 10.2 to the Company’s Current Report on Form 8-K, which was filed with the SEC on March 5, 2018. The Loan Agreement is being filed, and the Security Agreement was filed, to provide investors and the Company’s stockholders with information regarding the terms thereof and in accordance with applicable rules and regulations of the Securities and Exchange Commission (“**Commission**”). Pursuant to the Loan Agreement and Security Agreement, each of the parties thereto made customary representations, warranties and covenants, which were made by the parties to and solely for the benefit of each other and any expressly intended third party beneficiaries in the context of all of the terms and conditions of the agreements and in the context of the specific relationship between the parties. Accordingly, investors and stockholders should not rely on the representations, warranties and covenants as characterizations of the actual state of facts or continuing intentions of the parties since they were only made as of the dates of the Loan Agreement and Security Agreement. Information concerning the subject matter of such representations, warranties and covenants may change, which subsequent information may or may not be fully reflected in the Company’s reports or other filings with the Commission.

Item 5.02 (e) **Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Effective as of November 16, 2018 (the “**Effective Date**”), the Compensation Committee (the “**Committee**”) of the Board of Directors of Windtree Therapeutics, Inc. (the “**Company**”) approved an Executive Strategic and Retention Bonus Program (“**Strategic and Retention Bonus**”) that is intended to provide incentives to, and retain, certain key personnel, including the Company’s named executive officers (“**NEOs**”), while they focus on completing a strategic transaction (recognizing the significant effort such a strategic transaction would require) and, if successful, integrating and executing an expanded business plan. If completed, the strategic transaction would provide (i) access to additional late-stage potential pipeline products, diversify the Company’s product portfolio and potentially improve the Company’s ability to attract significant capital over time; and (ii) provide sufficient immediate funding to support continued development of the Company’s product candidates in the near to mid-term (“**Strategic Transaction**”).

Under the terms of the Strategic and Retention Bonus, an Eligible Transaction (as that term is defined under the program) means either (a) a Strategic Transaction consisting of a merger that would advance the strategic needs of the Company, including by potentially allowing for diversification of the Company’s product candidates, or (b) an acquisition; and, in addition, one or more financings within a nine-month period that in the aggregate results in gross proceeds to the Company of at least \$30 million. The Strategic and Retention Bonus payments will vary depending upon the aggregate amount raised in the financings. An NEO’s maximum bonus amount would be determined by application of a multiplier to the NEO’s 2018 base salary and would be payable only if the Company were to complete an Eligible Transaction with gross proceeds of at least \$45 million. An NEO’s minimum bonus amount would equal 20% of the maximum bonus amount and would be payable if the Company were to raise at least \$30 million. For other amounts raised, the maximum bonus amount would be reduced in a stepped-down fashion as provided under the program. The bonus payments, if earned, would be paid in two equal installments to support retention of key executives. The potential Strategic and Retention Bonus amounts for Mr. Fraser, the Company’s President and Chief Executive Officer, would range between 0.3 and 1.5 of base salary, yielding a potential bonus range of \$132,082 - \$660,411; for Mr. Tattory, the Company’s Senior Vice President and Chief Financial Officer, the range would be between 0.27 and 1.35 of base salary, yielding a potential bonus range of \$88,540 - \$442,700; and for Dr. Simonson, the Company’s Senior Vice President and Chief Medical Officer, the range would be between 0.25-1.25 of his base salary, yielding a potential bonus range of \$87,312 - \$436,559. If earned, the Strategic and Retention Bonus would be payable in two equal installments, with the first installment due within five business days after the closing of the Eligible Transaction, and the second installment due on the nine-month anniversary of the closing of the Strategic Transaction, provided that each NEO is actively employed by the Company at the time of payment. The Strategic and Retention Bonus is the only cash bonus that may be paid to the NEOs for fiscal years 2017 and 2018, as they previously waived their rights to the regular Company annual bonus for this period.

Item 9.01. **Financial Statements and Exhibits.**

(d) Exhibits:

10.1 [Loan Agreement between the Company and LPH Investments Ltd. effective as of November 19, 2018.](#)

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company’s product development or otherwise as to future events, 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.

[Signatures appear on the next page]

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.

Windtree Therapeutics, Inc.

By: /s/ Craig Fraser
Name: Craig Fraser
Title: President and Chief Executive Officer

Date: November 21, 2018

Loan Agreement

This Loan Agreement (this "Loan Agreement"), dated as of November 19, 2018, is entered into between Windtree Therapeutics, Inc., a Delaware corporation with its principal offices at 2600 Kelly Rd., Suite 100, Warrington, PA 18976 ("Borrower"), and LPH Investments Ltd., a Cayman Islands company organized and existing under the laws of Cayman Islands with its principal offices at 1/F, Building 20E, Phase 3, Hong Kong Science Park, Shatin, Hong Kong ("Lender").

RECITALS

WHEREAS, Lender is the owner of a majority in interest of Borrower's issued and outstanding shares of common stock (the "Common Stock");

WHEREAS, Borrower is in immediate need of capital to support its continuing operations; and

WHEREAS, Lender has agreed to advance funds to Borrower on the terms provided in this Loan Agreement to allow Borrower sufficient time to pursue a potential strategic transaction intended to allow Borrower to diversify its product offerings and secure the additional capital that it requires to advance the AEROSURF® development program and support its continuing operations (the "Strategic Transaction");

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

"Loan" means the loan made by Lender to Borrower in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00), which amount is payable in U.S. dollars in cash on or before November 15, 2018.

"Encumbrance" has the meaning set forth in Section 2.5.

"Maturity Date" means the earlier of (i) the closing date (the "Closing Date") of the Strategic Transaction, provided that in connection with the Strategic Transaction, Borrower shall secure additional cash resources in a minimum amount of Thirty Million Dollars (\$30,000,000) and (ii) March 31, 2019.

"Strategic Transaction" has the meaning set forth in the Recitals to this Agreement.

ARTICLE II

TERM LOAN

2.1 Agreement to Make Loan. On the terms and subject to the conditions of this Loan Agreement, Lender agrees to fund the Loan to Borrower Three Hundred Fifty Thousand Dollars (\$350,000.00) on or before November 15, 2018. The proceeds of the Loan shall be paid by wire transfer to an account designated in writing by Borrower.

2.2 Payment Terms. The entire unpaid principal balance of the Loan, together with accrued interest thereon, shall be due and payable on the Maturity Date.

2.3 Interest Rate. The Loan shall bear interest on the outstanding principal amount of the Loan at a rate per annum equal to six percent (6%) ("the Contracted Interest Rate"). If Borrower fails to repay the principal amount of the Loan on the due date, Lender shall charge Borrower interest at a rate equal to the lower of 30% above the Contracted Interest Rate (referred to as the "Defaulted Interest Rate") or the maximum interest rate permitted by law on overdue sums from and including the due date to the actual payment date. If Borrower fails to repay the accrued interest and default interest on the due date, the Defaulted Interest Rate shall be calculated monthly on the interest payment date.

2.4 Prepayment. Borrower may, at its option, prepay the Loan, in whole or in part, prior to the Maturity Date. Each prepayment shall include interest on the amount prepaid to the date of prepayment.

2.5 Negative Pledge. Borrower shall not, without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed, create, suffer to exist, or permit to subsist, any mortgage, pledge, lien, charge, privilege, priority, encumbrance or other security interest of any kind or nature whatsoever and howsoever arising (referred to as the "Encumbrance") upon all or any part of its present or future undertakings, assets, or revenues, except for the following ("Permitted Encumbrances"):

(a) any such Encumbrance created in the ordinary course of Borrower's development activities and business transactions, including without limitation,

(i) with respect to accounts maintained in the ordinary course and held at financial institutions to secure standard fees for services charged by such institutions, including liens of a collection bank arising in the ordinary course;

(ii) obligations in respect of purchase money financing, capital lease obligations and equipment financing facilities covering existing and newly-acquired equipment, including for the acquisition, installation, qualification and validation of such equipment;

(iii) liens in favor of landlords under real property leases granted by Borrower, and letter of credit deposits related thereto;

(iv) liens related to workers' compensation, unemployment insurance and other social security legislation;

(v) liens arising under leases, licenses or subleases granted to others not interfering in any material respect with the business of Borrower;

(vi) and liens on advances in favor of a vendor providing goods or services; and

(vii) the security interest in favor of Panacea Venture Management Company Ltd. pursuant to that certain Secured Convertible Promissory Note dated July 2, 2018;

(b) any Encumbrance in favor of Lender;

(c) statutory liens created by operation of law and Encumbrances arising in connection with outstanding contractual obligations; and;

(d) liens for taxes, assessments or governmental charges or levies.

2.6 Representations and Warranties. Borrower represents and warrants to Lender that:

(a) No Encumbrance. All of Borrower's assets are free and clear of any Encumbrance as of the date hereof except for Permitted Encumbrances;

(b) Ownership of Properties. Borrower has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title that, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and

(c) Litigation. There are no actions, suits, proceedings, claims, disputes or investigations pending or, to the knowledge of Borrower, threatened, at law, in equity, in arbitration or before any governmental authority, by or against Borrower or against any of its properties or revenues that (a) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (b) purport to affect or pertain to this Loan Agreement or any other loan agreement or any of the transactions contemplated hereby.

2.7 Security Interest. Borrower grants to Lender a continuing lien and security interest in substantially all of Borrower's assets to secure its obligations hereunder and all such obligations shall be deemed to be "Secured Obligations" as described in that certain Security Agreement by and between Borrower and Lender dated March 1, 2018 (the "Security Agreement"), and such security interest shall be subject to and governed by the terms of the Security Agreement.

ARTICLE III

DEFAULTS AND REMEDIES

3.1 Events of Default. Any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):

a) Borrower fails to make any required payment required on the Loan within five (5) days after Borrower's receipt of written notice of default from Lender;

b) Borrower breaches any representation, warranty, covenant or pledge made by Borrower in this Loan Agreement or otherwise in connection with the Loan;

c) if, pursuant to the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Borrower shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due; or

d) if a court enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's properties, or (iii) orders the liquidation of Borrower.

3.2 **Remedies.** Upon the occurrence of an Event of Default, Lender, at its option, may take one or more of the following remedial steps:

a) Upon notice to Borrower, the entire principal amount of the Loan shall become immediately due and payable, without presentment, demand for payment, protest, notice of nonpayment or protest, notice of dishonor or any other notice or demand, all of which are hereby expressly waived; and

b) Take any action at law or in equity to collect from Borrower the payments then due and thereafter to become due under the Loan or to enforce performance and observance of any obligation or agreement of Borrower under the Loan.

c) Resort to any remedy available to Lender under the Security Agreement.

3.3 **No Remedy Exclusive.** No remedy of Lender is intended to be exclusive of any other available remedy, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or by applicable law. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof.

ARTICLE IV

MISCELLANEOUS

4.1 **Notice.** Any notice to a party to this Agreement shall be in writing and sent to the respective addresses set forth in the introductory paragraph of this Agreement (or such other address as a party shall designate in writing) by certified mail, return receipt requested, or by nationally recognized overnight courier. All notices shall be effective upon the earlier of (a) three days after being sent or (b) receipt.

4.2 **Successors and Assigns.** This Loan Agreement contains the entire agreement of the parties with respect to its subject matter and may not be amended except by a written instrument signed by the party to be charged with such amendment. This Loan Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties, except that Borrower shall not have the right to assign its rights or obligations hereunder.

4.3 Judicial Proceedings. This Loan Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflict of laws principles. All claims or actions arising from this Loan Agreement shall be litigated in the federal courts for the Southern District of New York or the state courts located in the county of New York. Borrower and Lender hereby irrevocably submit to the jurisdiction of such courts and waive any claim that any action brought in such a court has been brought in an inconvenient forum

4.4 Captions. The section headings of this Loan Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

4.5 Severability. If any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.

4.6 Waiver of Jury Trial. **BORROWER AND LENDER HEREBY WAIVE ALL RIGHTS TO DEMAND A JURY TRIAL FOR ANY ACTIONS ARISING FROM THIS LOAN AGREEMENT.**

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS LOAN AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED OFFICERS AS OF THE DATE FIRST WRITTEN ABOVE.

WINDTREE THERAPEUTICS, INC.

LPH INVESTMENTS LTD.

By: /s/ Craig Fraser

Name: Craig Fraser

Title: President and Chief Executive Officer

By: /s/ Benjamin Li, Ph.D.

Name: Benjamin Li, Ph.D.

Title: Chief Executive Officer