

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

March 13, 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 5.02 (e). Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On March 13, 2018, the senior officers of Windtree Therapeutics, Inc. (the “Company”), including its Named Executive Officers, Craig Fraser, President and Chief Executive Officer, John Tattory, its Senior Vice President and Chief Financial Officer and Steven G. Simonson, M.D., its Senior Vice President and Chief Medical Officer, entered into amendments (individually, the “Amendment,” and collectively, the “Amendments”) to their executive employment agreements dated February 1, 2016, March 21, 2014, and December 19, 2014, respectively (the “Executive Agreements”).

The Amendments incorporate and restate amendments (“the SPA Amendments”) that were previously finalized in connection with that certain Share Purchase Agreement dated October 27, 2017 between the Company and LPH Investments Limited (“Share Purchase Agreement”). The Share Purchase Agreement, including the SPA Amendments, were previously filed with a Company Current Report on Form 8-K filed with the Securities and Exchange Commission on November 1, 2017, and provide that, in lieu of the Annual Bonuses (as defined in the Executive Agreements) that would have been payable to the executives during the 24 month period following the closing, the executives are entitled to an award of equity under the Company’s 2011 Long-Term Incentive Plan, as amended, having a value when issued equal to the combined total value of the 2017 and 2018 Target Bonus Amounts (as defined in each Executive Agreement) and vesting in two equal installments on March 15, 2018 and March 15, 2019. In addition, the Amendments change the initial vesting date of such equity awards from March 15, 2018 to August 1, 2018 and provide that, in the event an Executive Agreement is terminated for a reason other than Cause (as defined in the Executive Agreements), the vesting of the equity award that otherwise would have vested on August 1, 2018 will accelerate and become immediately vested.

In addition, the Amendment to Mr. Fraser’s Executive Agreement also corrects an error in the form of his Executive Agreement by adjusting the benefits continuation period solely in the event of termination of employment related to a Change of Control (as defined in his Executive Agreement) from 12 months to 18 months. The Amendments to Mr. Tattory’s and Dr. Simonson’s Executive Agreements also incorporate certain amendments intended to conform their Executive Agreements in some respects to Mr. Fraser’s, including, among other things, to (i) provide that the Term of the Agreement shall extend until otherwise terminated in accordance with Section 7 of the Executive Agreements, and (ii) provide that a termination of Employment will not be deemed to be for Good Reason unless Executive gives Notice of Termination within 30 days after Executive has actual knowledge of the act or omission of the Company constituting Good Reason. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Executive Agreements.

The forms of Amendment for each Mr. Fraser’s, Mr. Tattory’s and Dr. Simonson’s Executive Agreements are attached to this Current Report on Form 8-K as Exhibit 10.1, 10.2, and 10.3, respectively, and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits:

- 10.1 [Amendment No. 1 to Employment Agreement of Craig Fraser dated as of March 13, 2018.](#)
 - 10.2 [Amendment No. 2 to Employment Agreement of John Tattory dated as of March 13, 2018.](#)
 - 10.3 [Amendment No. 2 to Employment Agreement of Steven G. Simonson, M.D., dated as of March 13, 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, cash flows, future revenues, the timing of planned clinical trials 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. Any forward-looking statement made by us in this Current Report on Form 8-K is based only on information currently available to us and speaks only as of the date on which it is made. The Company undertakes no obligation to publicly update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise.

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: March 16, 2018

AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT

Effective as of March 13, 2018, Craig Fraser (“Executive”) and Windtree Therapeutics, Inc. (the “Company”) hereby agree to amend the Employment Agreement between them dated as of February 1, 2016 (the “Employment Agreement”) to reflect the revisions set forth herein (“Amendment”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Employment Agreement.

1. The Employment Agreement is amended to incorporate amendments previously made effective in the Share Purchase Agreement dated October 27, 2017 between the Company and LPH Investments Limited, which amendments are set forth in the exhibit attached hereto as Exhibit A.
2. Section 7(c)(iv) is hereby amended by changing the length of the Benefit Period (as defined in the Executive Agreement) to 18 months.

Except as amended herein, the remaining terms and conditions of the Employment Agreement shall remain in full force and effect. This Amendment confirms an agreement between Executive and the Company with respect to the subject matter hereof and is a material part of the consideration stated in the Employment Agreement and mutual promises made in connection therewith.

The parties have executed this Amendment as of the day and date first set forth above.

Windtree Therapeutics, Inc.

By: /s/ Kathryn A. Cole
Name: Kathryn A. Cole
Title: SVP, Human Resources

/s/ Craig Fraser
Name: Craig Fraser
Title: CEO and President



EXHIBIT A

1. Solely with respect to the Change of Control (as defined in the applicable Executive's Employment Agreement) occurring as a result of the transactions contemplated by the Share Agreement, in lieu of the Annual Bonus (as defined in such Executive's Employment Agreement) that otherwise would be payable pursuant to Section 6(a) of such Employment Agreement, the executive shall be entitled to an award of equity granted on or before the Closing under the Company's 2011 Long-term Incentive Plan ("2011 Incentive Plan"), as amended, having a value when issued equal to the combined total value of the 2017 and 2018 Target Bonus Amounts (as defined in such executive's Employment Agreement).
2. Payment Terms:
 - a. Form of equity: Paid in Restricted Stock Units (RSUs) (as defined or permitted under the 2011 Incentive Plan) equal to the combined total value of the 2017 and 2018 Annual Bonus provided under each applicable Employment Agreement for such Executive.
 - b. Timing: RSUs shall be approved and granted on or before the Closing and will be issued within 10 days after authorization of additional shares available for issuance under the 2011 Long-term Incentive Plan and registration with the Securities and Exchange Commission.
 - c. Vesting: 50% on March 15, 2018¹ and 50% on March 15, 2019 (each a "Vesting Date"), subject to continued full-time employment with the Company at the time of each Vesting Date.

The final grant document will include customary provisions related to delivery of shares, tax obligations, and any other pertinent details.

3. With respect to Section 6, the parties hereto acknowledge and agree that the outstanding options of the Executive on the Closing Date under the 2011 Long-Term Incentive Plan for each Executive, shall remain outstanding and shall continue to vest in accordance with their respective terms.
4. The Company and each Executive agree and acknowledge that there is and shall be no assumption by the Buyer nor its parent company, Lee's Pharmaceutical Holdings Limited, a company incorporated in the Cayman Islands with limited liability, of (i) any vested or unvested shares of stock and any vested and unvested options to acquire the Company's stock held by such Executive, or (ii) any Convertible and Derivative Equity Securities (as defined in the Share Purchase) as a result of the consummation of the transactions contemplated by the Securities Purchaser Agreement dated as of October 27, 2017 by and between the Company and the Buyer (the "SPA"). (Capitalized terms used in this paragraph 4 but not otherwise defined in this Amendment) shall have the meanings ascribed to such terms in the SPA.)
5. If during the Effective Period (as defined in the Employment Agreement, as amended by this Amendment) following the transaction contemplated by the SPA and for so long as the Buyer is the controlling stockholder of the Company, if the Buyer nominates candidates for election to replace a majority of the Board of Directors during any 12 consecutive month period, no benefits shall accrue or be payable to Executive on account of such a "Change of Control" as defined in the respective Employment Agreement, as amended by this Amendment.

¹ In accordance with Amendment No. 1 to Restricted Stock Unit Award Agreement dated as of March 13, 2018 between the Company and Executive the March 15, 2018 Vesting Date has been revised to August 1, 2018.

AMENDMENT NO. 2 TO EMPLOYMENT AGREEMENT

Effective as of March 13, 2018, John A. Tattory (“Executive”) and Windtree Therapeutics, Inc. (the “Company”) hereby agree to amend the Employment Agreement between them dated as of March 21, 2014 (the “Employment Agreement”) to reflect the revisions set forth herein (“Amendment”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Employment Agreement.

1. Section 2 is hereby amended and restated in its entirety to read as follows:

“The term (“Term”) of this Agreement shall commence on the date first above written (the “Start Date”) and shall continue until terminated as provided in Section 7 hereof. Upon the occurrence of a Change of Control during the Term of this Agreement, including any amendments hereto, this Agreement shall automatically be extended until the end of the Effective Period. On the Date of Termination, Executive acknowledges that Executive shall immediately be deemed to have resigned all employment and related job duties and responsibilities with the Company, including, without limitation any and all positions on any committees or boards of the Company or any affiliated company. Executive agrees to sign all reasonable documentation evidencing the foregoing as may be presented to Executive for signature by the Company.”

2. The 18 month period of non-solicitation set forth in Section 4(c) is hereby revised to provide for a 12 month period of non-solicitation.

3. Section 8(b) is hereby amended and restated in its entirety to read as follows:

“A termination of Employment of Executive will not be deemed to be for Good Reason unless Executive gives the Notice of Termination provided for herein within 30 days after Executive has actual knowledge of the act or omission of the Company constituting such Good Reason and Executive gives the Company a 30-day cure period to rectify or correct the condition or event that constitutes Good Reason and Executive delivers final Notice of Termination within 30 days of the date that Company’s failure to cure deadline has expired.”

4. The second sentence of Section 10(a) is hereby amended and restated to read as follows:

“Unless otherwise elected by the Executive to the extent permitted under Code Section 409A, the Company shall reduce or eliminate the Payments by first reducing or eliminating any cash severance benefits (with the payments to be made furthest in the future being reduced first), then by reducing or eliminating any accelerated vesting of stock options or similar awards, then by reducing or eliminating any accelerated vesting of restricted stock or similar awards, then by reducing or eliminating any other remaining Payments; provided, that no such reduction or elimination shall apply to any non-qualified deferred compensation amounts (within the meaning of Section 409A of the Code) to the extent such reduction or elimination would accelerate or defer the timing of such payment in manner that does not comply with Section 409A of the Code.”

5. The first sentence of Section 15(d) is hereby amended and restated to read as follows:

“The arbitration shall be filed with the office of the American Arbitration Association (“AAA”) located in Philadelphia, Pennsylvania or such other AAA office as the parties may agree upon (without any obligation to so agree).”

6. Section 16(a) is hereby amended and restated in its entirety to read as follows:

“Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the Commonwealth of Pennsylvania without regard to the application of choice of law rules.”

7. In addition, the Employment Agreement is further amended to incorporate amendments previously made effective in the Share Purchase Agreement dated October 27, 2017 between the Company and LPH Investments Limited, which amendments are set forth in the exhibit attached hereto as Exhibit A.

Except as amended herein, the remaining terms and conditions of the Employment Agreement shall remain in full force and effect. This Amendment confirms an agreement between Executive and the Company with respect to the subject matter hereof and is a material part of the consideration stated in the Employment Agreement and mutual promises made in connection therewith.

The parties have executed this Amendment as of the day and date first set forth above.

Windtree Therapeutics, Inc.

By: /s/ Kathryn A. Cole

Name: Kathryn A. Cole

Title: SVP, Human Resources

/s/ John A. Tattory

Name: John A. Tattory

Title: SVP and Chief Financial Officer

EXHIBIT A

1. Solely with respect to the Change of Control (as defined in the applicable Executive's Employment Agreement) occurring as a result of the transactions contemplated by the Share Agreement, in lieu of the Annual Bonus (as defined in such Executive's Employment Agreement) that otherwise would be payable pursuant to Section 6(a) of such Employment Agreement, the executive shall be entitled to an award of equity granted on or before the Closing under the Company's 2011 Long-term Incentive Plan ("2011 Incentive Plan"), as amended, having a value when issued equal to the combined total value of the 2017 and 2018 Target Bonus Amounts (as defined in such executive's Employment Agreement).
2. Payment Terms:
 - a. Form of equity: Paid in Restricted Stock Units (RSUs) (as defined or permitted under the 2011 Incentive Plan) equal to the combined total value of the 2017 and 2018 Annual Bonus provided under each applicable Employment Agreement for such Executive.
 - b. Timing: RSUs shall be approved and granted on or before the Closing and will be issued within 10 days after authorization of additional shares available for issuance under the 2011 Long-term Incentive Plan and registration with the Securities and Exchange Commission.
 - c. Vesting: 50% on March 15, 2018¹ and 50% on March 15, 2019 (each a "Vesting Date"), subject to continued full-time employment with the Company at the time of each Vesting Date.

The final grant document will include customary provisions related to delivery of shares, tax obligations, and any other pertinent details.

3. With respect to Section 6, the parties hereto acknowledge and agree that the outstanding options of the Executive on the Closing Date under the 2011 Long-Term Incentive Plan for each Executive, shall remain outstanding and shall continue to vest in accordance with their respective terms.
4. The Company and each Executive agree and acknowledge that there is and shall be no assumption by the Buyer nor its parent company, Lee's Pharmaceutical Holdings Limited, a company incorporated in the Cayman Islands with limited liability, of (i) any vested or unvested shares of stock and any vested and unvested options to acquire the Company's stock held by such Executive, or (ii) any Convertible and Derivative Equity Securities (as defined in the Share Purchase) as a result of the consummation of the transactions contemplated by the Securities Purchaser Agreement dated as of October 27, 2017 by and between the Company and the Buyer (the "SPA"). (Capitalized terms used in this paragraph 4 but not otherwise defined in this Amendment) shall have the meanings ascribed to such terms in the SPA.)
5. If during the Effective Period (as defined in the Employment Agreement, as amended by this Amendment) following the transaction contemplated by the SPA and for so long as the Buyer is the controlling stockholder of the Company, if the Buyer nominates candidates for election to replace a majority of the Board of Directors during any 12 consecutive month period, no benefits shall accrue or be payable to Executive on account of such a "Change of Control" as defined in the respective Employment Agreement, as amended by this Amendment.

¹ In accordance with Amendment No. 1 to Restricted Stock Unit Award Agreement dated as of March 13, 2018 between the Company and Executive the March 15, 2018 Vesting Date has been revised to August 1, 2018.

AMENDMENT NO. 2 TO EMPLOYMENT AGREEMENT

Effective as of March 13, 2018, Steven G. Simonson, M.D. (“Executive”) and Windtree Therapeutics, Inc. (the “Company”) hereby agree to amend the Employment Agreement between them dated as of December 29, 2014 (the “Employment Agreement”) to reflect the revisions set forth herein (“Amendment”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Employment Agreement.

1. Section 2 is hereby amended and restated in its entirety to read as follows:

“The term (“Term”) of this Agreement shall commence on the date first above written (the “Start Date”) and shall continue until terminated as provided in Section 7 hereof. Upon the occurrence of a Change of Control during the Term of this Agreement, including any amendments hereto, this Agreement shall automatically be extended until the end of the Effective Period. On the Date of Termination, Executive acknowledges that Executive shall immediately be deemed to have resigned all employment and related job duties and responsibilities with the Company, including, without limitation any and all positions on any committees or boards of the Company or any affiliated company. Executive agrees to sign all reasonable documentation evidencing the foregoing as may be presented to Executive for signature by the Company.”

2. The 18 month period of non-solicitation set forth in Section 4(c) is hereby revised to provide for a 12 month period of non-solicitation.

3. Section 8(b) is hereby amended and restated in its entirety to read as follows:

“A termination of Employment of Executive will not be deemed to be for Good Reason unless Executive gives the Notice of Termination provided for herein within 30 days after Executive has actual knowledge of the act or omission of the Company constituting such Good Reason and Executive gives the Company a 30-day cure period to rectify or correct the condition or event that constitutes Good Reason and Executive delivers final Notice of Termination within 30 days of the date that Company’s failure to cure deadline has expired.”

4. The second sentence of Section 10(a) is hereby amended and restated to read as follows:

“Unless otherwise elected by the Executive to the extent permitted under Code Section 409A, the Company shall reduce or eliminate the Payments by first reducing or eliminating any cash severance benefits (with the payments to be made furthest in the future being reduced first), then by reducing or eliminating any accelerated vesting of stock options or similar awards, then by reducing or eliminating any accelerated vesting of restricted stock or similar awards, then by reducing or eliminating any other remaining Payments; provided, that no such reduction or elimination shall apply to any non-qualified deferred compensation amounts (within the meaning of Section 409A of the Code) to the extent such reduction or elimination would accelerate or defer the timing of such payment in manner that does not comply with Section 409A of the Code.”

5. The first sentence of Section 15(d) is hereby amended and restated to read as follows:

“The arbitration shall be filed with the office of the American Arbitration Association (“AAA”) located in Philadelphia, Pennsylvania or such other AAA office as the parties may agree upon (without any obligation to so agree).”

6. Section 16(a) is hereby amended and restated in its entirety to read as follows:

“Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the Commonwealth of Pennsylvania without regard to the application of choice of law rules.”

7. In addition, the Employment Agreement is further amended to incorporate amendments previously made effective in the Share Purchase Agreement dated October 27, 2017 between the Company and LPH Investments Limited, which amendments are set forth in the exhibit attached hereto as Exhibit A.

Except as amended herein, the remaining terms and conditions of the Employment Agreement shall remain in full force and effect. This Amendment confirms an agreement between Executive and the Company with respect to the subject matter hereof and is a material part of the consideration stated in the Employment Agreement and mutual promises made in connection therewith.

The parties have executed this Amendment as of the day and date first set forth above.

Windtree Therapeutics, Inc.

By: /s/ Kathryn A. Cole
Name: Kathryn A. Cole
Title: SVP, Human Resources

/s/ Steven G. Simonson, M.D.
Name: Steven G. Simonson, M.D.
Title: SVP and Chief Medical Officer

EXHIBIT A

1. Solely with respect to the Change of Control (as defined in the applicable Executive's Employment Agreement) occurring as a result of the transactions contemplated by the Share Agreement, in lieu of the Annual Bonus (as defined in such Executive's Employment Agreement) that otherwise would be payable pursuant to Section 6(a) of such Employment Agreement, the executive shall be entitled to an award of equity granted on or before the Closing under the Company's 2011 Long-term Incentive Plan ("2011 Incentive Plan"), as amended, having a value when issued equal to the combined total value of the 2017 and 2018 Target Bonus Amounts (as defined in such executive's Employment Agreement).
2. Payment Terms:
 - a. Form of equity: Paid in Restricted Stock Units (RSUs) (as defined or permitted under the 2011 Incentive Plan) equal to the combined total value of the 2017 and 2018 Annual Bonus provided under each applicable Employment Agreement for such Executive.
 - b. Timing: RSUs shall be approved and granted on or before the Closing and will be issued within 10 days after authorization of additional shares available for issuance under the 2011 Long-term Incentive Plan and registration with the Securities and Exchange Commission.
 - c. Vesting: 50% on March 15, 2018¹ and 50% on March 15, 2019 (each a "Vesting Date"), subject to continued full-time employment with the Company at the time of each Vesting Date.

The final grant document will include customary provisions related to delivery of shares, tax obligations, and any other pertinent details.

3. With respect to Section 6, the parties hereto acknowledge and agree that the outstanding options of the Executive on the Closing Date under the 2011 Long-Term Incentive Plan for each Executive, shall remain outstanding and shall continue to vest in accordance with their respective terms.
4. The Company and each Executive agree and acknowledge that there is and shall be no assumption by the Buyer nor its parent company, Lee's Pharmaceutical Holdings Limited, a company incorporated in the Cayman Islands with limited liability, of (i) any vested or unvested shares of stock and any vested and unvested options to acquire the Company's stock held by such Executive, or (ii) any Convertible and Derivative Equity Securities (as defined in the Share Purchase) as a result of the consummation of the transactions contemplated by the Securities Purchaser Agreement dated as of October 27, 2017 by and between the Company and the Buyer (the "SPA"). (Capitalized terms used in this paragraph 4 but not otherwise defined in this Amendment) shall have the meanings ascribed to such terms in the SPA.)
5. If during the Effective Period (as defined in the Employment Agreement, as amended by this Amendment) following the transaction contemplated by the SPA and for so long as the Buyer is the controlling stockholder of the Company, if the Buyer nominates candidates for election to replace a majority of the Board of Directors during any 12 consecutive month period, no benefits shall accrue or be payable to Executive on account of such a "Change of Control" as defined in the respective Employment Agreement, as amended by this Amendment.

¹ In accordance with Amendment No. 1 to Restricted Stock Unit Award Agreement dated as of March 13, 2018 between the Company and Executive the March 15, 2018 Vesting Date has been revised to August 1, 2018.