

ZOSANO PHARMA CORP

FORM 8-K (Current report filing)

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Address	34790 Ardentech Court Fremont, CA, 94555
Telephone	(510) 745-1200
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Industry	Biotechnology & Medical Research
Sector	Healthcare
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**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): January 24, 2018

ZOSANO PHARMA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36570
(Commission
File Number)

45-4488360
(I.R.S. Employer
Identification No.)

34790 Ardentech Court
Fremont, CA 94555
(Address of principal executive offices) (Zip Code)

(510) 745-1200
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 (see General Instruction A.2. below):

- Written communication 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 communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication 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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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 5.03 Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year*Increase in Authorized Shares and Reverse Stock Split*

On January 23, 2018, Zosano Pharma Corporation (“we” or the “Company”) held a special meeting of stockholders. At the special meeting, the stockholders approved, among other things, an amendment to our Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 100,000,000 to 250,000,000 shares (the “Authorized Share Increase”). A Certificate of Amendment to the Amended and Restated Certificate of Incorporation authorizing the Authorized Share Increase was filed with the Secretary of State of the State of Delaware on January 24, 2018, and the Authorized Share Increase became effective in accordance with the terms of the Certificate of Amendment upon filing with the Secretary of State of the State of Delaware.

The stockholders also approved a proposal authorizing the Company’s Board of Directors, in its discretion, to effect a reverse stock split of the Company’s outstanding shares of common stock, par value \$0.0001 per share (the “Common Stock”) at a ratio ranging from 1-for-5 to 1-for-20 to be determined by the Board of Directors and effected, if at all, no later than November 23, 2018. Accordingly, on January 23, 2018, the Board of Directors approved a 1-for-20 reverse stock split of the Common Stock (the “Reverse Stock Split”) and the filing of a Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Company to effectuate the Reverse Stock Split.

A Certificate of Amendment to the Amended and Restated Certificate of Incorporation authorizing the Reverse Stock Split was filed with the Secretary of State of the State of Delaware on January 24, 2018, and the Reverse Stock Split will become effective in accordance with the terms of the Certificate of Amendment at 5:00 p.m. Eastern Time on January 25, 2018 (the “Effective Time”).

Impact of the Reverse Stock Split

At the Effective Time, every twenty shares of Common Stock issued and outstanding will automatically combine into one share of issued and outstanding Common Stock, without any change in the par value per share.

As a result of the Reverse Stock Split, there will be approximately 2.0 million shares of Common Stock outstanding. The Reverse Stock Split will not affect the number of authorized shares of Common Stock, which, after giving effect to the Authorized Share Increase, is 250,000,000 shares. The number of authorized shares of preferred stock under the Amended and Restated Certificate of Incorporation will remain the same. In addition, a proportionate adjustment will be made to the per share exercise price and the number of shares issuable upon the exercise of the Company’s outstanding equity awards, options and warrants to purchase shares of common stock and the number of shares reserved for issuance pursuant to the Company’s equity incentive compensation plans.

Fractional shares will not be issued as a result of the Reverse Stock Split; instead, holders of pre-Reverse Stock Split shares of the Company’s Common Stock, who otherwise would have been entitled to receive a fractional share as a result of the Reverse Stock Split, will receive a cash payment in lieu of fractional shares to which they would otherwise be entitled on a post-Reverse Stock Split share basis for such fractional interests.

The Company’s transfer agent, Computershare Trust Company, N.A., will act as exchange agent for the Reverse Stock Split and will send instructions to stockholders of record regarding the exchange of certificates for Common Stock.

The Common Stock will begin trading on the Nasdaq Capital Market on a split-adjusted basis at the open of the market on January 26, 2018. The Company’s common stock will continue to trade on the Nasdaq Capital Market under the ticker symbol, “ZSAN” and the new CUSIP number for common stock following the Reverse Stock Split will be 98979H202.

The information set forth herein does not purport to be complete and is qualified in its entirety by reference to the full text of the Certificate of Amendment that effectuated the Authorized Share Increase and the Certificate of Amendment that effectuated the Reverse Stock Split, which are filed as Exhibits 3.1 and 3.2 hereto, respectively, and are incorporated herein by reference.

Item 5.07. Submission of Matters to a Vote of Security Holders

On January 23, 2018, we held a special meeting of stockholders. A total of 39,460,931 shares of our common stock were outstanding as of December 12, 2017, the record date for the special meeting. Set forth below are the matters acted upon at the special meeting and the final voting results on each matter as reported by our inspector of elections.

Proposal One: Approval of the increase in number of authorized shares of common stock

Our stockholders approved the amendment of our Amended and Restated Certificate of Incorporation to increase the number of authorized shares of our common stock from 100,000,000 to 250,000,000. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
22,592,051	6,930,267	1,198,230	0

Proposal Two: Approval of the reverse stock split

Our stockholders approved the authorization of our Board of Directors, in its discretion but in no event later than November 23, 2018 (in advance of the expiration of the second 180 calendar day period the Company may be afforded by Nasdaq to regain compliance with the \$1.00 minimum bid price continued listing requirement), to amend our Amended and Restated Certificate of Incorporation to effect a reverse stock split of our common stock, at a ratio in the range of 1-for-5 to 1-for-20, such ratio to be determined by our Board of Directors and included in a public announcement. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
25,381,197	4,882,792	456,559	0

Proposal Three: Adjournment

Our stockholders approved the adjournment of the special meeting, if necessary, to solicit additional proxies if there were not sufficient votes in favor of any of the foregoing proposals. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
23,225,483	6,850,873	644,191	1

Item 8.01 Other Events.

On January 25, 2018, the Company issued a press release announcing the Reverse Stock Split as described in Item 5.03. A copy of the press release is attached as Exhibit 99.1 hereto.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Exhibit Description</u>
3.1	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Zosano Pharma Corporation, filed on January 24, 2018 (Authorized Share Increase).
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Zosano Pharma Corporation, filed on January 24, 2018 (Reverse Stock Split).
99.1	Press release dated January 25, 2018.

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.

**ZOSANO PHARMA
CORPORATION**

Dated: January 25, 2018

By: /s/ Georgia Erbez

Name: Georgia Erbez
Title: Chief Business Officer and
Chief Financial Officer

**CERTIFICATE OF AMENDMENT
TO
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ZOSANO PHARMA CORPORATION**

Zosano Pharma Corporation (the “*Corporation*”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “*DGCL*”), does hereby certify that:

FIRST: The name of this corporation is Zosano Pharma Corporation and the date on which the Amended and Restated Certificate of Incorporation of this corporation was originally filed with the Secretary of State of the State of Delaware was January 29, 2015 (the “*Amended and Restated Certificate of Incorporation*”).

SECOND: The Board of Directors of the Corporation has duly adopted resolutions proposing and declaring advisable that the Amended and Restated Certificate of Incorporation be amended as set forth herein and calling for the consideration and approval thereof at a meeting of the stockholders of the Corporation.

THIRD: The Amended and Restated Certificate of Incorporation is hereby amended by deleting the first paragraph of ARTICLE IV in its entirety and inserting the following in lieu thereof:

“**A.** This corporation is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares which the corporation is authorized to issue is two hundred fifty five million (255,000,000) shares. Two hundred fifty million (250,000,000) shares shall be Common Stock, each having a par value of one-hundredth of one cent (\$0.0001). Five million (5,000,000) shares shall be Preferred Stock, each having a par value of one-hundredth of one cent (\$0.0001).”

FOURTH : Pursuant to a resolution of the Board, this Certificate of Amendment was submitted to the stockholders of the Company for their approval, and was duly adopted in accordance with the provisions of Section 242 of the DGCL.

FIFTH : This Certificate of Amendment to the Amended and Restated Certificate of Incorporation shall be effective on and as of the date of filing of this Certificate of Amendment with the Secretary of State of the State of Delaware.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Zosano Pharma Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer on this 24th day of January, 2018.

ZOSANO PHARMA CORPORATION

By: /s/ John Walker

John Walker

President and CEO

**CERTIFICATE OF AMENDMENT
TO
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ZOSANO PHARMA CORPORATION**

Zosano Pharma Corporation (the “*Corporation*”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “*DGCL*”), does hereby certify that:

FIRST: The name of this corporation is Zosano Pharma Corporation and the date on which the Amended and Restated Certificate of Incorporation of this corporation was originally filed with the Secretary of State of the State of Delaware was January 29, 2015 (the “*Amended and Restated Certificate of Incorporation*”).

SECOND: The Board of Directors of the Corporation has duly adopted resolutions proposing and declaring advisable that the Amended and Restated Certificate of Incorporation be amended as set forth herein and calling for the consideration and approval thereof at a meeting of the stockholders of the Corporation.

THIRD: Effective as of 5:00 p.m., Eastern Standard Time, on January 25, 2018 (the “*Effective Time*”), each twenty (20) issued and outstanding shares of the Corporation’s Common Stock, par value \$0.0001 per share, shall be converted into one (1) share of the Corporation’s Common Stock, par value \$0.0001 per share, as constituted following the Effective Time.

FOURTH: The Amended and Restated Certificate of Incorporation is hereby amended to add the following as paragraph D of ARTICLE IV in the form below:

“**D**. Upon the effectiveness of the filing of this Certificate of Amendment (the “*Effective Time*”) each share of the Corporation’s common stock, \$0.0001 par value per share (the “*Old Common Stock*”), either issued or outstanding or held by the Corporation as treasury stock, immediately prior to the Effective Time, will be automatically reclassified as (without any further act) into a smaller number of shares such that each five (5) to twenty (20) shares of Old Common Stock issued and outstanding or held by the Company as treasury stock immediately prior to the Effective Time is reclassified into one share of Common Stock, \$0.0001 par value per share, of the Corporation (the “*New Common Stock*”), the exact ratio within such range to be determined by the board of directors of the Corporation prior to the Effective Time and publicly announced by the Corporation (the “*Reverse Stock Split*”). No fractional shares shall be issued as a result of such reclassification. In lieu of any fractional shares to which the stockholder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair value of the Common Stock as determined in good faith by the Board of Directors of the Corporation. As soon as practicable following the Effective Time, the Corporation will cause the Corporation’s exchange agent and registrar to issue new book entries representing the number of shares of the New Common Stock into which such shares of Old Common Stock shall have been reclassified.”

FIFTH : The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Zosano Pharma Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer on this 24th day of January, 2018.

ZOSANO PHARMA CORPORATION

By: /s/ John Walker

John Walker

President and CEO



January 25, 2018

**Zosano Announces Results of Special Meeting of Stockholders and
1-for-20 Reverse Stock Split
Shares of Common Stock Will Begin Trading on Split-Adjusted Basis
on January 26, 2018**

FREMONT, Calif., Jan. 25, 2018 (BUSINESS WIRE)—Zosano Pharma Corporation (NASDAQ:ZSAN) (“Zosano” or the “Company”) a clinical-stage biopharmaceutical company focused on providing rapid systemic administration of therapeutics to patients using its proprietary ADAM technology, today announced the results of the special meeting of stockholders held on January 23, 2018 and that the Company will effect a reverse stock split of its issued and outstanding common stock. At the special meeting, shareholders approved all of the proposals, which included: (i) approval to increase the number of authorized shares from 100,000,000 to 250,000,000; and (ii) approval authorizing the Company’s Board of Directors, in its discretion, to effect a reverse stock split of the Company’s outstanding shares of common stock, par value \$0.0001 per share (the “Common Stock”) at a ratio ranging from 1-for-5 to 1-for-20 to be determined by the Board of Directors.

Following the special meeting of stockholders, the Company’s Board of Directors approved the implementation of a reverse stock split, determined the appropriate reverse stock split to be a ratio of 1-for-20 and approved the filing of a Certificate of Amendment to the Restated Certificate of Incorporation of the Company to effectuate the reverse stock split.

The Company will effect a reverse stock split of its issued and outstanding common stock at an exchange ratio of 1-for-20, at 5:00 p.m. Eastern Time on Thursday, January 25, 2018. The Company’s common stock will begin trading on a split-adjusted basis on Friday, January 26, 2018 under a new CUSIP number, 98979H202, and will remain listed on the Nasdaq Capital Market under the symbol “ZSAN”.

Upon the effectiveness of the reverse split at 5:00 p.m. Eastern Time on January 25, 2018, each twenty shares of the Company’s issued and outstanding common stock will be automatically combined and converted into one issued and outstanding share of common stock, par value \$0.001 per share. Proportional adjustments also will be made to the shares issuable in connection with the Company’s outstanding stock options and warrants. As a result of the reverse split, there will be approximately 2.0 million shares of common stock outstanding.

The reverse stock split will affect all stockholders uniformly and will not alter any stockholder’s percentage interest in the Company’s equity, except to the extent that the reverse stock split would result in a stockholder owning a fractional share. Fractional shares will not be issued as a result of the reverse stock split; instead, holders of pre-reverse stock split shares of the Company’s common stock who otherwise would have been entitled to receive a fractional share will receive a cash payment in lieu of such fractional share.

The Company's transfer agent, Computershare Trust Company, N.A., will act as exchange agent for the reverse stock split and will send instructions to stockholders of record regarding the exchange of certificates for common stock. Stockholders should direct any questions concerning the reverse stock split to their broker or the Company's transfer agent, Computershare Trust Company, N.A., at 1-800-546-5141.

About Zosano Pharma

Zosano Pharma Corporation is a clinical stage biopharmaceutical company focused on providing rapid systemic administration of therapeutics to patients using its proprietary Adhesive Dermally-Applied Microarray, or ADAM technology. The Company recently announced positive results from its ZOTRIP study that evaluated M207, which is its proprietary formulation of zolmitriptan delivered via its ADAM technology, as an acute treatment for migraine. Zosano is focused on developing products where rapid administration of established molecules with known safety and efficacy profiles provides an increased benefit to patients, for markets where patients remain underserved by existing therapies. The Company anticipates that many of its current and future development programs may enable the Company to utilize a regulatory pathway that would streamline clinical development and accelerate the path towards commercialization. Learn more at www.zosanopharma.com.

Forward-Looking Statements

This press release contains forward-looking statements regarding statements relating to the reverse stock split and other future events and expectations. Readers are urged to consider statements that include the words "may," "will," "would," "could," "should," "might," "believes," "estimates," "projects," "potential," "expects," "plans," "anticipates," "intends," "continues," "forecast," "designed," "goal," "unaudited," "approximately" or the negative of those words or other comparable words to be uncertain and forward-looking. These statements are subject to risks and uncertainties that are difficult to predict and actual outcomes may differ materially. These include risks and uncertainties and include, without limitation, the risk that the market price of our common stock following the reverse stock split may not exceed or remain higher than the market price prior to the proposed reverse stock split, as well as risks associated with the process of discovering, developing and commercializing products that are safe and effective for use as human therapeutics, risks inherent in the effort to build a business around such products and other risks and uncertainties described under the heading "Risk Factors" in the Company's most recent annual report on Form 10-K, as amended. Although we believe that the expectations reflected in these forward-looking statements are reasonable, we cannot in any way guarantee that the future results, level of activity, performance or events and circumstances reflected in forward-looking statements will be achieved or occur. All forward-looking statements are based on information currently available to Zosano and Zosano assumes no obligation to update any such forward-looking statements.

Zosano Contact:

Georgia Erbez
Chief Business Officer and
Chief Financial Officer
510-745-1200