

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): May 16, 2018

ZIVO BIOSCIENCE, INC.

(Exact name of registrant as specified in its charter)

<u>Nevada</u>	<u>000-30415</u>	<u>87-0699977</u>
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2804 Orchard Lake Road, Suite 202, Keego Harbor, Michigan 48320

(Address of principal executive offices and zip code)

(248) 452-9866

(Registrant's telephone number including area code)

Not applicable

(Registrant's 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))

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

Item 2.03

Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

Entry into a Material Definitive Agreement

Creation of a Direct Financial Obligation

On May 16, 2018, the Registrant and HEP Investments, LLC (“Lender”), entered into the following documents, effective as of May 16, 2018: (i) a Tenth Amendment to Loan Agreement under which the Lender has agreed to advance up to a total of \$20,000,000 to the Registrant, subject to certain conditions, and (ii) an Eleventh Amended and Restated Senior Secured Convertible Promissory Note. The Tenth Amendment to Loan Agreement amends and restates the Ninth Amendment to Loan Agreement, which was entered into with the Lender on January 31, 2018 and disclosed in the Registrant’s Form 8-K Current Report filed on February 12, 2018. The Eleventh Amended and Restated Senior Secured Convertible Promissory Note amends and restates the Tenth Amendment Amended and Restated Senior Secured Convertible Promissory Note, which was entered into with the Lender on January 31, 2018 and disclosed in the Registrant’s Form 8-K Current Report filed on February 12, 2018. The total outstanding debt as of April 24, 2018 is \$16,911,839, and the related amount of unpaid interest is \$1,898,727.

In consideration for increasing the advance amount up to \$20,000,000 in accordance with the Eleventh Amended and Restated Senior Convertible Promissory Note, the Registrant agreed to issue to the Lender warrants to purchase 5,000,000 shares of common stock at an exercise price of \$.10 with a term of 5 years.

Based on the above, the total shares of common stock, if the Lender converted the complete \$18,810,566 convertible debt and accrued interest, would be 188,105,660 shares, not including any future interest charges which may be converted into common stock.

The Registrant has agreed to pay a closing fee of \$277,934 in connection with the Loan transaction (when the remaining \$3,088,161 in funding is achieved), consisting of \$166,761 in cash and \$111,174 paid in shares of common stock valued at various amounts based on the timing of the funding and the related stock price.

Amounts advanced under the Note are secured by all the Registrant’s assets.

The Registrant has made certain agreements with the Lender which shall remain in effect as long as any amount is outstanding under the Loan. These agreements include an agreement not to make any change in the Registrant’s senior management. Two representatives of the Lender will have the right to attend Board of Director meetings as non-voting observers.

Item 9.01 Financial Statements and Exhibits

Exhibit [10.1](#) – Tenth Amendment to Loan Agreement with HEP Investments, LLC dated May 16, 2018

Exhibit [10.2](#) – Eleventh Amended and Restated Senior Secured Convertible Promissory Note HEP Investments, LLC dated May 16, 2018

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.

ZIVO BIOSCIENCE, INC.

By: /s/ Philip M. RICE II
Name: Philip M. Rice, II
Title: Chief Financial Officer

Dated: May 17, 2018

TENTH AMENDMENT TO LOAN AGREEMENT

This Tenth Amendment to Loan Agreement (“Tenth Amendment”) is made and entered into as of May 16, 2018 by and between HEP INVESTMENTS LLC, a Michigan limited liability company (“Lender”), and ZIVO BIOSCIENCE, INC. (formerly HEALTH ENHANCEMENT PRODUCTS, INC.), a Nevada corporation (“Borrower”).

RECITALS

A. Borrower and Lender entered into that certain Loan Agreement, dated as of December 1, 2011 (as the same may be amended, modified or restated from time to time, the “Loan Agreement”) whereby Lender made a loan to Borrower evidenced by the Note.

B. Borrower and Lender desire to make certain changes to the Loan Agreement upon the terms and conditions hereinafter set forth in connection with the execution of a Tenth Amended and Restated Senior Convertible Promissory Note, of even date herewith, including the consent of the Guarantors to such amendment endorsed hereon.

NOW THEREFORE, in consideration of the covenants and agreements of the parties, Borrower and Lender, with the consent and agreement of the undersigned Guarantors (each a “Guarantor” and collectively the “Guarantors”), agree as follows:

1. **Capitalized Terms.** Capitalized terms used but not otherwise defined in this Tenth Amendment shall have the meanings given to such terms in the Loan Agreement.

2. **Continued Effect.** Except as specifically modified or amended by the terms of this Tenth Amendment, all other terms and provisions of the Loan Agreement and all other Loan Documents (as defined in the Loan Agreement) shall continue in full force and effect. By execution of this Amendment, Borrower and each Guarantor hereby reaffirms, assumes and binds itself to all of the obligations, duties, rights, covenants, terms and conditions that are contained in the Loan Agreement, the Note and the other Loan Documents. Borrower and each Guarantor hereby acknowledges and agrees that (i) the liens created and provided for by the Loan Documents continue to secure all obligations under the Loan Agreement as amended hereby. Nothing herein contained shall in any manner affect or impair the priority of the liens and security interests created and provided for by the Loan Documents as to the indebtedness which would be secured thereby prior to giving effect to this Amendment.

3. **Amendment.** Section 1 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

Loan. Lender agrees to make a loan to Borrower in the amount of up to \$20,000,000 (the “Loan”) in accordance with the terms of that certain Eleventh Amended and Restated Senior Secured Convertible Promissory Note attached hereto as Exhibit A (the “Note”).”

4. **Fees and Expenses; Outstanding Amount.** Lender and Borrower acknowledge and agree that, as of April 24, 2018, the principal amount outstanding under the Loan is \$16,911,839.16, and related interest accrued through April 24, 2018 of \$ 1,898,726.69. In consideration for increasing the amount of the Loan in accordance with the Eleventh Amended and Restated Senior Convertible Promissory Note, of even date herewith, Borrower agrees to promptly grant to Lender 5-year warrants to purchase 5,000,000 shares of Borrower common stock, at an exercise price of \$0.10 per share, in substantially the same form as previously granted to Lender.

5. **Guarantors Consent.** The Guarantors hereby consent to this Tenth Amendment and acknowledge and agree that their Guaranties remain in full force and effect in accordance with their respective terms, including the increase in the amount of the Loan, and that the Guarantors have no defenses, setoff of counterclaims with respect thereto.

6. **Authority.** Each individual executing this Tenth Amendment on behalf of the respective parties hereto represents and warrants that he/she is duly authorized to execute and deliver this Ninth Amendment on behalf of the respective party hereto and that this Ninth Amendment is binding upon the respective party in accordance with its terms.

7. **Counterparts.** This Tenth Amendment may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument. Copies (whether photostatic, facsimile or otherwise) of this Ninth Amendment may be made and relied upon to the same extent as an original.

[Signatures on next page]

IN WITNESS WHEREOF, Lender, Borrower and Guarantors have executed this Ninth Amendment to Loan Agreement as of the date first written above.

BORROWER:

ZIVO BIOSCIENCE, INC.

(formerly HEALTH ENHANCEMENT PRODUCTS, INC.),
a Nevada corporation

By: /s/ Philip M. Rice II

Name: Philip M. Rice, II

Title: Chief Financial Officer

LENDER:

HEP INVESTMENTS LLC, a Michigan limited liability company

By: /s/ Laith Yaldao

Laith Yaldao,

Manager

ACKNOWLEDGED AND AGREED BY THE UNDERSIGNED GUARANTORS:

HEALTH ENHANCEMENT CORPORATION, a Nevada corporation

By: /s/ Philip M. Rice II

Print Name: Philip M. Rice, II

Its: Chief Financial Officer

HEPI PHARMACEUTICALS, INC., a Delaware corporation

By: /s/ Philip M. Rice II

Print Name: Philip M. Rice, II

Its: Chief Financial Officer

**ELEVENTH AMENDED AND RESTATED
SENIOR SECURED CONVERTIBLE PROMISSORY NOTE**

\$20,000,000

**Keego Harbor, Michigan
May 16, 2018**

FOR VALUE RECEIVED, **ZIVO BIOSCIENCE, INC.**, a Nevada corporation (“Borrower”), whose address is 2804 Orchard Lake Road, Suite 202, Keego Harbor, Michigan 48320, promises to pay to the order of **HEP INVESTMENTS LLC**, a Michigan limited liability company (“Lender”), whose address is 2804 Orchard Lake Road, Suite 205, Keego Harbor, Michigan 48320, or at such other place as Lender may designate in writing, in lawful money of the United States of America, the principal sum of up to Twenty Million Dollars (\$20,000,000), or such lesser sum as shall have been advanced by Lender to Borrower under the loan agreement hereinafter described, together with interest as provided herein, in accordance with the terms of this Eleventh Amended and Restated Senior Secured Convertible Promissory Note (this “Note”).

In accordance with the terms of that certain Loan Agreement, dated as of December 1, 2011, by and between Lender and Borrower (as amended or restated from time to time, the “Loan Agreement”), Lender intends to loan to the Borrower up to Twenty Million Dollars (\$20,000,000). All advances made hereunder shall be charged to a loan account in Borrower's name on Lender's books, and Lender shall debit to such account the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. From time to time but not less than quarterly, Lender shall furnish Borrower a statement of Borrower's loan account, which statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement of exceptions from Borrower within ten (10) days after such statement has been furnished. Terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement. Lender and Borrower acknowledge and agree that, as of April 24, 2018, the total outstanding indebtedness under this Note was \$16,911,839.16, and related interest accrued through April 24, 2018 of \$1,898,726.69.

Payment. The unpaid principal balance of this Note shall bear interest computed upon the basis of a year of 360 days for the actual number of days elapsed in a month at a rate of eleven percent (11%) per annum (the “Effective Rate”). Upon the occurrence and during the continuance of an Event of Default (as defined below), the unpaid principal balance of this Note shall bear interest, computed upon the basis of a year of 360 days for the actual number of days elapsed in a month, at a rate equal to the lesser of five percent (5%) over the Effective Rate or the highest rate allowed by applicable law. The indebtedness represented by this Note shall be paid to Lender on April 1, 2019 and, if not sooner converted in accordance with the terms of this Note, the entire unpaid principal balance of this Note, together with all accrued and unpaid interest, shall be immediately due and payable in full on April 1, 2019 (the “Due Date”).

Pre-payment Premium. Borrower may prepay the principal balance of this Note, in whole or in part, plus all accrued interest then outstanding upon sixty (60) days prior written notice to Lender; provided, however, there shall be a pre-payment premium of five (5%) percent of each amount prepaid at any time during the term of this Note.

Use of Proceeds. The funds advanced pursuant to this Note shall be used by Borrower for working capital.

Conversion Right and Funding Provisions.

~~(A)~~ Lender's option, at any time prior to the repayment in full of this Note, all or any portion of the outstanding indebtedness of this Note (including accrued and unpaid interest) may be converted into validly issued and fully paid shares of common stock of Borrower (“Shares”) at the conversion rate of \$0.10 per share (as appropriately adjusted by any stock split, stock combination or other corporate recapitalization affecting such common stock occurring after the date hereof).

~~(B)~~ Upon conversion of this Note as provided herein, (i) the portion of this Note so converted shall be deemed cancelled and shall be converted into the Shares as specified above; (ii) Lender, by acceptance of this Note, agrees to deliver the executed original of this Note to Borrower within ten (10) days of the conversion of the entire outstanding indebtedness of this Note and to execute such documents as are necessary to document the issuance of the Shares and to comply with applicable securities laws; and (iii) as soon as practicable after Borrower's receipt of the documents referenced above, Borrower shall issue and deliver to Lender (or its designee) stock certificates evidencing the Shares (or confirmation that the Shares are held by Lender (or its designee) in book entry form on the books and records of Borrower's transfer agent) and Borrower shall deliver to Lender a promissory note (in the form of this Note) reflecting the balance of the outstanding indebtedness under this Note.

Default. Each of the following constitutes an “Event of Default” under this Note:

~~(a)~~ Borrower’s failure to pay the outstanding indebtedness of this Note within ten (10) days of the date on which such payment is due hereunder, whether at maturity or otherwise;

~~(b)~~ Borrower’s breach of or failure to perform or observe any covenant, condition or agreement contained in this Note, the Loan Agreement or the Security Agreement (defined below), which breach or failure continues unremedied for a period of thirty (30) calendar days after receipt by Borrower of written notice specifying the nature of the default. Notwithstanding the foregoing, Borrower shall not be in default under this subsection (b) with respect to any non-monetary breach that can be cured by the performance of affirmative acts if Borrower promptly commences the performance of said affirmative acts and diligently prosecutes the same to completion within a period of forty-five (45) calendar days after receipt by Borrower of written notice specifying the nature of the default;

~~(c)~~ Borrower files a voluntary petition in bankruptcy;

~~(d)~~ Borrower makes a general assignment for the benefit of its creditors or Borrower’s creditors file against Borrower any involuntary petition under any bankruptcy or insolvency law that is not dismissed within ninety (90) days after it is filed;

~~(e)~~ Any court appoints a receiver to take possession of substantially all of Borrower’s assets and such receivership is not terminated within ninety (90) days after its appointment; or

~~(f)~~ Lender reasonably deems itself insecure with respect to the indebtedness under this Note.

Upon the occurrence and during the continuance of an Event of Default, at the election of Lender, the entire unpaid principal balance of this Note, together with all accrued and unpaid interest, shall be immediately due and payable in full.

Security. This Note is secured by all of the assets of Borrower pursuant to that certain Security Agreement, dated as of December 1, 2011 (the “Security Agreement”), and that certain Patent, Copyright, License and Trademark Security Agreement, dated as of December 2, 2011.

Waivers. Borrower and all endorsees, sureties and guarantors hereof hereby jointly and severally waive presentment for payment, demand, notice of non-payment, notice of protest or protest of this Note, and Lender diligence in collection or bringing suit, and do hereby consent to any and all extensions of time, renewals, waivers or modifications as may be granted by Lender with respect to payment or any other provisions of this Note. The liability of Borrower under this Note shall be absolute and unconditional, without regard to the liability of any other party.

Usury. Notwithstanding anything herein to the contrary, in no event shall Borrower be required to pay a rate of interest in excess of the Maximum Rate. The term “Maximum Rate” shall mean the maximum non-usurious rate of interest that Lender is allowed to contract for, charge, take, reserve or receive under the applicable laws of any applicable state or of the United States of America (whichever from time to time permits the highest rate for the use, forbearance or detention of money) after taking into account, to the extent required by applicable law, any and all relevant payments or charges hereunder, or under any other document or instrument executed and delivered in connection therewith and the indebtedness evidenced hereby.

In the event Lender ever receives, as interest, any amount in excess of the Maximum Rate, such amount as would be excessive interest shall be deemed a partial prepayment of principal, and, if the principal hereof is paid in full, any remaining excess shall be returned to Borrower. In determining whether or not the interest paid or payable, under any specified contingency, exceeds the Maximum Rate, Borrower and Lender shall, to the maximum extent permitted by law, (a) characterize any nonprincipal payment as an expense, fee, or premium rather than as interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread the total amount of interest through the entire contemplated term of such indebtedness until payment in full of the principal (including the period of any extension or renewal thereof) so that the interest on account of such indebtedness shall not exceed the Maximum Rate.

Miscellaneous.

~~(A)~~ modifications, consents, amendments or waivers of any provision of any this Note shall be effective only if in writing and signed by Lender and then shall be effective only in the specific instance and for the limited purpose for which given.

~~(B)~~ communications provided in this Note shall be personally delivered or mailed, postage prepaid, by registered or certified mail, return receipt requested, to the addresses set forth at the beginning of this Note or such other addresses as Borrower or Lender may indicate by written notice.

~~(C)~~ headings used in this Note are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Note.

~~(D)~~ This Note shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns; provided, however, that neither party may, without the prior written consent of the other party, assign any rights, powers, duties or obligations under this Note.

~~(E)~~ This Note shall be construed and enforced in accordance with the laws of the State of Michigan. All actions arising out of or relating to this Note shall be heard and determined exclusively by any state or federal court with jurisdiction in the Eastern District of the State of Michigan. Consistent with the preceding sentence, the parties hereto hereby irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this Note or the transactions contemplated by this Note may not be enforced in or by any of the above-named courts.

~~(F)~~ This Note is intended to amend and restate, and is not intended to be in substitution for or a novation of, that certain Senior Secured Convertible Promissory Note, dated December 1, 2011, executed and delivered by Borrower in favor of Lender in the original principal amount of \$2,000,000, as previously amended and restated (the "Original Note"). This Note shall continue to be secured by the security instruments and UCC statements executed and filed with the Original Note, and otherwise as set forth in the loan documentation executed in connection with the Original Note.

[Signature on the following page]

IN WITNESS WHEREOF, the undersigned has duly executed this Tenth Amended and Restated Senior Secured Convertible Promissory Note as of the day and year first written above.

BORROWER:
ZIVO BIOSCIENCE, INC.

By: /s/ Philip M. Rice II
Name: Philip M. Rice II
Its: Chief Financial Officer