
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 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): August 31, 2023

Baudax Bio, Inc.

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction of
incorporation or organization)

001-39101
(Commission
File Number)

47-4639500
(I.R.S. Employer
Identification No.)

490 Lapp Road, Malvern, Pennsylvania
(Address of principal executive offices)

19355
(Zip Code)

Registrant's telephone number, including area code: (484) 395-2470

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))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of Exchange on Which Registered
Common Stock, par value \$0.01	BXRX	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 (Sec.230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (Sec.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 August 31, 2023, Baudax Bio entered into Amendment No. 7 to the Credit Agreement (the “Amendment”), by and among Baudax Bio, Baudax Bio N.A. LLC, Baudax Bio Limited and TeraImmune, LLC, the lenders party thereto (the “Lenders”) and Wilmington Trust, National Association, solely in its capacity as administrative and collateral agent for the Lenders, which modifies that certain Credit Agreement, dated as of May 29, 2020 (as amended from time to time, the “Credit Agreement”). Pursuant to the Amendment, the Lenders agreed to, among other things, defer certain loan amortization payments and waive the minimum liquidity financial maintenance covenant until December 31, 2023.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the agreement which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

EXHIBIT INDEX

Exhibit Number	Description
10.1	<u>Amendment No. 7 to Credit Agreement, dated as of August 31, 2023, by and among Baudax Bio, Baudax Bio N.A. LLC, Baudax Bio Limited and TeraImmune, LLC, the lenders party thereto and Wilmington Trust, National Association.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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 5, 2023

Baudax Bio, Inc.

By: /s/ Gerri A. Henwood

Name: *Gerri A. Henwood*

Title: *President and Chief Executive Officer*

AMENDMENT NO. 7 TO CREDIT AGREEMENT

This Amendment No. 7 to Credit Agreement (this "Amendment") dated as of August 31, 2023, is among Baudax Bio, Inc., a Pennsylvania corporation ("Borrower"), Baudax Bio N.A. LLC, a Delaware limited liability company ("Baudax LLC"), Baudax Bio Limited, a private company incorporated under the laws of Ireland limited by shares having company number 562027 ("Baudax Limited"), TeraImmune, LLC, a Delaware limited liability company ("TeraImmune") and together with Baudax LLC and Baudax Limited, collectively, the "Guarantors" and, together with the Borrower, the "Loan Parties", Wilmington Trust, National Association, not individually, but solely in its capacity as administrative and collateral agent for the Lender (the "Agent") and the Lender party hereto (constituting the only Lender under the Credit Agreement (as defined below)).

WHEREAS, the Borrower, Baudax LLC, Baudax Limited, the Lender and the Agent are party to that certain Forbearance Agreement, dated as of June 29, 2023, as amended by that certain Amendment No. 1 to Forbearance Agreement and Amendment No. 6 to Credit Agreement, dated as of July 28, 2023 (as it may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, collectively, the "Forbearance Agreement");

WHEREAS, the Borrower, the Lender and the Agent are party to that certain Credit Agreement, dated as of May 29, 2020, as amended by that certain Amendment No. 1 and Waiver to Credit Agreement, dated as of August 1, 2022, that certain Amendment No. 2 to Credit Agreement, dated as of October 24, 2022, that certain Amendment No. 3 to Credit Agreement, dated as of November 30, 2022, that certain Amendment No. 4 to Credit Agreement, dated as of January 5, 2023, that certain Amendment No. 5 and Consent to Credit Agreement, dated as of March 29, 2023, the Forbearance Agreement and that certain Amendment No. 1 to Forbearance Agreement and Amendment No. 6 to Credit Agreement, dated as of July 28, 2023 (as it may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement"), pursuant to which the Lender agreed to make loans to the Borrower on the terms set forth therein;

WHEREAS, the Loan Parties are requesting that the Agent and Lender agree to make certain amendments to the Credit Agreement as described herein, and the Agent and the Lender are willing to do so under the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions: Loan Document. Capitalized terms used herein without definition shall have the meanings assigned to such terms in the Credit Agreement. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

2. Amendments to Credit Agreement. Upon the effectiveness of this Amendment, the Credit Agreement is hereby amended as follows:

(a) Section 1.1 of the Credit Agreement is amended by inserting the following definitions in alphabetical order:

"2023 Amortization Shortfall" means the amount equal to (a) \$1,350,000, *minus* (b) the sum (without duplication) of (i) all optional prepayments of principal of the Loans under Section 2.4.3 from and after the Amendment No. 7 Effective Date, *plus* (ii) the amount in excess of \$500,000 of each amortization payment made on an Interest Payment Date under Section 2.4.1(a)(vii), *plus* (iii) a Qualifying Equity Financing Payment."

“Amendment No. 7 Effective Date” means August 31, 2023.”

“Qualifying Equity Financing” means any equity financing pursuant to which the sale or issuance by the Borrower of its Capital Stock generates gross cash proceeds of at least \$5,000,000.”

“Qualifying Equity Financing Payment” has the meaning set forth in Section 2.4.2.

“Second Amortization Date” means the date that the 2023 Amortization Shortfall equals zero dollars (\$0).”

(b) Section 2.4.1 of the Credit Agreement is amended and restated in its entirety as follows:

“2.4.1 Amortization.

(a) Subject to earlier Payment In Full following the occurrence of an Event of Default or termination of this Agreement, the Borrower shall repay the Loans as follows: (i) commencing on the Amortization Date, and on each Interest Payment Date thereafter until the Interest Payment Date on December 1, 2022, in equal monthly installments of principal based on an amortization schedule of 36 months, (ii) an additional payment of principal in the amount of \$300,000 by December 31, 2022, (iii) a payment of principal in the amount of \$500,000 on January 3, 2023, (iv) on each of the Interest Payment Dates on February 1, 2023 and March 1, 2023, a payment of principal in the amount of \$300,000, (v) on the Interest Payment Date on April 3, 2023 and on each Interest Payment Date thereafter prior to September 1, 2023, a payment of principal in the amount of \$500,000, (vi) on each of the Interest Payment Dates on September 1, 2023, October 1, 2023 and November 1, 2023, a payment of principal in the amount of \$50,000, (vii) commencing on December 1, 2023, and on each Interest Payment Date thereafter prior to the Second Amortization Date, a payment of principal in the amount of \$500,000, *plus* \$300,000 (or such lesser amount that would cause the 2023 Amortization Shortfall to equal zero dollars (\$0) (provided, that to the extent Borrower will pay a lesser amount that would cause the 2023 Amortization Shortfall to equal zero dollars (\$0), Borrower shall provide Agent with written notice at least five (5) Business Days (or such later date as the Agent agrees to in its sole discretion) prior to such payment indicating the amount of such principal payment that will cause the 2023 Amortization Shortfall to equal zero dollars (\$0))), and (viii) commencing on the first Interest Payment Date following the Second Amortization Date and on each Interest Payment Date thereafter, a payment of principal in the amount of \$500,000.

(b) The amount of each amortization payment specified in Section 2.4.1(a) as received by the Agent and reflected in the Register shall be binding on the Borrower absent manifest error.”

(c) Section 2.4.2 of the Credit Agreement is amended by adding the following language at the end thereof:

“From and after the Amendment No. 7 Effective Date, if a Qualifying Equity Financing occurs, within five (5) Business Days of the consummation of such Qualifying Equity Financing, the Borrower shall prepay the Obligations in an amount that would cause the 2023 Amortization Shortfall, after giving effect to such prepayment, to equal zero dollars (\$0) (a “Qualifying Equity Financing Payment”) (together with payment to the Agent, for the benefit of the Lenders, of the amounts described in Section 2.12.2); provided, that the Borrower shall not be required to make more than one (1) Qualifying Equity Financing Payment.”

(d) Section 7.17.1 of the Credit Agreement is amended and restated in its entirety as follows:

“7.17.1 Liquidity Accounts. From and after December 31, 2023, not suffer or permit the aggregate amount of cash in the Liquidity Accounts to be less than \$1,000,000 at any time.

3. Conditions to Effectiveness. This Amendment shall become effective on the date (such date, the “Effective Date”) on which the following conditions are satisfied:

- (a) the Agent and the Lender shall have received counterpart signatures to this Amendment duly executed and delivered by the Loan Parties, the Agent and the Lender; and
- (b) the representations and warranties in Section 4 shall be true and correct.

4. Representations and Warranties. The Loan Parties represent and warrant to the Lender and the Agent that, after giving effect to this Amendment:

(a) The representations and warranties of the Loan Parties contained in the Forbearance Agreement are true, accurate and correct in all material respects (without duplication of any materiality qualifiers); provided, however, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects (without duplication of any materiality qualifiers) as of such date.

(b) Except for the Specified Defaults referred to in the Forbearance Agreement and after giving effect to this Amendment, no Default or Event of Default under the Loan Documents has occurred and is continuing or would result from the effectiveness of this Amendment.

5. Reimbursement of Costs and Expenses. On or prior to October 15, 2023, Borrower shall pay (or cause to be paid), without duplication:

- (a) to Agent, for its own account, an amendment fee of \$5,000, which shall be fully earned and non-refundable as of the date hereof; and
- (b) to Agent and the Lender, all fees and reasonable and documented out-of-pocket expenses incurred in connection with the negotiation, preparation, execution and delivery of this Amendment and any other Loan Documents.

6. No Implied Amendment or Waiver. Except as expressly set forth in this Amendment, this Amendment is limited to the matters specifically set forth herein and shall not, by implication or otherwise, limit, impair, constitute a waiver of or otherwise affect any rights or remedies of the Agent or the Lender under the Loan Documents, or alter, modify, amend or in any way affect any of the terms, obligations or

covenants contained in the Loan Documents, all of which shall continue in full force and effect. Nothing in this Amendment shall be construed to imply any willingness on the part of the Agent or the Lender to agree to or grant any similar or future amendment, consent or waiver of any of the terms and conditions of the Loan Document.

7. Waiver and Release. TO INDUCE THE AGENT AND THE LENDER TO AGREE TO THE TERMS OF THIS AMENDMENT, EACH LOAN PARTY AND ITS AFFILIATES (COLLECTIVELY, THE "RELEASING PARTIES") REPRESENT AND WARRANT THAT, AS OF THE DATE HEREOF, THERE ARE NO CLAIMS OR OFFSETS AGAINST, OR RIGHTS OF RECOUPMENT WITH RESPECT TO, OR DISPUTES OF, OR DEFENSES OR COUNTERCLAIMS TO, THEIR OBLIGATIONS UNDER THE LOAN DOCUMENTS, AND IN ACCORDANCE THEREWITH THEY:

(a) WAIVE ANY AND ALL SUCH CLAIMS, OFFSETS, RIGHTS OF RECOUPMENT, DISPUTES, DEFENSES AND COUNTERCLAIMS, WHETHER KNOWN OR UNKNOWN, ARISING PRIOR TO THE DATE HEREOF.

(b) FOREVER RELEASE, RELIEVE AND DISCHARGE THE AGENT, THE LENDER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, PREDECESSORS, SUCCESSORS, ASSIGNS, ATTORNEYS, ACCOUNTANTS, AGENTS, EMPLOYEES AND REPRESENTATIVES (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OF THEM, FROM ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, PROMISES, ACTS, AGREEMENTS AND DAMAGES, OF WHATEVER KIND OR NATURE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, CONTINGENT OR FIXED, LIQUIDATED OR UNLIQUIDATED, MATURED OR UNMATURED, WHETHER AT LAW OR IN EQUITY, WHICH THE RELEASING PARTIES EVER HAD, NOW HAVE, OR MAY, SHALL OR CAN HEREAFTER HAVE, DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY BASED UPON, CONNECTED WITH, OR RELATED TO MATTERS, THINGS, ACTS, CONDUCT AND/OR OMISSIONS AT ANY TIME FROM THE BEGINNING OF THE WORLD THROUGH AND INCLUDING THE DATE HEREOF, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS AGAINST THE RELEASED PARTIES ARISING UNDER OR RELATED TO ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY.

(c) IN CONNECTION WITH THE RELEASE CONTAINED HEREIN, ACKNOWLEDGE THAT THEY ARE AWARE THAT THEY MAY HEREAFTER DISCOVER CLAIMS PRESENTLY UNKNOWN OR UNSUSPECTED, OR FACTS IN ADDITION TO OR DIFFERENT FROM THOSE WHICH THEY KNOW OR BELIEVE TO BE TRUE, WITH RESPECT TO THE MATTERS RELEASED HEREIN. NEVERTHELESS, IT IS THE INTENTION OF THE RELEASING PARTIES, THROUGH THIS AMENDMENT AND WITH ADVICE OF COUNSEL, FULLY, FINALLY AND FOREVER TO RELEASE ALL SUCH MATTERS, AND ALL CLAIMS RELATED THERETO, WHICH DO NOW EXIST, OR HERETOFORE HAVE EXISTED. IN FURTHERANCE OF SUCH INTENTION, THE RELEASES HEREIN GIVEN SHALL BE AND REMAIN IN EFFECT AS A FULL AND COMPLETE RELEASE OF SUCH MATTERS NOTWITHSTANDING THE DISCOVERY OR EXISTENCE OF ANY SUCH ADDITIONAL OR DIFFERENT CLAIMS OR FACTS RELATED THERETO.

(d) COVENANT AND AGREE NOT TO BRING ANY CLAIM, ACTION, SUIT OR PROCEEDING AGAINST THE RELEASED PARTIES, DIRECTLY OR INDIRECTLY, REGARDING OR RELATED IN ANY MANNER TO THE MATTERS RELEASED HEREBY, AND FURTHER COVENANT AND AGREE THAT THIS AMENDMENT IS A BAR TO ANY SUCH CLAIM, ACTION, SUIT OR PROCEEDING.

(e) REPRESENT AND WARRANT TO THE RELEASED PARTIES THAT THEY HAVE NOT HERETOFORE ASSIGNED OR TRANSFERRED, OR PURPORTED TO ASSIGN OR TRANSFER, TO ANY PERSON OR ENTITY ANY CLAIMS OR OTHER MATTERS HEREIN RELEASED.

(f) ACKNOWLEDGE THAT THEY HAVE HAD THE BENEFIT OF INDEPENDENT LEGAL ADVICE WITH RESPECT TO THE ADVISABILITY OF ENTERING INTO THIS RELEASE AND HEREBY KNOWINGLY, AND UPON SUCH ADVICE OF COUNSEL, WAIVE ANY AND ALL APPLICABLE RIGHTS AND BENEFITS UNDER, AND PROTECTIONS OF, CALIFORNIA CIVIL CODE SECTION 1542, AND ANY AND ALL STATUTES AND DOCTRINES OF SIMILAR EFFECT. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES AS FOLLOWS:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

8. Expenses. Subject to Section 5 hereof, the Loan Parties agree to pay all reasonable and documented out-of-pocket costs and expenses of the Agent and the Lender (including diligence costs, consulting fees and Costs) in connection with the transactions contemplated by this Amendment invoiced to the Borrower (including the reasonable and documented out-of-pocket fees and expenses of counsel to the Agent and the Lender incurred in connection with the negotiation, preparation, execution and delivery of this Amendment and the other Loan Documents).

9. Guarantor Reaffirmation. Each Guarantor hereby ratifies and reaffirms as of the date hereof the guarantee granted by it to the Agent for the benefit of the Lender under the Loan Documents and agrees and acknowledges that such guarantee shall continue and shall remain in full force and effect from and after the date hereof after giving effect from and after the date hereof, and the obligations guaranteed thereby shall include the Loan Parties' obligations under the Loan Documents from and after the date hereof. Except as expressly provided herein, this Amendment shall not release, reduce or diminish any Loan Party's obligations to the Agent and the Lender under the Loan Documents, or prejudice, alter or in any regard adversely affect the rights and remedies of the Agent or the Lender in respect thereof.

10. Reaffirmation of Security Interest. Except as expressly set forth in this Amendment (including, with respect to the Release), each Loan Party hereby (i) affirms that each of the security interests and liens granted in or pursuant to the Loan Documents are valid and subsisting and shall continue and shall remain in full force and effect from and after the date hereof and (ii) agree that this Amendment shall in no manner impair or otherwise adversely affect any of the security interests and liens granted in or pursuant to the Loan Documents.

11. Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one agreement. Executed copies of the signature pages of this Amendment sent by facsimile or transmitted electronically shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.

12. Governing Law. THIS AMENDMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

13. Agent Authorization. The undersigned Lender, who constitutes the only Lender under the Credit Agreement, hereby (i) authorizes and directs the Agent to execute and deliver this Amendment and (ii) acknowledges and agrees that the Lender constitutes all of the Lenders necessary to direct the Agent to execute such documents; and (iii) acknowledges and agrees that the direction set forth in this Amendment constitutes an instruction, consent and request of the Lender under the Loan Documents, including Sections 9.3 and 9.7 of the Credit Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first written above.

BORROWER:

BAUDAX BIO, INC.

By /s/ Gerri Henwood

Name: Gerri Henwood

Title: President and Chief Executive Officer

GUARANTORS:

BAUDAX BIO N.A. LLC

By /s/ Gerri Henwood

Name: Gerri Henwood

Title: Director

BAUDAX BIO LIMITED

By /s/ Gerri Henwood

Name: Gerri Henwood

Title: Director

TERAIMMUNE, LLC

By /s/ Jillian Dilmore

Name: Jillian Dilmore

[Signature Page to Amendment]

AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION

By /s/ Andrew Lennon

Name: Andrew Lennon

Title: Assistant Vice President

[Signature Page to Amendment]

LENDER:

MAM EAGLE LENDER, LLC

By /s/ Lou Hanover

Name: Lou Hanover

Title: Authorized Signatory

[Signature Page to Amendment]