
**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

October 22, 2020

Date of Report (Date of earliest event reported)

INVIVO THERAPEUTICS HOLDINGS CORP.

(Exact Name of Registrant as Specified in Charter)

Nevada
(State or Other
Jurisdiction of Incorporation)

001-37350
(Commission File Number)

36-4528166
(IRS Employer
Identification No.)

**One Kendall Square, Suite B14402
Cambridge, Massachusetts 02139**
(Address of Principal Executive Offices) (Zip Code)

(617) 863-5500
(Registrant's telephone number, including area code)

N/A
(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 (see General Instruction A.2. below):

- 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))

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, \$0.00001 par value per share	NVIV	The Nasdaq Capital Market

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 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 8.01. Other Information

On October 22, 2020, InVivo Therapeutics Holdings Corp. (the “Company”) entered into a Placement Agency Agreement (the “Placement Agency Agreement”) with H.C. Wainwright & Co., LLC (“Wainwright”) for a registered public offering (the “Offering”) of an aggregate of (i) 11,785,000 shares of common stock, \$0.00001 par value per share, of the Company (the “Shares”), (ii) Series B warrants (the “Series B Warrants”) exercisable for an aggregate of 6,965,000 shares of common stock and (iii) Series A Warrants (the “Series A Warrants”) exercisable for an aggregate of 18,750,000 shares of common stock (the Series A Warrants together with the Series B Warrants, the “Warrants”). The Offering will close on October 26, 2020, subject to customary closing conditions.

The Company’s net proceeds from the Offering, after deducting Wainwright’s placement agent fees and other estimated offering expenses payable by the Company, will be approximately \$13.5 million.

In connection with the Offering, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) on October 22, 2020 with certain institutional investors. The Purchase Agreement contains customary representations and warranties of the Company, termination rights of the parties, and certain indemnification obligations of the Company and ongoing covenants of the Company, including a prohibition on issuance of common stock or securities convertible or exchangeable into common stock by the Company for a period of 90 days after the date of the Purchase Agreement and a prohibition on the Company entering into variable rate transactions for a period of 12 months after the date of the Purchase Agreement, subject to certain exceptions.

The Series A Warrants are exercisable upon issuance at a price of \$0.80 per share of common stock, subject to adjustment in certain circumstances, and expire on October 27, 2025. The Series B Warrants are exercisable upon issuance at a price of \$0.00001 per share of common stock, subject to adjustment in certain circumstances, and expire when exercised in full, subject to certain conditions. The Shares and Series B Warrants were each offered together with the Series A Warrants, but the Shares and Warrants were issued separately from the Series A Warrants.

The offering price to the public was \$0.80 per Share and Series A Warrant and \$0.79999 per Series B Warrant and Series A Warrant. The Series B Warrants were issued and sold to certain purchasers whose purchase of shares of common stock in the Offering would have otherwise resulted in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, at the election of the purchaser, 9.99%) of the Company’s outstanding common stock immediately following the consummation of this Offering, if the purchaser so chose in lieu of shares of common stock that would otherwise result in the purchaser’s beneficial ownership exceeding 4.99% of the Company’s outstanding common stock (or at the election of the purchaser, 9.99%).

The Shares, Warrants and Placement Agent Warrants (as defined below) were issued pursuant to a registration statement on Form S-1 that was filed with the Securities and Exchange Commission (“SEC”) on October 6, 2020 and declared effective by the SEC on October 22, 2020 (File No. 333-249353).

The Company is also party to an engagement letter (the “Engagement Letter”) with Wainwright, pursuant to which Wainwright acted as exclusive placement agent for the Offering. In accordance with the terms of the Engagement Letter and the Placement Agency Agreement, the Company paid Wainwright a cash fee of \$1,050,000, which represents 7.0% of the gross proceeds of the Offering, a management fee of \$150,000, which represents 1.0% of the gross proceeds of the Offering, and \$12,900 for expenses of its clearing firm, and will reimburse Wainwright for its reasonable and documented legal fees and expenses up to \$66,000.

Pursuant to the Engagement Letter and the Placement Agency Agreement, the Company issued to Wainwright’s designees placement agent warrants (the “Placement Agent Warrants”) to purchase 1,218,750 shares of common stock, which represents a number of shares of common stock equal to 6.5% of the aggregate number of shares of common stock and Series B Warrants sold in the Offering. The Placement Agent Warrants have an exercise price of \$1.00 per share of common stock. The Placement Agent Warrants are exercisable upon issuance and expire October 22, 2025.

In addition, under the Engagement Letter the Company has granted to Wainwright, subject to certain exceptions, the right to act as the Company's exclusive agent, advisor or underwriter with respect to any offering of securities for capital raising purposes until October 31, 2021.

The descriptions of terms and conditions of the Series A Warrants, the Series B Warrants, the Placement Agent Warrants and the Purchase Agreement set forth herein are qualified in their entirety by the full text of the Form of Series A Warrant, Form of Series B Warrant, Form of Placement Agent Warrant and Form of Securities Purchase Agreement, which are filed as Exhibits 4.1, 4.2, 4.3 and 99.1, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

The opinion and consent of Ballard Spahr LLP, as to the validity of these shares of common stock, filed as Exhibits 5.1 and 23.1 to this Current Report on Form 8-K, respectively, are incorporated by reference into the Registration Statement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
<u>4.1</u>	<u>Form of Series A Warrant (incorporated by reference from Exhibit 4.12 to the Company's Amendment No. 1 to Registration Statement on Form S-1/A (File No. 333-249353), as filed with the SEC on October 16, 2020)</u>
<u>4.2</u>	<u>Form of Series B Pre-Funded Warrant (incorporated by reference from Exhibit 4.13 to the Company's Amendment No. 1 to Registration Statement on Form S-1/A (File No. 333-249353), as filed with the SEC on October 16, 2020)</u>
<u>4.3</u>	<u>Form of Placement Agent Warrant (incorporated by reference from Exhibit 4.14 to the Company's Amendment No. 1 to Registration Statement on Form S-1/A (File No. 333-249353), as filed with the SEC on October 16, 2020)</u>
<u>5.1</u>	<u>Opinion of Ballard Spahr LLP</u>
<u>23.1</u>	<u>Consent of Ballard Spahr LLP (included in Exhibit 5.1)</u>
<u>99.1</u>	<u>Form of Securities Purchase Agreement (incorporated by reference from Exhibit 10.24 to the Company's Amendment No. 1 to Registration Statement on Form S-1/A (File No. 333-249353), as filed with the SEC on October 16, 2020)</u>

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.

INVIVO THERAPEUTICS HOLDINGS CORP.

Date: October 23, 2020

By: /s/ Richard Toselli

Name: Richard Toselli

Title: President and Chief Executive Officer



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October 23, 2020

InVivo Therapeutics Holdings Corp.
One Kendall Square, Suite B14402
Cambridge, MA 02139

Re: Registration Statement on Form S-1

Ladies and Gentlemen:

We have acted as counsel to InVivo Therapeutics Holdings Corp., a Nevada corporation ("Corporation"), in connection with the Corporation's Registration Statement on Form S-1 (File No. 333-249353) (the "Base Registration Statement"), as filed with the United States Securities and Exchange Commission (the "Commission") on October 6, 2020 under the Securities Act of 1933, as amended (the "Securities Act"), and as amended on October 16, 2020 (the "Amended Registration Statement"). The prospectus contained within the Amended Registration Statement covers the sale of a proposed maximum aggregate offering price of \$31,218,750 of the following securities of the Corporation, the sale of which will be governed by a Placement Agency Agreement (the "PAA") to be entered into with H.C. Wainwright & Co., LLC, as placement agent, a Securities Purchase Agreement between the Corporation and each purchaser identified on the signature pages thereto (the "SPA" and, collectively with the PAA, the "Agreements") and, in the case of shares of Common Stock (as defined below) issuable upon exercise of the Warrants (as defined below), and warrant agreements with respect to such Warrants:

- (i) up to 11,785,000 shares of common stock (the "Offering Shares"), par value \$0.00001 per share (the "Common Stock");
 - (ii) Series A warrants (the "Series A Warrants") to purchase 18,750,000 shares of Common Stock (the "Series A Shares");
 - (iii) Series B pre-funded warrants (the "Series B Warrants") to purchase 6,965,000 shares of Common Stock (the "Series B Shares"); and
 - (iv) Placement Agent Warrants (the "Placement Agent Warrants" and, collectively with the Series A Warrants and the Series B Warrants, the "Warrants") to purchase a number of shares of Common Stock equal to 6.5% of the aggregate number of shares of Common Stock and Series B Warrants (the "Placement Agent Shares" and, collectively with the Offering Shares, the Series A Shares, and the Series B Shares, the "Shares" and, collectively with the Warrants, the "Securities").
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In connection therewith, we have examined, and relied upon the accuracy of factual matters contained in: (a) the Articles of Incorporation of the Corporation filed with the Nevada Secretary of State on April 2, 2003, as amended (the "Articles"); (b) the Amended and Restated Bylaws of the Corporation, dated as of March 29, 2016; (c) resolutions adopted by the Corporation's Board of Directors authorizing the filing of the Base Registration Statement and the Amended Registration Statement and the exhibits thereto with the Commission, the formation of the Pricing Committee, and subject to the final approval of the Pricing Committee, the issuance and sale of the Securities pursuant to the Agreements, amongst other items. We have also examined such corporate records and other agreements, documents and instruments, and such certificates or comparable documents of public officials and officers and representatives of the Corporation and have made such inquiries of such officers and representatives and have considered such matters of law as we have deemed appropriate as the basis for the opinion hereinafter set forth.

In delivering this opinion, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, photostatic or conformed copies, the authenticity of originals of all such latter documents, and the accuracy and completeness of all records, information and statements submitted to us by officers and representatives of the Corporation. In making our examination of documents executed by parties other than the Corporation, we have assumed that such parties had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization of all requisite action, corporate or other, and execution and delivery by such parties of such documents and the validity and binding effect thereof with respect to such parties.

The opinion expressed below is based on the assumption that the Amended Registration Statement, and any amendments or supplements thereto (including any post-effective amendments), have been filed by the Corporation with the Commission and will be effective at the time that any of the Securities are issued, and that persons acquiring the Securities will receive a prospectus containing all of the information required by Part I of the Amended Registration Statement before acquiring such Securities. We further assume that the Securities will continue to be duly and validly authorized on the dates that the Securities are issued, and, upon the issuance of any of the Securities, the total number of shares of Common Stock issued and outstanding, after giving effect to such issuance of such Securities, including the purchase of any Common Stock pursuant to the Warrants, will not exceed the total number of shares of Common Stock that the Corporation is then authorized to issue under the Articles.

Based upon the foregoing and subject to the assumptions, exceptions, limitations and qualifications set forth herein, we are of the opinion that:

1. With respect to the Shares (the “Offered Common Stock”), when, as and if (a) the Board of Directors or any duly appointed Pricing Committee has taken all necessary corporate action to fix and determine the terms of the Offered Common Stock and authorize their issuance and sale in accordance with the Articles, the Agreements, the terms of the Warrants, any warrant agreement, as applicable, including the reservation of a sufficient number of shares of Common Stock; (b) the Agreements, the terms of the Warrants, and any warrant agreement have been duly authorized, executed, and delivered by authorized officers of the parties thereto; (c) certificates representing the shares of the Offered Common Stock have been manually signed by an authorized officer of the transfer agent and registrar for the Common Stock and registered by such transfer agent and registrar, and delivered to the purchasers thereof; and (d) the Corporation receives consideration per share of the Offered Common Stock in such amount as may be determined by the Board of Directors or any duly appointed Pricing Committee, the issuance and sale of the shares of Offered Common Stock will have been duly authorized, and such shares of Offered Common Stock will be validly issued, fully paid and non-assessable.

2. With respect to the Warrants (the “Offered Warrants”), when, as and if (a) specifically authorized for issuance by the Board of Directors or any duly appointed Pricing Committee, including the reservation of a sufficient number of shares of Common Stock issuable upon exchange, exercise or conversion of such Offered Warrants; (b) the terms of the Warrants and any warrant agreement have been duly authorized, executed, and delivered by authorized officers of the parties thereto; (c) the terms of the Offered Warrants and their issuance and sale have been duly established in conformity with any such warrant agreement and do not violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Corporation and comply with any requirement and restriction imposed by any court or governmental body having jurisdiction over the Corporation; (d) the Offered Warrants have been duly executed and countersigned in accordance with any such warrant agreement or held in global form, and issued and sold as contemplated by the Amended Registration Statement; and (e) the Corporation has received the consideration for the Offered Warrants provided for in the resolutions of the Board of Directors or any duly appointed Pricing Committee, the issuance and sale of the Offered Warrants will have been duly authorized, and such securities will be legally valid and binding obligations of the Corporation.

This opinion is limited to the present laws of the State of Nevada. We express no opinion as to the laws of any other jurisdiction, of the United States of America, or to any state “Blue Sky” laws and regulations, and no opinion regarding the statutes, administrative decisions, rules and regulations or requirements of any county, municipality or subdivision or other local authority of any jurisdiction.

Our opinion is subject to the effect of applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer, marshalling or similar laws affecting creditors’ rights and remedies generally; general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether such enforceability is considered in a proceeding in equity or at law); and limitations on enforceability of rights to indemnification or contribution by federal or state securities laws or regulations or by public policy.

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We do not undertake to advise you or anyone else of any changes in the opinions expressed herein resulting from changes in law, changes in fact or any other matters that hereafter might occur or be brought to our attention.

We hereby consent to the sole use of this opinion as an exhibit to the Amended Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act and the rules and regulations promulgated thereunder.

Very truly yours,
/s/ Ballard Spahr LLP
