

KITE PHARMA, INC.

FORM 8-K (Current report filing)

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Address	2225 COLORADO AVENUE SANTA MONICA, CA, 90404
Telephone	(310) 824-9999
CIK	0001510580
Symbol	KITE
SIC Code	2836 - Biological Products, Except Diagnostic Substances
Industry	Biotechnology & Medical Research
Sector	Healthcare

**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 1, 2017

Kite Pharma, Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-36508
(Commission
File Number)

27-1524986
(IRS Employer
Identification No.)

2225 Colorado Avenue
Santa Monica, California
(Address of Principal Executive Offices)

90404
(Zip Code)

Registrant's telephone number, including area code: (310) 824-9999

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 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 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On August 27, 2017, Kite Pharma, Inc. (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) by and among the Company, Gilead Sciences, Inc. (“Parent”) and Dodgers Merger Sub, Inc. (“Purchaser”). Pursuant to the Merger Agreement, and upon the terms and subject to the conditions thereof, Purchaser will commence a tender offer (the “Offer”) to purchase all of the issued and outstanding shares (the “Shares”) of common stock, par value \$0.001 per share, of the Company at a price of \$180.00 per Share in cash (the “Offer Price”). The Merger Agreement provides, among other things, that as soon as practicable following the consummation of the Offer and subject to the satisfaction or waiver of certain conditions, Purchaser will be merged with and into the Company (the “Merger”) and, together with the Offer and the other transactions contemplated by the Merger Agreement, the “Transactions”), with the Company surviving the Merger as the surviving corporation (the “Surviving Corporation”) and a wholly owned, direct subsidiary of Parent.

Certain of the Company’s executive officers may be subject to an excise tax on payments they will or may receive in connection with the Transactions under Section 4999 of the Internal Revenue Code of 1986, as amended (the “Code”). Generally, an excise tax of 20% is imposed on each individual recipient of certain “parachute payments” that, under the rules of Section 280G of the Code, exceed a certain threshold amount for such individual and the corporation making the payments is denied a tax deduction for such payments. The excise tax is due in addition to the regular income and employment taxes otherwise payable in connection with compensatory payments to the Affected Individuals (as defined below). Payments to certain executive officers of the Company that will or may be considered “parachute payments” under Section 280G of the Code that would be subject to the Code Section 4999 excise tax include, as applicable, severance payments and benefits under the Company’s Change in Control and Severance Benefit Plan (the “CIC Severance Plan”), the value of the accelerated vesting of unvested equity awards upon a Qualifying Termination (as defined in the CIC Severance Plan), as well as payment of the annual cash bonus in respect of the 2017 fiscal year and the Excise Tax Reimbursement Payment (as defined below).

The Company’s Board of Directors (the “Board”) has considered the impact of the potential Code Section 4999 excise tax on certain individual executive officers of the Company who would be subject to such excise tax, and has determined that the imposition of the excise tax on such individuals would result in an unintended personal tax burden that would deprive the individuals of a portion of the value of their compensatory payments in connection with the Transactions, particularly their Company equity awards (the “Affected Individuals”). The Board has considered the tax implications of Sections 4999 and 280G of the Code and assessed the costs and benefits of potential payments to alleviate the Code Section 4999 excise taxes, to the Company, its stockholders, the Surviving Corporation and each of the Affected Individuals. The Board determined that, of our executive officers, Dr. Belldgrun, Ms. Buttita, Dr. Chang, Mr. Moore, Ms. Tomasello, Ms. Kim and Dr. Wieszorek constitute Affected Individuals.

As part of its considerations, the Board noted that the primary reason for the magnitude of the Code Section 4999 excise tax burden was the unvested Company stock options and Company restricted stock units held by the Affected Individuals. These awards have a high value as a result of the substantial value of Shares, including as a result of significant Company achievements, including those leading to the Transactions and the Offer Price. The Board determined that it is in the best interests of the Company to align the interests of its stockholders with those of the Affected Individuals and mitigate the negative tax impact to such Affected Individuals that would otherwise result from the Transactions, which are expected to bring significant financial benefits to the Company and its stockholders.

The Company Board concluded that, contingent upon the Purchaser irrevocably accepting for payment all Shares tendered and not validly withdrawn in the Offer immediately following the expiration of the Offer (the “Offer Acceptance”), the Company will provide each of the Affected Individuals with a gross-up entitlement with respect to the Code Section 4999 excise tax, so that, on a net after-tax basis, the Affected Individual will be in the same position as if no such excise tax had applied to him or her (the “Excise Tax Reimbursement Payment”). Accordingly, on September 1, 2017, the Company entered into letter agreements with each of the Affected Individuals setting forth the terms of the Excise Tax Reimbursement Payment for such individual. A form of the letter agreement entered into with each of the Affected Individuals is attached to this Form 8-K as Exhibit 10.1, and this description is qualified entirely by reference thereto. The aggregate Excise Tax Reimbursement Payments that would become payable if all seven Affected Individuals are terminated immediately following the Offer Acceptance is estimated to be approximately \$33 million (based on certain assumptions), however such cost could be significantly reduced (including to \$0) if such executive officers continue employment with Parent following such time. The actual amounts to be paid to the Affected Individuals by the Company will not be finally determined until after the consummation of the Transactions and these amounts will be paid following the time of the Offer Acceptance but before the Code Section 4999 excise tax becomes due. The Affected Individuals will retain the obligation to pay income and other taxes on all of the payments they will or may receive in connection with the Transactions and will forfeit the right to receive an Excise Tax Reimbursement Payment if either the Merger Agreement terminates pursuant to its terms or the Affected Individual’s employment with the Company terminates for any reason before the Offer Acceptance.

Item 9.01 **Financial Statements and Exhibits.**

(d) Exhibits.

Description

10.1 Form of Excise Tax Reimbursement Payment Letter Agreement.

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.

KITE PHARMA, INC.
(Registrant)

Date: September 5, 2017

By: /s/ Arie Beldegrun
Arie Beldegrun, M.D.
President and Chief Executive Officer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Form of Excise Tax Reimbursement Payment Letter Agreement.

[Kite Letterhead]

[Date]

[Name]
[Address]
[Address]

Dear [Name] :

This letter agreement (this “Agreement”) confirms the understanding between you and Kite Pharma, Inc. (the “Company”) regarding certain payment, reimbursement treatment that you may become entitled to receive in connection with the acquisition (the “Acquisition”) of the Company by Gilead Sciences, Inc., a Delaware corporation (“Parent”), pursuant to that certain Agreement and Plan of Merger, dated as of August 27, 2017, among the Company, Parent and Purchaser (the “Merger Agreement”). Capitalized terms used but not otherwise defined in this letter have the meanings given to such terms in the Merger Agreement. This Agreement will become effective at the Offer Acceptance Time. However, if the Merger Agreement terminates pursuant to its terms or your employment with the Company terminates for any reason prior to the Offer Acceptance Time, this letter will terminate and be of no force or effect.

1. Certain Taxes

In the event that it shall be determined that any payment, award, benefit or distribution (or any acceleration of any payment, award, benefit or distribution) by the Company or any of its affiliated entities (including their respective successors) to or for your benefit in connection with the Acquisition (determined without regard to any additional payments required under Section 1 of this letter) (the “Payments”) would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the “Code”), or any interest or penalties are incurred by you with respect to such excise tax (such excise tax, together with any such interest and penalties, the “Excise Tax”), then the Company shall pay you an additional payment (which, for this purpose, includes withholding and remittance of taxes by Parent or the Company on your behalf) (a “Reimbursement Payment”) in an amount such that after payment by you of all taxes (including, without limitation, any income taxes and any interest and penalties imposed with respect thereto, and any excise tax imposed upon the Reimbursement Payment), you retain an amount of the Reimbursement Payment equal to the Excise Tax imposed upon the Payments. For purposes of determining the amount of the Reimbursement Payment, you shall be deemed to (i) pay federal income taxes at the highest marginal rates of federal income taxation for the calendar year in which the Reimbursement Payment is to be made and (ii) pay applicable state and local income taxes at the highest marginal rate of taxation for the calendar year in which the Reimbursement Payment is to be made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

The Reimbursement Payment with respect to any Payment will be made promptly (and in no event later than 10 days following such Payment).

You and the Company agree that the determinations necessary to be made under the first paragraph of this Section 1, including whether and when a Reimbursement Payment is required, the amount of such Reimbursement Payment and the assumptions to be utilized in arriving at such determinations, will be based on the most recent calculations prepared by Compensia, Inc. ("Compensia") prior to such determination. Compensia shall provide detailed supporting calculations both to you and the Company within 15 business days of the receipt of notice from you or the Company that there has been a Payment, or such earlier time as is requested by the Company (collectively, the "Determination"). The Determination shall be binding upon you and the Company.

As a result of the uncertainty in the application of Section 4999 of the Code at the time of the Determination, it is possible that Reimbursement Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event the amount of the Reimbursement Payment is less than the amount necessary to reimburse you for your Excise Tax, Compensia shall determine the amount of the Underpayment that has occurred and any such Underpayment (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) shall be promptly paid by the Company to or for the benefit of you. If, after receipt of a Reimbursement Payment, you become entitled to receive any refund with respect to the Excise Tax to which such Reimbursement Payment relates, you shall promptly pay to the Company the amount of any such refund.

2. Other Terms

The validity, interpretation, construction and performance of this letter shall in all respects be governed by the laws of California, without reference to principles of conflict of law, and will be binding on any successor to the Company. This letter is intended to comply with the requirements of Section 409A of the Code (to the extent applicable) and shall be interpreted, operated and administered accordingly. Each payment under this letter will be treated as a separate payment for purposes of Section 409A of the Code.

3. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same agreement.

[*Remainder of Page Intentionally Left Blank*]

We thank you for your service and contributions to the success of the Company.

Sincerely,

[Name]
[Title]

Acknowledged and agreed on the date first written above:

[●]