

VERU INC.
Form 8-K
September 27, 2018

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): September 27, 2018

VERU INC.

(Exact name of registrant as specified in its charter)

Wisconsin
(State or other jurisdiction

1-13602
(Commission

39-1144397
(IRS Employer

of incorporation)

File Number)

Identification No.)

4400 Biscayne Boulevard, Suite 888, Miami, Florida 33137

Edgar Filing: VERU INC. - Form 8-K

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (305) 509-6897

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 (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))

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 1.01 Entry into a Material Definitive Agreement

On September 27, 2018, Veru Inc. (the Company) entered into an underwriting agreement (the Underwriting Agreement) with Cantor Fitzgerald & Co. (Cantor), as representative of the underwriters named therein (the Underwriters), relating to the offering, issuance and sale (the Offering) of 7,142,857 shares of the Company's common stock, par value \$0.01 per share, at a public offering price of \$1.40 per share. Pursuant to the Underwriting Agreement, the Company has granted the Underwriters a 30-day option to purchase additional shares of Common Stock in an amount not to exceed 1,071,428 shares. The net proceeds to the Company from this offering, excluding any exercise by the underwriters of their 30-day option to purchase additional shares, are expected to be approximately \$9.2 million after deducting underwriting discounts and commissions and estimated expenses payable by the Company. The closing of the sale of the shares in the Offering is expected to occur on or about October 1, 2018, subject to customary closing conditions. All of the shares in the Offering are being sold by the Company.

The Offering is being made pursuant to the Company's effective shelf registration statement on Form S-3 (Registration No. 333-221120) previously filed with the Securities and Exchange Commission (the SEC) and a related prospectus supplement and accompanying base prospectus filed with the SEC.

The Underwriting Agreement contains customary representations, warranties and agreements by the Company, customary conditions to closing, indemnification obligations of the Company and the Underwriters, including for liabilities under the Securities Act of 1933, as amended, other obligations of the parties and termination provisions. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the Underwriting Agreement and may be subject to limitations agreed upon by the contracting parties. In addition, pursuant to the terms of the Underwriting Agreement and subject to certain exceptions, the Company and all of its directors and officers have agreed not to offer, sell or agree to sell, directly or indirectly, any shares of the Company's common stock without the consent of Cantor for a period of 90 days after the date of the Underwriting Agreement.

The Underwriting Agreement is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference. The foregoing description of the terms of the Underwriting Agreement is qualified in its entirety by reference to such exhibit.

The legal opinion of Reinhart Boerner Van Deuren s.c. relating to the legality of the issuance and sale of the shares in the Offering is attached as Exhibit 5.1 to this Current Report on Form 8-K.

Item 8.01 Other Events

On September 26, 2018, the Company issued a press release announcing the Offering, and on September 27, 2018, the Company issued a press release announcing the pricing of the Offering. A copy of each press release is filed as Exhibit 99.1 and Exhibit 99.2, respectively, to this Current Report on Form 8-K and is incorporated by reference herein.

Effective as of December 31, 2017, the Company entered into an Executive Employment Agreement (the Fisch Employment Agreement) with Dr. Harry Fisch, a member of the Company's Board of Directors. The Fisch Employment Agreement replaced the Consulting Agreement, dated as of January 1, 2017, between the Company and Dr. Fisch. A copy of the Fisch Employment Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K.

Forward-Looking Statements

This report contains forward-looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. Forward-looking statements in this report can be identified by the use of forward-looking words or phrases

such as anticipate, believe, could, expect, intend, may, opportunity, plan, predict, potential, estimate, or would or the negative of these terms or other words of similar meaning. Any forward-looking statements in this release are based upon the Company's current plans and strategies and reflect the Company's current assessment of the risks and uncertainties related to its business and are made as of the date of this report. The Company assumes no obligation to update any forward-looking statements contained in this release because of new information or future events, developments or circumstances. Such forward-looking statements are subject to known and unknown risks, uncertainties and assumptions, and if any such risks or uncertainties materialize or if any of the assumptions prove incorrect, our actual results could differ materially from those expressed or implied by such statements. Factors that may cause actual results to differ materially from those contemplated by such forward-looking statements include, but are not limited to, uncertainties related to market conditions and the satisfaction of customary closing conditions related to the proposed public offering and the Company's expectations regarding the use of proceeds therefrom. This list is not exhaustive and other risks are detailed in the Company's periodic reports filed with the SEC, including the Company's Form 10-K for the year ended September 30, 2017, which are available at www.sec.gov.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed herewith:

Exhibit No.	Document
1.1	<u>Underwriting Agreement dated September 27, 2018, by and between Veru Inc. and Cantor Fitzgerald & Co., as representative of the underwriters named therein.</u>
5.1	<u>Opinion of Reinhart Boerner Van Deuren s.c.</u>
10.1	<u>Executive Employment Agreement, dated as of December 31, 2017, between Veru Inc. and Harry Fisch, MD, FACS.</u>
23.1	<u>Consent of Reinhart Boerner Van Deuren s.c. (included in Exhibit 5.1).</u>
99.1	<u>Press Release dated September 26, 2018.</u>
99.2	<u>Press Release dated September 27, 2018.</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 hereunto duly authorized.

Date: September 27, 2018

VERU INC.

By: /s/ Michele Greco
Michele Greco
Chief Financial Officer and
Chief Administrative Officer