

Ohr Pharmaceutical Inc  
Form 425  
January 23, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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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 18, 2019

Ohr Pharmaceutical, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	333-88480	46-5622433
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

800 Third Avenue, 11 <sup>th</sup> Floor, New York, NY	10022
(Address of Principal Executive Offices)	(Zip Code)

(212) 682-8452  
(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:

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 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 3.03 Material Modification to Rights of Security Holders.**

To the extent required by Item 3.03 of Form 8-K, the information contained in Items 5.03 and 5.07 of this Current Report on Form 8-K is incorporated herein by reference.

**Item 5.03            Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On January 18, 2019, Ohr Pharmaceutical, Inc., a Delaware corporation (the “Company”), held a Special Meeting of Stockholders (the “Special Meeting”). At the Special Meeting, the stockholders approved a proposal to amend the Company’s Certificate of Incorporation (the “Certificate of Incorporation”) to effect a reverse stock split of its outstanding common stock at a ratio in the range of one-for-three to one-for-twenty, to be determined at the discretion of the Board of Directors of the Company (the “Board”).

On January 18, 2019, following the Special Meeting, the Board approved a one-for-twenty reverse stock split of the Company’s issued and outstanding shares of common stock (the “Reverse Stock Split”). On January 22, 2019, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment to its Certificate of Incorporation (the “Certificate of Amendment”) to effect the Reverse Stock Split. The Company’s common stock will begin trading on a split-adjusted basis when the market opens on February 4, 2019.

As a result of the Reverse Stock Split, every twenty shares of the Company’s issued and outstanding common stock will automatically be converted into one share of common stock, without any change in the par value per share. In addition, a proportionate adjustment will be made to the per share exercise price and the number of shares issuable upon the exercise of all outstanding stock options and warrants to purchase shares of common stock and the number of shares reserved for issuance pursuant to the Company’s equity incentive plan. Any fraction of a share of common stock that would be created as a result of the Reverse Stock Split will be rounded up to the next whole share.

Since the Certificate of Amendment did not reduce the number of authorized shares of the Company’s common stock, the effect of the Certificate of Amendment and the Reverse Stock Split is to increase the number of shares of common stock available for issuance relative to the number of shares issued and outstanding.

The Company’s common stock will continue to trade on the Nasdaq Capital Market under the symbol “OHRP.” The new CUSIP number for common stock following the Reverse Stock Split will be 67778H309.

Standard Registrar and Transfer Co. Inc., the Company's transfer agent, will act as the exchange agent for the Reverse Stock Split.

For more information about the Reverse Stock Split, see the Company's Definitive Proxy Statement on Schedule 14A, which was filed with the Securities and Exchange Commission (the "SEC") on December 18, 2018, the relevant portions of which are incorporated herein by reference.

The above description of the Certificate of Amendment and the Reverse Stock Split is a summary of the material terms thereof and is qualified in its entirety by reference to the Certificate of Amendment, a copy of which is attached as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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

The Company held the Special Meeting on January 18, 2019. There were 56,466,428 shares of common stock entitled to be voted, of which 44,933,397 were voted in person or by proxy. The following matters were submitted to a vote of the Company's stockholders at the Special Meeting.

Proposal 1. A proposal to approve an amendment to the Company's certificate of incorporation to effect a reverse stock split of the Company's common stock at a split ratio of not less than one-for-three and not more than one-for-twenty, to be effective, if at all, at such time as the Company's Board of Directors shall determine in its sole discretion. The results of the voting were as follows:

For	Against	Abstentions	Broker Non-Votes
35,392,595	9,387,304	153,498	0

Proposal 2. A proposal to approve the adjournment of the Special Meeting to permit the Company to solicit additional proxies if there are insufficient proxies at the Special Meeting to approve Proposal 1. The results of the voting were as follows:

For	Against	Abstentions	Broker Non-Votes
35,843,916	8,879,467	210,014	0

**Item 8.01 Other Events.**

On January 23, 2019, the Company issued a press release relating to the matters described in Item 5.03 above. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

***Additional Information about the Merger and Where to Find It***

In connection with the Agreement and Plan of Merger and Reorganization (the "Merger Agreement"), dated January 2, 2019, by and among the Company, Ohr Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of the Company ("Merger Sub"), and NeuBase Therapeutics, Inc., a Delaware corporation ("NeuBase"), pursuant to which, among other things, subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger

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Sub will merge with and into NeuBase, with NeuBase becoming a wholly-owned subsidiary of the Company and the surviving corporation of the merger (the “Merger”), the Company intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a prospectus, joint proxy and information statement. Investors and security holders of the Company and NeuBase are urged to read these materials when they become available because they will contain important information about the Company, NeuBase and the Merger. The joint proxy statement, information statement, prospectus, and other relevant materials (when they become available), and any other documents filed by the Company with the SEC, may be obtained free of charge at the SEC web site at [www.sec.gov](http://www.sec.gov). In addition, investors and security holders may obtain free copies of the documents filed with the SEC by the Company by directing a written request to: Ohr Pharmaceutical, Inc., 800 Third Avenue, 11th Floor, New York, NY, Attention: Corporate Secretary. Investors and security holders are urged to read the joint proxy statement, prospectus and the other relevant materials when they become available before making any voting or investment decision with respect to the Merger.

This Current Report on Form 8-K 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 shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended. Subject to certain exceptions to be approved by the relevant regulators or certain facts to be ascertained, the public offer will not be made directly or indirectly, in or into any jurisdiction where to do so would constitute a violation of the laws of such jurisdiction, or by use of the mails or by any means or instrumentality (including without limitation, facsimile transmission, telephone and the internet) of interstate or foreign commerce, or any facility of a national securities exchange, of any such jurisdiction.

***Participants in the Solicitation***

The Company and its directors and executive officers and NeuBase and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of the Company in connection with the proposed transaction. Information regarding the special interests of these directors and executive officers in the Merger will be included in the joint proxy statement/prospectus referred to above. Additional information regarding the directors and executive officers of the Company is included in the Company's Annual Report on Form 10-K for the year ended September 30, 2018 and the proxy statement for the Company's 2018 Annual Meeting of Stockholders. These documents are available free of charge at the SEC web site ([www.sec.gov](http://www.sec.gov)) and from the Company, Attn: Corporate Secretary, at the address described above.

***Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995:***

This Current Report on Form 8-K contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act. These forward-looking statements include, among other things, statements regarding the structure, timing and completion of the proposed Merger; the combined company's listing on Nasdaq upon the closing of the proposed Merger; the financial position and cash balance of the combined company; expectations regarding ownership structure of the combined company; expectations regarding an issuance and sale of securities or other financing by NeuBase and the expected proceeds thereof, the future operations of the combined company and its ability to successfully initiate and complete clinical trials and achieve regulatory milestones; 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; that the proposed Merger will close and will enable the combined company to participate in the possible success of the combined company's product candidates; that the product candidates have the potential to address critical unmet needs of patients with serious diseases and conditions; and the executive and board structure of the combined company. These forward-looking statements are distinguished by use of words such as "will," "would," "anticipate," "expect," "believe," "designed," "plan," or "intend," the negative of these terms, and similar references future periods. These views involve risks and uncertainties that are difficult to predict and, accordingly, the Company's actual results may differ materially from the results discussed in the Company's forward-looking statements. The Company's forward-looking statements contained herein speak only as of the date of this Current Report on Form 8-K. Factors or events that the Company cannot predict, including those described in the risk factors contained in the Company's filings with the SEC, may cause the Company's actual results to differ from those expressed in forward-looking statements. The Company and the combined company may not actually achieve the plans, carry out the intentions or meet the expectations or projections disclosed in the forward-looking statements, and you should not place undue reliance on these forward-looking statements. Because such statements deal with future events and are based on the Company's current expectations, they are subject to various risks and uncertainties and actual results, performance or achievements of the Company or the combined company could differ materially from those described in or implied by the statements in this Current Report on Form 8-K, including: the risk that the conditions to the closing of the transaction are not satisfied, including the failure to timely or at all obtain stockholder approval for the transaction; uncertainties as to the timing of the consummation of the transaction and the ability of each of the

Company and NeuBase to consummate the transaction; risks related to the combined company's ability to correctly manage its operating expenses and its expenses; risks related to the market price of the Company's common stock relative to the exchange ratio; unexpected costs, charges or expenses resulting from the transaction; potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed Merger transaction; the combined company's plans to develop and commercialize its product candidates, including NT0100 and NT0200; the timing of initiation of the combined company's planned clinical trials; the timing of the availability of data from the combined company's clinical trials; the timing of any planned investigational new drug application or new drug application; the combined company's plans to research, develop and commercialize its current and future product candidates; the clinical utility, potential benefits and market acceptance of the combined company's product candidates; the combined company's commercialization, marketing and manufacturing capabilities and strategy; the combined company's ability to protect its intellectual property position; and the requirement for additional capital to continue to advance these product candidates, which may not be available on favorable terms or at all, as well as those risks discussed under the heading "Risk Factors" in the Company's most recent Annual Report on Form 10-K. Except as otherwise required by law, the Company disclaims any intention or obligation to update or revise any forward-looking statements, which speak only as of the date hereof, whether as a result of new information, future events or circumstances or otherwise.



**Item 9.01 Financial Statements and Exhibits.**

(d)

Exhibits:

3.1

Certificate of Amendment to the Certificate of Incorporation of Ohr Pharmaceutical, Inc., filed with the Delaware Secretary of State on January 23, 2019.

99.1

Press release, dated January 23, 2019.

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.

OHR  
PHARMACEUTICAL,  
INC  
(Registrant)

Date: January 23, 2019 By: /s/ Sam Backenroth  
Sam Backenroth  
Chief Financial  
Officer