

HISTOGENICS CORP
Form 425
April 18, 2019

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): April 18, 2019 (April 16, 2019)

HISTOGENICS CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

001-36751
(Commission

File Number)
830 Winter Street, 3rd Floor

04-3522315
(I.R.S. Employer

Identification Number)

Waltham, Massachusetts 02451

(781) 547-7900

(Addresses, including zip code, and telephone numbers, including area code, of principal executive offices)

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 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

As previously announced, on October 17, 2018, The Nasdaq Stock Market LLC (Nasdaq) notified Histogenics Corporation (the Company or Histogenics) that it did not meet Nasdaq s \$1.00 per share minimum bid price requirement under Nasdaq Listing Rule 5550(a)(2) (Rule 5550(a)(2)) for continued listing on The Nasdaq Capital Market, and the Company was given an initial grace period of 180 days, or until April 15, 2019, to regain compliance with Rule 5550(a)(2).

On April 16, 2019, the Company received a letter (the Letter) from the Nasdaq Listing Qualifications Staff (the Staff) notifying the Company that, based upon the Company s continuing non-compliance with Rule 5550(a)(2), the Staff had determined that the Company s common stock would be delisted from Nasdaq unless the Company timely requests a hearing before a Nasdaq Hearings Panel (the Panel). The Letter also noted that the Company was not eligible for a second 180 day grace period as it does not comply with the stockholders equity initial listing requirement for The Nasdaq Capital Market.

Accordingly, the Company plans to timely request a hearing before the Panel, which is expected to occur in the second quarter of 2019. The Company s common stock will continue to trade on The Nasdaq Capital Market under the symbol HSGX until the Panel issues its decision following the hearing and through the expiration of any additional extension period granted by the Panel. There can be no assurance that the Panel will grant the Company s request for continued listing. If the Company s common stock ceases to be listed for trading on Nasdaq, the Company expects that its common stock would be traded on the over-the-counter market.

As previously reported, on April 5, 2019, the Company entered into an Agreement and Plan of Merger and Reorganization (the Merger Agreement) with Ocugen, Inc., a Delaware corporation (Ocugen), and Restore Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Histogenics (Merger Sub). Upon the terms and subject to the satisfaction of the conditions described in the Merger Agreement, including approval of the transaction by Histogenics stockholders and Ocugen s stockholders, Merger Sub will be merged with and into Ocugen (the Merger), with Ocugen surviving the Merger as a wholly-owned subsidiary of Histogenics. Under the exchange ratio formula in the Merger Agreement, the former Ocugen equity holders immediately before the Merger are expected to own approximately 90% of the outstanding capital stock of Histogenics, and the stockholders of Histogenics immediately before the Merger are expected to own approximately 10% of the outstanding capital stock of Histogenics, subject to certain adjustments as described in the Merger Agreement, including additional potential ownership based on Histogenics cash at the closing of the Merger (the Closing) after taking into account, among other things as set forth in the Merger Agreement, any Ocugen convertible notes that are not converted into equity at the Closing and proceeds from any Divestiture Transactions (as defined in the Merger Agreement), up to an additional 5% of the outstanding capital stock of Histogenics. The exchange ratio formula includes Ocugen s outstanding stock options and warrants and Histogenics outstanding stock options, warrants and Series A Convertible Preferred Stock. The closing of the Merger is subject to satisfaction or waiver of certain customary closing conditions. The Merger Agreement contemplates that, in connection with the closing of the Merger, the Company s common stock would continue to be listed on The Nasdaq Capital Market. There can be no assurances that the combined Company will meet Nasdaq s initial listing requirements upon consummation of the Merger.

Item 8.01 Other Events.

The information set forth in Item 3.01 of this Current Report on Form 8-K is incorporated herein by reference.

Additional Information about the Merger and Where to Find It

In connection with the proposed Merger, Histogenics and Ocugen intend to file relevant materials with the Securities and Exchange Commission, or the SEC, including a registration statement on Form S-4 that will contain a prospectus

and a proxy statement. *Investors and security holders of Histogenics and*

Ocugen are urged to read these materials when they become available because they will contain important information about Histogenics, Ocugen and the proposed Merger. The proxy statement, prospectus and other relevant materials (when they become available), and any other documents filed by Histogenics with the SEC, may be obtained free of charge at the SEC web site at www.sec.gov. In addition, investors and security holders may obtain free copies of the documents filed with the SEC by Histogenics by directing a written request to: Histogenics Corporation, c/o Gunderson Dettmer, One Marina Park Drive, Suite 900, Boston, MA 02210, Attention: HSGX Secretary. Investors and security holders are urged to read the proxy statement, prospectus and the other relevant materials when they become available before making any voting or investment decision with respect to the proposed merger.

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities in connection with the proposed merger shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Participants in the Solicitation

Histogenics and its directors and executive officers and Ocugen and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Histogenics in connection with the proposed transaction. Information regarding the special interests of these directors and executive officers in the proposed merger will be included in the joint proxy statement/prospectus referred to above. Additional information regarding the directors and executive officers of Histogenics is also included in Histogenics' Annual Report on Form 10-K for the year ended December 31, 2018. These documents are available free of charge at the SEC web site (www.sec.gov) and from the Secretary of Histogenics at the address described above.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements based upon Histogenics' current expectations. Forward-looking statements involve risks and uncertainties, and include, but are not limited to, statements about the structure, timing and completion of the proposed Merger; expectations regarding Nasdaq's delisting and hearing processes; Histogenics' prospects to regain compliance with Nasdaq's continuing listing standards and remain listed on The Nasdaq Capital Market; the combined company's listing on Nasdaq after closing of the proposed Merger; the possibility that any grant, sale or transfer of rights to NeoCart technology will occur; expectations regarding the ownership structure of the combined company, including potential dilution resulting from future debt or equity financings; the expected executive officers and directors of the combined company; the combined company's expected cash position at the closing of the proposed Merger; the future operations of the combined company; the nature, strategy and focus of the combined company; the development and commercial potential and potential benefits of any product candidates of the combined company; the executive and board structure of the combined company; the location of the combined company's corporate headquarters; anticipated preclinical and clinical drug development activities and related timelines, including the expected timing for data and other clinical and preclinical results; Ocugen having sufficient resources to advance its pipeline; the expected charges and related cash expenditures that Histogenics expects to incur; and other statements that are not historical fact. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation: (i) the risk that the conditions to the closing of the proposed Merger are not satisfied, including the failure to timely obtain stockholder approval for the transaction, if at all; (ii) uncertainties as to the timing of the consummation of the proposed Merger and the ability of each of

Histogenics and Ocugen to consummate the proposed Merger; (iii) risks related to Histogenics ability to manage its operating expenses and its expenses associated with the proposed Merger pending closing; (iv) risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed Merger; (v) the risk that as a result of adjustments to the exchange ratio, Histogenics stockholders and Ocugen stockholders could own more or less of the combined company than is currently anticipated; (vi) risks related to the market price of Histogenics common stock relative to the exchange ratio; (vii) unexpected costs, charges or expenses resulting from the transaction; (viii) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed Merger; (ix) the uncertainties associated with the clinical development and regulatory approval of Ocugen's product candidates, including potential delays in the commencement, enrollment and completion of clinical trials; (x) risks related to the inability of the combined company to obtain sufficient additional capital to continue to advance these product candidates and its preclinical programs; (xi) uncertainties in obtaining successful clinical results for product candidates and unexpected costs that may result therefrom; (xii) risks related to the failure to realize any value from product candidates and preclinical programs being developed and anticipated to be developed in light of inherent risks and difficulties involved in successfully bringing product candidates to market; (xiii) risks associated with the possible failure to realize certain anticipated benefits of the proposed Merger, including with respect to future financial and operating results; and (xiv) risks related to unanticipated charges not currently contemplated that may occur as a result of Histogenics' prior workforce reductions, including that the workforce reduction charges, costs and expenditures may be greater than currently anticipated. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties. These and other risks and uncertainties are more fully described in periodic filings with the SEC, including the factors described in the section entitled "Risk Factors" in Histogenics' Annual Report on Form 10-K for the year ended December 31, 2018 filed with the SEC on March 22, 2019, and in other filings that Histogenics makes and will make with the SEC in connection with the proposed Merger, including the proxy statement/prospectus/information statement described above under "Additional Information about the Proposed Merger and Where to Find It." You should not place undue reliance on these forward-looking statements, which are made only as of the date hereof or as of the dates indicated in the forward-looking statements. Histogenics expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in its expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

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.

Date: April 18, 2019

HISTOGENICS CORPORATION

By: /s/ Adam Gridley
Adam Gridley
President