

DEPOMED INC  
Form 8-K  
July 13, 2015

**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): **July 7, 2015**

**DEPOMED, INC.**

(Exact name of registrant as specified in its charter)

**001-13111**

(Commission File Number)

**California**  
(State or other jurisdiction of  
incorporation)

**94-3229046**  
(I.R.S. Employer Identification No.)

**7999 Gateway Blvd, Suite 300, Newark, California 94560**

(Address of principal executive offices, with zip code)

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(510) 744-8000

(Registrant's telephone number, including area code)

**Not Applicable**

(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))

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Items 1.01 and 3.03

**Modification to Rights of Security Holders.**

**Entry into a Material Definitive Agreement; Material**

*Rights Agreement*

On July 12, 2015, the Board of Directors (the *Board*) of Depomed, Inc., a California corporation (the *Company*) declared a dividend of one right (*Right*) for each outstanding share of the Company's Common Stock, no par value (*Common Stock*), to shareholders of record at the close of business on July 23, 2015. Each Right entitles the registered holder to purchase from the Company a unit consisting of one one-hundredth of a share (a *Fractional Share*) of Series B Junior Participating Preferred Stock, no par value (the *Preferred Stock*), at a purchase price of \$105.00 per Fractional Share, subject to adjustment (the *Purchase Price*). The description and terms of the Rights are set forth in a Rights Agreement dated as of July 12, 2015 as it may from time to time be supplemented or amended (the *Rights Agreement*) between the Company and Continental Stock Transfer & Trust Company, as Rights Agent.

Initially, the Rights will be attached to all outstanding shares of Common Stock, and no separate certificates for the Rights (*Rights Certificates*) will be distributed. The Rights will separate from the Common Stock and a *Distribution Date* will occur, with certain exceptions, upon the earlier of (i) 10 days following a public announcement that a person or group of affiliated or associated persons (an *Acquiring Person*) has acquired, or obtained the right to acquire, beneficial ownership of 10% or more of the outstanding shares of Common Stock (the date of the announcement being the *Stock Acquisition Date*), or (ii) 10 business days following the commencement of a tender offer or exchange offer that would result in a person's becoming an *Acquiring Person*. In certain circumstances, the *Distribution Date* may be deferred by the Board. Certain inadvertent acquisitions will not result in a person's becoming an *Acquiring Person* if the person promptly divests itself of sufficient Common Stock. If at the time of the adoption of the Rights Agreement, any person or group of affiliated or associated persons is the beneficial owner of 10% or more of the outstanding shares of Common Stock, such person shall not become an *Acquiring Person* unless and until certain increases in such person's beneficial ownership occur or are deemed to occur. Until the *Distribution Date*, (a) the Rights will be evidenced by the Common Stock certificates (together with a copy of the Summary of Rights or bearing the notation referred to below) and will be transferred with and only with such Common Stock certificates, (b) new Common Stock certificates issued after July 23, 2015 will contain a notation incorporating the Rights Agreement by reference and (c) the surrender for transfer of any certificate for Common Stock (with or without a copy of the Summary of Rights) will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate. If any Common Stock is held in book-entry accounts through a direct registration service of the Company's transfer agent, the associated Rights will be evidenced and transferred as set forth in the Rights Agreement.

The Rights are not exercisable until the *Distribution Date* and will expire at the close of business on the date of the Company's next annual meeting of shareholders occurring

after the date of the Rights Agreement, unless earlier redeemed or exchanged by the Company as described below.

Certain synthetic interests in securities created by derivative positions whether or not such interests are considered to be ownership of the underlying Common Stock or are reportable for purposes of Regulation 13D of the Securities Exchange Act of 1934 are treated as beneficial ownership of the number of shares of Common Stock equivalent to the economic exposure created by the derivative position, to the extent actual shares of Common Stock are directly or indirectly held by counterparties to the derivatives contracts. Swaps dealers unassociated with any control intent or intent to evade the purposes of the Rights Agreement are excepted from such imputed beneficial ownership.

As soon as practicable after the Distribution Date, Rights Certificates will be mailed to holders of record of Common Stock as of the close of business on the Distribution Date and, from and after the Distribution Date, the separate Rights Certificates alone will represent the Rights. All shares of Common Stock issued prior to the Distribution Date will be issued with Rights. Shares of Common Stock issued after the Distribution Date in connection with certain employee benefit plans or upon conversion of certain securities will be issued with Rights. Except as otherwise determined by the Board, no other shares of Common Stock issued after the Distribution Date will be issued with Rights. If the Company elects to distribute any Rights by crediting book-entry accounts, such Rights will be credits to the book-entry accounts, separate Rights Certificates will not be issued with respect to such Rights, and any legend may be placed on the relevant direct registration transaction advice instead of on a Rights Certificate.

In the event (a Flip-In Event ) that a person becomes an Acquiring Person, each holder of a Right will thereafter have the right to receive, upon exercise of such Right, a number of shares of Common Stock (or, in certain circumstances, cash, property or other securities of the Company) having a Current Market Price (as defined in the Rights Agreement) equal to two times the exercise price of the Right. Notwithstanding the foregoing, following the occurrence of any Triggering Event, all Rights that are, or (under certain circumstances specified in the Rights Agreement) were, beneficially owned by or transferred to an Acquiring Person (or by certain related parties) will be null and void in the circumstances set forth in the Rights Agreement.

In the event (a Flip-Over Event ) that, at any time from and after the time an Acquiring Person becomes such, (i) the Company is acquired in a merger or other business combination transaction, or (ii) 50% or more of the Company's assets, cash flow or earning power is sold or transferred, each holder of a Right (except Rights that are voided as set forth above) shall thereafter have the right to receive, upon exercise, a number of shares of common stock of the acquiring company having a Current Market Price equal to two times the exercise price of the Right. Flip-In Events and Flip-Over Events are collectively referred to as Triggering Events.

The number of outstanding Rights associated with a share of Common Stock, or the number of Fractional Shares of Preferred Stock issuable upon exercise of a Right and the

Purchase Price, are subject to adjustment in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Common Stock occurring prior to the Distribution Date. The Purchase Price payable, and the number of Fractional Shares of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution in the event of certain transactions affecting the Preferred Stock.

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price. No fractional shares of Preferred Stock that are not integral multiples of a Fractional Share are required to be issued upon exercise of Rights and, in lieu thereof, an adjustment in cash may be made based on the market price of the Preferred Stock on the last trading date prior to the date of exercise. Pursuant to the Rights Agreement, the Company reserves the right to require prior to the occurrence of a Triggering Event that, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Preferred Stock will be issued.

At any time until the time a Person becomes an Acquiring Person, the Company may redeem the Rights in whole, but not in part, at a price of \$0.01 per Right, payable, at the option of the Company, in cash, shares of Common Stock or such other consideration as the Board may determine. Immediately upon the effectiveness of the action of the Board ordering redemption of the Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the \$0.01 redemption price. The Rights Plan does not prevent a shareholder from conducting a proxy contest to remove and replace the Board with directors who then vote to redeem the Rights, if such actions are taken prior to the time that such shareholder becomes an Acquiring Person.

At any time after the occurrence of a Flip-In Event and prior to a person's becoming the beneficial owner of 50% or more of the shares of Common Stock then outstanding or the occurrence of a Flip-Over Event, the Company may exchange the Rights (other than Rights owned by an Acquiring Person or an affiliate or an associate of an Acquiring Person, which will have become void), in whole or in part, at an exchange ratio of one share of Common Stock, and/or other equity securities deemed to have the same value as one share of Common Stock, per Right, subject to adjustment.

Until a Right is exercised, the holder thereof, as such, will have no rights as a shareholder of the Company, including, without limitation, the right to vote or to receive dividends. While the distribution of the Rights should not be taxable to shareholders or to the Company, shareholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Common Stock (or other consideration) of the Company or for the common stock of the acquiring company as set forth above or are exchanged as provided in the preceding paragraph.

Other than the redemption price, any of the provisions of the Rights Agreement may be amended by the Board as long as the Rights are redeemable. Thereafter, the provisions of the Rights Agreement other than the redemption price may be amended by the Board in order to cure any ambiguity, defect or inconsistency, to make changes that do not materially adversely

affect the interests of holders of Rights (excluding the interests of any Acquiring Person), or to shorten or lengthen any time period under the Rights Agreement; *provided, however*, that no amendment to lengthen the time period governing redemption shall be made at such time as the Rights are not redeemable.

This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, a copy of which is attached hereto as Exhibit 4.1 and is incorporated herein by reference.

The Rights will have certain anti-takeover effects. The Rights will cause substantial dilution to any person or group that attempts to acquire the Company without the approval of the Board. As a result, the overall effect of the Rights may be to render more difficult or discourage any attempt to acquire the Company even if such acquisition may be favorable to the interests of the Company's shareholders. The Rights may also have the effect of assuring that all of the Company's shareholders receive fair and equal treatment in the event of any proposed takeover of the Company and to guard against partial tender offers, open market accumulations and other abusive or coercive tactics to gain control of the Company without paying all shareholders a control premium. Because the Board can redeem the Rights or amend the Rights Agreement, the Rights should not interfere with a merger or other business combination approved by the Board.

The information set forth under Item 5.03 below is incorporated by reference into this Item 3.03.

**Item 5.03** **Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

*Certificate of Determination - Series B Junior Participating Preferred Stock*

On July 13, 2015, in connection with the Rights Agreement, the Company filed a Certificate of Determination with the Secretary of State of the State of California with respect to the Series B Junior Participating Preferred Stock setting forth the terms of the Series B Preferred Stock issuable upon exercise of the Rights, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

The information set forth under Items 1.01 and 3.03 above are incorporated by reference into this Item 5.03.

*Amended and Restated Bylaws*

On July 12, 2015, the Board adopted and approved an amendment and restatement to the Company's Bylaws (the Amended Bylaws). The Amended Bylaws, among other things, provide for the establishment of a measurement record date for purposes of ascertaining shareholders eligible to call for a special meeting of shareholders and establish certain other procedures relating to the calling of a special meeting of shareholders. The Amended Bylaws also supplement the advanced notice requirements and procedures for the submission by shareholders of nominations for the board of

directors and of other proposals to be presented at shareholder meetings, and provide that the exclusive forum for any shareholder to bring any: (i) derivative action, (ii) claim asserting a breach of fiduciary duty, (iii) action under

the California Corporations Code or the Company's organizational documents or (iv) other action relating to the internal affairs of the Company, shall in each case be the Santa Clara County Superior Court within the State of California or, if no state court located within the State of California has jurisdiction, the federal district court for the Northern District of California. The Amended Bylaws also make certain other ministerial changes.

This summary description of the Amended Bylaws does not purport to be complete and is qualified in its entirety by reference to the Amended Bylaws, a copy of which is attached hereto as Exhibit 3.2 and is incorporated herein by reference. All of the changes approved by the Board are shown in the marked version comparing the Amended Bylaws to the Company's Bylaws as in effect immediately prior to such Board approval filed as Exhibit 3.3 hereto.

*Amendment of the Certificate of Determination*

On July 13, 2015, the Company filed with the Secretary of State of the State of California a Certificate of Amendment reducing the number of designated Series RP Preferred Stock to zero (the Series RP Amendment); as a result, all shares of preferred stock designated as Series RP Preferred Stock were eliminated, returned to the status of authorized but unissued shares of undesignated preferred stock and the series is cancelled.

The foregoing is a summary of the terms of the Series RP Amendment. The summary does not purport to be complete and is qualified in its entirety by reference to the Series RP Amendment, a copy of which is attached as Exhibit 3.4 and incorporated herein by reference.

**Item 8.01.**

**Other Events.**

On July 7, 2015, the Company issued a press release to confirm that the Board had unanimously rejected an unsolicited proposal from Horizon Pharma plc to acquire all of the outstanding shares of the Company. A copy of the press release is attached hereto as Exhibit 99.1.



**Item 9.01.**

**Financial Statements and Exhibits.**

(d) Exhibits

3.1 Certificate of Determination of Series B Junior Participating Preferred Stock of Depomed, Inc.

3.2 Amended and Restated Bylaws of Depomed, Inc.

3.3 Marked Comparison of the Bylaws

3.4 Certificate of Amendment to Certificate of Determination of Series RP Preferred Stock of Depomed, Inc.

4.1 Rights Agreement dated as of July 12, 2015 between Depomed, Inc. and Continental Stock Transfer & Trust Company, as Rights Agent, which includes as Exhibit A the form of Certificate of Determination of Series B Junior Participating Preferred Stock setting forth the terms of the Preferred Stock, as Exhibit B the form of Rights Certificate and as Exhibit C the Summary of Rights to Purchase Preferred Stock

99.1 Depomed, Inc. Press Release dated July 7, 2015

**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.

DEPOMED, INC.

Date: July 13, 2015

By: /s/ Matthew M. Gosling  
Name: Matthew M. Gosling  
Title: Senior Vice President, General Counsel and  
Secretary

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
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3.3	Marked Comparison of the Bylaws
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