

DEPOMED INC  
Form 10-Q/A  
December 18, 2015

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**FORM 10-Q/A**

(Amendment No. 1)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934**

**FOR THE QUARTERLY PERIOD ENDED March 31, 2015**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934**

**FOR THE TRANSITION PERIOD FROM      TO**

**COMMISSION FILE NUMBER 001-13111**

**DEPOMED, INC.**

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

Edgar Filing: DEPOMED INC - Form 10-Q/A

**CALIFORNIA**  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

**94-3229046**  
(I.R.S. EMPLOYER  
IDENTIFICATION NUMBER)

**7999 Gateway Boulevard, Suite 300**

**Newark, California 94560**

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES, INCLUDING ZIP CODE)

**(510) 744-8000**

(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company, as defined in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of issued and outstanding shares of the Registrant's Common Stock, no par value, as of May 8, 2015 was 59,963,351.

**Explanatory Note**

Depomed, Inc. (the Company) is filing this Amendment No. 1 (this Amendment) to its Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, filed with the Securities and Exchange Commission (the Commission) on May 11, 2015 (the Form 10-Q). The sole purpose of this Amendment is to file revised versions of Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5 (the Exhibits) to the Form 10-Q in response to communications from the Staff of the Commission regarding a confidential treatment request made by the Company with respect to certain portions of the Exhibits.

Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, this Amendment restates in its entirety Item 6 of the Form 10-Q and contains new certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, which are filed herewith. Because no financial statements have been included in this amendment and this amendment does not contain or amend any disclosure with respect to Items 307 and 308 of Regulation S-K, paragraphs 3, 4 and 5 of such certifications have been omitted.

This Amendment should be read in conjunction with the Form 10-Q, which continues to speak as of the date of the Form 10-Q. Except as specifically noted above, this Amendment does not modify or update disclosures in the Form 10-Q. Accordingly, this Amendment does not reflect events occurring after the filing of the Form 10-Q or modify or update any related or other disclosures.

**ITEM 6. EXHIBITS**

(a) Exhibits

- 3.1 (1) Amended and Restated Articles of Incorporation
- 3.2 (2) Certificate of Amendment to Amended and Restated Articles of Incorporation
- 3.3 (3) Certificate of Determination of Series RP Preferred Stock of the Company
- 3.4 (4) Bylaws, as amended
- +10.1 (\*) Note Purchase Agreement dated March 12, 2015 among the Company and Deerfield Private Design Fund III, L.P., Deerfield Partners, L.P., Deerfield International Master Fund, L.P., Deerfield Special Situations Fund, L.P., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., BioPharma Secured Investments III Holdings Cayman LP, Inteligo Bank Ltd. and Phemus Corporation and Deerfield Private Design Fund III, L.P., as collateral agent
- +10.2 (\*) Security Agreement dated April 2, 2015 between the Company and Deerfield Private Design Fund III, L.P., as collateral agent
- +10.3 (\*) Assignment and Consent dated January 13, 2015 between the Company and Grünenthal GmbH related to the License Agreement (U.S.) dated January 13, 2015 between Grünenthal GmbH and Janssen Research and Development
- +10.4 (\*) Transitional Supply Agreement dated April 2, 2015 between the Company, Janssen Ortho LLC and Janssen Pharmaceuticals, Inc.
- +10.5 (\*) Supply Agreement dated April 2, 2015 between the Company and Noramco, Inc.
- 31.1 (\*) Certification pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934 of James A. Schoeneck
- 31.2 (\*) Certification pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934 of August J. Moretti
- 32.1 (\*\*\*) Certification pursuant to 18 U.S.C. Section 1350 of James A. Schoeneck
- 32.2 (\*\*\*) Certification pursuant to 18 U.S.C. Section 1350 of August J. Moretti
- 101 (\*\*\*) Interactive Data Files pursuant to Rule 405 of Regulation S-T

- 
- (1) Incorporated by reference to the Company's registration statement on Form SB-2 (File No. 333-25445)
  - (2) Incorporated by reference to the Company's Form 10-K filed on March 31, 2003
  - (3) Incorporated by reference to the Company's Form 10-Q filed on May 10, 2005
  - (4) Incorporated by reference to the Company's Form 8-K filed on April 19, 2005
  - \* Filed herewith
  - + Confidential treatment requested
  - \*\* Previously furnished with the Form 10-Q
  - \*\*\* Previously filed with the Form 10-Q

**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 thereunto duly authorized.

Date: December 18, 2015

DEPOMED, INC.

/s/ James A. Schoeneck  
James A. Schoeneck  
President and Chief Executive Officer

/s/ August J. Moretti  
August J. Moretti  
Chief Financial Officer