
**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): December 23, 2021

SORRENTO THERAPEUTICS, INC.
(Exact Name of Registrant as Specified in its Charter)

**Delaware
(State or Other Jurisdiction
of Incorporation)**

**001-36150
(Commission
File Number)**

**33-0344842
(IRS Employer
Identification No.)**

**4955 Directors Place
San Diego, CA 92121
(Address of Principal Executive Offices) (Zip Code)**

Registrant's telephone number, including area code: (858) 203-4100

**N/A
(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:

- 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:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.0001 par value	SRNE	The Nasdaq Stock Market LLC

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 December 23, 2021, Sorrento Therapeutics, Inc. (the “Company”) entered into Amendment No. 1 (the “Amendment”) to that certain Amended and Restated Sales Agreement, dated December 3, 2021 (the “Sales Agreement”), by and among the Company, Cantor Fitzgerald & Co., B. Riley Securities, Inc. and H.C. Wainwright & Co., LLC (the “Sales Agents”).

The Amendment amends the Sales Agreement to provide that the Company may offer and sell, from time to time, through or to the Sales Agents, as sales agents and/or principals, up to an additional \$5,000,000,000 in shares of the Company’s common stock (the “Additional Shares”), such that the Company may offer and sell up to an aggregate of \$5,442,943,290.81 in shares of its common stock (the “Offering”) pursuant to the Sales Agreement, as amended by the Amendment (the “Amended Sales Agreement”), inclusive of \$442,943,290.81 in shares sold pursuant to the Sales Agreement through December 22, 2021. Any Additional Shares offered and sold in the Offering will be issued pursuant to the Company’s shelf registration statement on Form S-3ASR (the “Registration Statement”), which became automatically effective upon filing with the Securities and Exchange Commission (the “SEC”) on December 23, 2021. The Additional Shares may be offered only by means of a prospectus forming a part of the Registration Statement.

Subject to the terms and conditions of the Amended Sales Agreement, each Sales Agent will use its commercially reasonable efforts to sell the shares of the Company’s common stock from time to time, based upon the Company’s instructions. Under the Amended Sales Agreement, the Sales Agents may sell the shares of the Company’s common stock by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415 promulgated under the Securities Act of 1933, as amended.

The Company has no obligation to sell any shares of its common stock pursuant to the Amended Sales Agreement, and may at any time suspend offers under the Amended Sales Agreement. The Offering will terminate upon (i) the election of the Sales Agents upon the occurrence of certain adverse events, (ii) three business days’ advance notice from the Company to the Sales Agents or a Sales Agent (with respect to itself) to the Company, or (iii) the sale of all \$5,442,943,290.81 of shares of the Company’s common stock pursuant thereto.

Under the terms of the Amended Sales Agreement, the Sales Agents will be entitled to a commission at an initial fixed rate of 3.0% of the gross proceeds from each sale of shares of the Company’s common stock under the Amended Sales Agreement, which percentage may be adjusted based on the aggregate amount of securities sold by the Sales Agents pursuant to the Amended Sales Agreement.

The Company currently intends to use any additional net proceeds from the Offering for working capital and general corporate purposes, which may include capital expenditures, research and development expenditures, regulatory affairs expenditures, clinical trial expenditures, acquisitions of new technologies and investments, business combinations and the repayment, refinancing, redemption or repurchase of indebtedness or capital stock. The Company also may use a portion of the net proceeds to repurchase or redeem a portion or all of those certain senior secured notes due 2026 in an initial aggregate principal amount of \$224,000,000 issued by Scilex Pharmaceuticals Inc., an indirect majority-owned subsidiary of the Company, in September 2018.

The foregoing description of the Sales Agreement and the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Sales Agreement and the Amendment, which are filed as Exhibits 1.1 and 1.2 hereto, respectively, and are incorporated herein by reference.

The representations, warranties and covenants contained in the Amended Sales Agreement were made solely for the benefit of the parties to the Amended Sales Agreement, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Amended Sales Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Amended Sales Agreement and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company’s periodic reports and other filings with the SEC.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any offer, solicitation or sale of any securities in any state or country in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or country.

Item 8.01. Other Information

Effective December 23, 2021, the Sales Agreement was terminated with respect to A.G.P./Alliance Global Partners, and A.G.P./Alliance Global Partners ceased acting as a sales agent under the Sales Agreement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

- 1.1* [Amended and Restated Sales Agreement, dated as of December 3, 2021, by and among Sorrento Therapeutics, Inc., Cantor Fitzgerald & Co., B. Riley Securities, Inc., H.C. Wainwright & Co., LLC and A.G.P./Alliance Global Partners \(incorporated by reference to Exhibit 1.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on December 3, 2021\).](#)
- 1.2 [Amendment No. 1 to Amended and Restated Sales Agreement, dated as of December 23, 2021, by and among Sorrento Therapeutics, Inc., Cantor Fitzgerald & Co., B. Riley Securities, Inc. and H.C. Wainwright & Co., LLC.](#)
- 104 Cover Page Interactive Data File, formatted in Inline Extensible Business Reporting Language (iXBRL).

* Non-material schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the SEC.

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.

SORRENTO THERAPEUTICS, INC.

Date: December 23, 2021

By: /s/ Henry Ji, Ph.D.

Name: Henry Ji, Ph.D.

Title: Chairman of the Board, President and Chief Executive Officer

AMENDMENT NO. 1 TO AMENDED AND RESTATED SALES AGREEMENT

This **AMENDMENT NO. 1 TO AMENDED AND RESTATED SALES AGREEMENT** (this "Amendment") dated as of December 23, 2021, is made by and among Sorrento Therapeutics, Inc. (the "Company"), on the one hand, and Cantor Fitzgerald & Co., B. Riley Securities, Inc. and H.C. Wainwright & Co., LLC (each individually, a "Sales Agent" and together, the "Sales Agents"), on the other hand. The Company and the Sales Agents shall be referred to collectively as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, the Company and the Sales Agents entered into an Amended and Restated Sales Agreement dated as of December 3, 2021 (the "Sales Agreement") pursuant to which the Company engaged the Sales Agents to sell shares of the Company's Common Stock from time to time; and

WHEREAS, the Parties desire to amend certain provisions of the Sales Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties agrees with the other as follows:

1. Capitalized Terms. Unless otherwise defined herein, all terms and conditions used in this Amendment shall have the meanings assigned to such terms in the Sales Agreement.

2. Amendment to Section 1 of Sales Agreement. Section 1 ("Issuance and Sale of Shares") of the Sales Agreement is hereby deleted in its entirety and replaced with the following:

"1. Issuance and Sale of Shares. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell to or through the Sales Agents, acting as agents and/or principals, shares of the Company's common stock, par value \$0.0001 per share (the "Common Stock"), having an aggregate offering price of up to \$5,442,943,290.81, subject to the limitations set forth in Section 3(b) hereof. The issuance and sale of shares of Common Stock having an aggregate offering price of up to \$5,000,000,000 to or through the Sales Agents will be effected pursuant to the Registration Statement (as defined below) which the Company has filed or will file with the U.S. Securities and Exchange Commission (the "Commission") and which was or will be immediately effective upon filing thereof under Rule 462(e) of the Securities Act.

The Company has filed or will file, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the “**Securities Act**”), with the Commission an automatic shelf registration statement on Form S-3ASR, relating to certain securities, including the Common Stock, to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the “**Exchange Act**”). The Company has prepared a prospectus specifically relating to the Placement Shares having an aggregate offering price of up to \$5,000,000,000 (the “**ATM Prospectus**”) included as part of such registration statement and shall, if necessary, prepare a prospectus supplement specifically relating to the Placement Shares (the “**Prospectus Supplement**”) to the ATM Prospectus included as a part of such registration statement. The Company will furnish to the Sales Agents, for use by the Sales Agents, copies of the ATM Prospectus included as part of such registration statement at the time it became effective, as supplemented by the Prospectus Supplement, if any. Except where the context otherwise requires, such registration statement, as amended at the time of such registration statement’s effectiveness for purposes of Section 11 of the Securities Act, including all documents filed as a part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B or 462(b) of the Securities Act, is herein called the “**Registration Statement**”. The ATM Prospectus, including all documents incorporated therein by reference (to the extent such information has not been superseded or modified in accordance with Rule 412 under the Securities Act (as qualified by Rule 430B(g) of the Securities Act)), and the Prospectus Supplement, if any, including all documents incorporated therein by reference (to the extent such information has not been superseded or modified in accordance with Rule 412 under the Securities Act (as qualified by Rule 430B(g) of the Securities Act)), as it or they may be supplemented by any additional prospectus supplement, in the form in which such ATM Prospectus and/or Prospectus Supplement, if any, have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any “issuer free writing prospectus” (“**Issuer Free Writing Prospectus**”), as defined in Rule 433 of the Securities Act (“**Rule 433**”), relating to the Placement Shares that (i) is required to be filed with the Commission by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i), in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g), is herein called the “**Prospectus**”. Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to either the Electronic Data Gathering Analysis and Retrieval System, or if applicable, the Interactive Data Electronic Applications (collectively “**EDGAR**”).”

3. Amendment to Section 6(a) of Sales Agreement. The first sentence of Section 6(a) of the Sales Agreement is hereby deleted in its entirety.

4. Amendment to Section 8(b) of Sales Agreement. The first sentence of Section 8(b) of the Sales Agreement is hereby deleted in its entirety and replaced with: “The Company shall have filed with the Commission the ATM Prospectus pursuant to Rule 424(b) under the Securities Act not later than the Commission’s close of business on the second Business Day following the date of amendment no. 1 to this Agreement.”

5. Full Force and Effect. Except as herein amended, the Sales Agreement shall remain in full force and effect. Upon the effectiveness of this Amendment, each reference in the Sales Agreement to “this Agreement,” “hereunder,” “herein” or words of like import shall mean and be a reference to the Sales Agreement, as amended by this Amendment.

6. Further Assurances. Each Party hereto, without additional consideration, shall cooperate, shall take such further action and shall execute and deliver such further documents as may be reasonably requested by the other Party hereto in order to carry out the provisions and purposes of this Amendment.

7. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Amendment by one party to the other may be made by facsimile transmission.

8. Headings. The section headings herein are for convenience only and shall not affect the construction hereof.

9. Waiver. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Amendment or any of the documents referred to in this Amendment will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege.

10. Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Amendment.

11. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to the principles of conflicts of laws. Any disputes arising from this Amendment shall be resolved pursuant to Section 16 of the Sales Agreement.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to Amended and Restated Sales Agreement to be duly executed as of the day and year first above written.

SORRENTO THERAPEUTICS, INC.

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D.
Title: Chairman of the Board, President and Chief Executive Officer

CANTOR FITZGERALD & CO.

By: /s/ Mark Kaplan
Name: Mark Kaplan
Title: Chief Operating Officer

B. RILEY SECURITIES, INC.

By: /s/ Patrice McNicoll
Name: Patrice McNicoll
Title: Co-Head of Investment Banking

H.C. WAINWRIGHT & CO., LLC

By: /s/ Mark W. Viklund
Name: Mark W. Viklund
Title: Chief Executive Officer
