

**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

Date of Report (Date of Earliest Event Reported): December 23, 2020

KemPharm, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

001-36913
(Commission File Number)

20-5894398
(IRS Employer Identification No.)

1180 Celebration Boulevard, Suite 103,
Celebration, FL
(Address of Principal Executive Offices)

34747
(Zip Code)

Registrant's Telephone Number, Including Area Code: (321) 939-3416

(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 Instructions 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 | KMPH | None |

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 5.03 Amendments to Articles of Incorporation or ByLaws; Change in Fiscal Year.

On December 23, 2020, KemPharm, Inc., a Delaware corporation (the “Company”), issued a press release announcing that the Company's Board of Directors approved a 1-for-16 reverse stock split of its shares of common stock (the “Reverse Stock Split”). As a result of the Reverse Stock Split, every 16 shares of the Company’s common stock issued and outstanding as of 5:01 p.m. (Eastern Time) on December 23, 2020 will be automatically combined and converted into one share of common stock, par value \$0.0001 per share. The Company’s common stock will be assigned a new CUSIP number (488445 206) and is expected to begin trading on a split-adjusted basis on Monday, December 28, 2020. The Company will trade under a new and temporary ticker symbol "KMPHD" for a period of 20 business days including the effective date of the Reverse Stock Split. After the conclusion of the 20-business day period, the Company's common stock will resume trading under its previous ticker symbol “KMPH”. The Reverse Stock Split will reduce the number of shares of common stock issuable upon the conversion of the Company’s outstanding convertible notes and the exercise or vesting of its outstanding stock options and warrants in proportion to the ratio of the reverse stock split and will cause a proportionate increase in the conversion and exercise prices of such convertible notes, stock options and warrants. The Reverse Stock Split will not change the total number of authorized shares of common stock or preferred stock.

No fractional shares of common stock will be issued as a result of the Reverse Stock Split. Stockholders of record who would otherwise be entitled to receive a fractional share will receive a cash payment in lieu thereof. The Reverse Stock Split impacts all holders of the Company’s common stock proportionally and does not impact any stockholder’s percentage ownership of common stock (except to the extent the reverse stock split results in any stockholder owning only a fractional share).

The Reverse Stock Split was implemented pursuant to a Certificate of Amendment to the Company’s Amended and Restated Certificate of Incorporation, a copy of which is filed herewith as Exhibit 3.1 and incorporated herein by reference. The Company effected the Reverse Stock Split in accordance with the authority granted to the Company’s Board of Directors by the Company’s Stockholders at the Special Meeting of Stockholders held on November 17, 2020.

The Press Release announcing the Reverse Stock Split is attached hereto as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit

| No. | Description |
|------------|---|
| 3.1 | <u>Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Company, effective as of December 23, 2020.</u> |
| 99.1 | <u>Press Release titled "KemPharm Announces 1-for-16 Reverse Stock Split" dated December 23, 2020.</u> |

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.

KemPharm, Inc.

Date: December 23, 2020

By: /s/ R. LaDuane Clifton

R. LaDuane Clifton, CPA

Chief Financial Officer, Secretary and Treasurer

**CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
KEMPHARM, INC.**

KEMPHARM, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby certify:

FIRST: The name of the corporation is KemPharm, Inc. (the “**Company**”).

SECOND: The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was May 28, 2014 under the name “KemPharm, Inc.”

THIRD: The Board of Directors (the “**Board**”) of the Company, acting in accordance with the provisions of Sections 141 and 242 of the DGCL, adopted resolutions amending its Amended and Restated Certificate of Incorporation, as amended, as follows:

1. Article IV of the Amended and Restated Certificate of Incorporation of the Company is hereby amended to add the following provisions in their entirety to the existing provisions of Article IV immediately preceding Section A of Article IV:

“Effective at 5:01 p.m. Eastern time, on the date of the filing of this Certificate of Amendment to the Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the “Effective Time”), the shares of the Company’s Common Stock, par value \$0.0001 per share, issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Company immediately prior to the Effective Time shall be combined into a smaller number of shares such that each 16 shares of issued and outstanding Common Stock immediately prior to the Effective Time are combined into one validly issued, fully paid and nonassessable share of Common Stock, par value \$0.0001 per share. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued and, in lieu thereof, upon surrender after the Effective Time of a certificate which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the combination, following the Effective Time (after taking into account all fractional shares of Common Stock otherwise issuable to such holder), shall be entitled to receive a cash payment equal to the fraction to which such holder would otherwise be entitled multiplied by the fair value of the Common Stock on the date of the Effective Time, as determined by the Board.

Each stock certificate that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been combined (as well as the right to receive cash in lieu of fractional shares of Common Stock after the Effective Time), provided however, that each person of record holding a certificate that represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been combined.”

FOURTH: Thereafter, pursuant to a resolution by the Board, this Certificate of Amendment was submitted to the stockholders of the Company for their approval in accordance with the provisions of Section 211 and 242 of the DGCL. Accordingly, said proposed amendment has been adopted in accordance with Section 242 of the DGCL.

IN WITNESS WHEREOF, KEMPHARM, INC. has caused this Certificate of Amendment to be signed by its duly authorized officer this 23rd day of December, 2020.

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton

R. LaDuane Clifton, CPA

Chief Financial Officer, Secretary and Treasurer



KemPharm Announces 1-for-16 Reverse Stock Split

Celebration, FL – December 23, 2020 – KemPharm, Inc. (OTCQB: KMPH), a specialty pharmaceutical company focused on the discovery and development of proprietary prodrugs, today announced that the Company's Board of Directors has approved a 1-for-16 reverse stock split of its shares of common stock ("Reverse Stock Split"). KemPharm's stockholders granted authority to the Board of Directors to effect this Reverse Stock Split of KemPharm's common stock at the Special Meeting of Stockholders held on November 17, 2020. The Reverse Stock Split is intended to enable the Company to potentially regain its listing on The Nasdaq Capital Market.

The Reverse Stock Split is scheduled to take effect today, December 23, 2020, at 5:01 p.m. ET (the "Effective Time"). Shares of the Company's common stock are expected to begin trading on a split-adjusted basis on Monday, December 28, 2020. The Company's common stock will trade under a new and temporary ticker symbol "KMPHD" for a period of 20 business days including the effective date of the Reverse Stock Split. After the conclusion of the 20-business day period, KemPharm's common stock will resume trading under its previous ticker symbol "KMPH". but the security will be assigned a new CUSIP number (488445 206)

As a result of the Reverse Stock Split, every sixteen (16) shares of the Company's pre-reverse split common stock will be combined and reclassified into one (1) share of common stock. By doing so, the number of outstanding shares of the Company's common stock will be reduced from approximately 72.5 million to approximately 4.5 million shares. No fractional shares of common stock will be issued to any stockholders in connection with the Reverse Stock Split. Any fractional shares resulting from the Reverse Stock Split will be paid to each stockholder in an amount in cash resulting from multiplying (i) the closing sales price of the Company's common stock as reported on the OTC Markets Venture Market on December 23, 2020 by (ii) the number of shares of the Company's common stock held by such stockholder before the Reverse Stock Split that would otherwise have been exchanged for such fractional share interest.

KemPharm expects that stockholders holding shares of KMPH common stock at registered brokerage firms or at the transfer agent will have the Reverse Stock Split processed automatically in their accounts over the next few days. Stockholders holding physical stock certificates may request new certificates evidencing their post-Reverse Stock Split shares by contacting the Company's transfer agent, Computershare Trust Company, N.A., at (800) 962-4284.

About KemPharm:

KemPharm is a specialty pharmaceutical company focused on the discovery and development of proprietary prodrugs to treat serious medical conditions through its proprietary LAT® (Ligand Activated Therapy) technology. KemPharm utilizes its proprietary LAT® technology to generate improved prodrug versions of FDA-approved drugs as well as to generate prodrug versions of existing compounds that may have applications for new disease indications. KemPharm's prodrug product candidate pipeline is focused on the high need areas of attention deficit hyperactivity disorder, or ADHD, and stimulant use disorder. KemPharm's co-lead clinical development candidates for the treatment of ADHD, KP415 and KP484, are both based on a prodrug of d-methylphenidate, but have differing duration/effect profiles. In addition, KemPharm has received FDA approval for APADAZ®, an immediate-release combination product containing benzhydrocodone, a prodrug of hydrocodone, and acetaminophen. For more information on KemPharm and its pipeline of prodrug product candidates visit www.kempharm.com or connect with us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

Caution Concerning Forward Looking Statements:

This press release may contain forward-looking statements made in reliance upon the safe harbor provisions of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include all statements that do not relate solely to historical or current facts, including without limitation the Company's proposed development and commercial timelines, and can be identified by the use of words such as "may," "will," "expect," "project," "estimate," "anticipate," "plan," "believe," "potential," "should," "continue" or the negative versions of those words or other comparable words. Forward-looking statements are not guarantees of future actions or performance. These forward-looking statements, including the potential to regain listing of the Company's common stock on The Nasdaq Capital Market, are based on information currently available to KemPharm and its current plans or expectations and are subject to a number of uncertainties and risks that could significantly affect current plans. Risks concerning KemPharm's business are described in detail in KemPharm's Annual Report on Form 10-K for the year ended December 31, 2019, KemPharm's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, and KemPharm's other Periodic and Current Reports filed with the Securities and Exchange Commission. KemPharm is under no obligation to, and expressly disclaims any such obligation to, update or alter its forward-looking statements, whether as a result of new information, future events or otherwise.

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