

**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 13, 2023 (January 12, 2023)

Ensysce Biosciences, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-38306
(Commission
File Number)

82-2755287
(I.R.S. Employer
Identification Number)

7946 Ivanhoe Avenue, Suite 201
La Jolla, California
(Address of principal executive offices)

92037
(Zip Code)

(858) 263-4196
Registrant's telephone number, including area code

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 to 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(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001 per share	ENSC	The Nasdaq Stock Market LLC
Warrants to purchase one share of Common Stock	ENSCW	OTC Pink Open Market

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.

As previously reported on Current Reports on Forms 8-K filed July 6, 2022, August 2, 2022 and August 9, 2022, on June 30, 2022, Ensysce Biosciences, Inc. ("Ensysce" or the "Company") entered into a Securities Purchase Agreement (the "SPA") for an aggregate financing of \$8.0 million with institutional investors. At two closings under the SPA, which occurred on June 30, 2022 and August 8, 2022, the Company issued to the investors (i) senior secured convertible promissory notes in the aggregate principal amount of \$8.48 million for an aggregate purchase price of \$8.0 million (the "Notes") and (ii) warrants (the "Warrants") to purchase 9,335,780 shares of the Company's common stock, par value \$0.0001 per share (the "Common Stock") in the aggregate. Under the SPA, the conversion price for converting Notes into the Common Stock, after several downward resets, is \$2.006 per share (the "Conversion Price"), subject to adjustment under certain events. In addition, following a reverse stock split in October 2022, the number of Warrants is now 466,788.

On January 12, 2023, the parties to the SPA agreed to a Letter Agreement amending the SPA ("Letter Agreement") to take certain actions. Among other matters, the parties to the Letter Agreement (i) reduced the Conversion Price for the remaining balance of the Company's outstanding Notes from \$2.006 to \$0.7512 (the "New Conversion Price") for the period from January 12, 2023 until May 12, 2023 (the "Period"), and (ii) agreed to register any additional shares of Common Stock required to give the holders registered shares upon conversion of the Notes if exceeding those shares already registered on a Form S-3 that was declared effective on December 29, 2022. The remaining balance of the Notes was \$3,339,931 as of the date of the Letter Agreement. Following the Period, the prior conversion price of \$2.006 will apply. In addition, the parties have agreed that to the extent the investors receive shares as an interest payment or upon a redemption notice pursuant to Sections 2(a) and 6(b) of the Notes, any cash true-up payment based on the New Conversion Price will not be required to be paid for one hundred and twenty days. The parties have also agreed that accelerations of payment that are permitted under the Notes for any given month may be made over four conversion notices instead of two conversion notices during the period from January 12, 2023 until

May 12, 2023.

The New Conversion Price meets a minimum price requirement established by The Nasdaq Stock Market in connection with a potential issuance of 20% or more of the Common Stock of a public company or 20% or more of the voting power outstanding before the potential issuance. The Letter Agreement may result in the need for the Company to issue more than 20% of its shares of Common Stock. If the New Conversion Price did not meet the minimum price requirement, then the Letter Agreement would have to be approved by Company stockholders. The New Conversion Price is the price that was the lower of: (i) the Nasdaq Official Closing Price (as reflected on Nasdaq.com) immediately preceding the signing of the Letter Agreement; or (ii) the average Nasdaq Official Closing Price of the Common Stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the Letter Agreement. On the date of execution of the Letter Agreement, the (i) the Nasdaq Official Closing Price (as reflected on Nasdaq.com) immediately preceding the signing of the Letter Agreement was \$0.7600; and (ii) the average Nasdaq Official Closing Price of the Common Stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the Letter Agreement was \$0.7512.

There is no change to the exercise price of the Warrants because of the execution of the Letter Agreement. The Letter Agreement also includes certain conditions that the Company must satisfy in connection with the transaction.

The Company has registered with the Securities and Exchange Commission (the "SEC") the resale of the shares of Common Stock issuable upon conversion of the Notes as well as the shares of Common Stock issuable upon the exercise of the Warrants pursuant to the Registration Rights Agreement, dated June 30, 2022, by and among the Company and the purchasers signatory to the SPA. The Company registered the resale of additional shares of Common Stock upon conversion of the Notes in December 2022 and may be required to register additional shares of Common Stock upon conversion of the Notes as a result of the Letter Agreement.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information provided under Item 1.01 in this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference. The Notes and the Warrants were issued without registration under the Securities Act of 1933, as amended (the "Securities Act"), based on the exemption from registration afforded by Section 4(a)(2) of the Securities Act.

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Item 9.01. Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
4.6	Form of Senior Secured Convertible Promissory Note issued by the Company pursuant to and in accordance with the Securities Purchase Agreement (incorporated by reference to Exhibit 4.6 filed with Ensysce Biosciences, Inc.'s Current Report on Form 8-K on August 9, 2022)
4.7	Form of Common Stock Purchase Warrant issued by the Company pursuant to and in accordance with the Securities Purchase Agreement (incorporated by reference to Exhibit 4.7 filed with Ensysce Biosciences, Inc.'s Current Report on Form 8-K on August 9, 2022)
10.1*	Securities Purchase Agreement, dated June 30, 2022, by and among the Company and the purchasers signatory thereto (incorporated by reference to Exhibit 10.1 filed with Ensysce Biosciences, Inc.'s Current Report on Form 8-K on July 6, 2022)
10.2	Registration Rights Agreement, dated June 30, 2022, by and among the Company and the parties signatory thereto (incorporated by reference to Exhibit 10.2 filed with Ensysce Biosciences, Inc.'s Current Report on Form 8-K on July 6, 2022)
10.3	Subsidiary Guarantee, dated June 30, 2022, by and among the Company and the purchasers signatory thereto (incorporated by reference to Exhibit 10.3 filed with Ensysce Biosciences, Inc.'s Current Report on Form 8-K on July 6, 2022)
10.4*	Security Agreement, dated June 30, 2022, by and among the Company, EBI OpCo, Inc., Covistat, Inc. and the other parties signatory thereto (incorporated by reference to Exhibit 10.4 filed with Ensysce Biosciences, Inc.'s Current Report on Form 8-K on July 6, 2022)
10.5*	Patent Security Agreement, dated June 30, 2022, by and among the Company, EBI OpCo, Inc., Covistat, Inc. and the other parties signatory thereto (incorporated by reference to Exhibit 10.5 filed with Ensysce Biosciences, Inc.'s Current Report on Form 8-K on July 6, 2022)
10.6	Letter Agreement, dated January 12, 2023, by and among the Company and the parties signatory thereto
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Schedules, exhibits and similar supporting attachments to this exhibit are omitted pursuant to Item 601(b)(2) of Regulation S-K. We agree to furnish a supplemental copy of any omitted schedule or similar attachment to the SEC upon request.

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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.

Dated: January 12, 2023

Ensysce Biosciences, Inc.

By: /s/ Lynn Kirkpatrick
Name: Dr. Lynn Kirkpatrick
Title: President and Chief Executive Officer

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January 12, 2023

3i, LP
140 Broadway FL 38
New York, NY 10005

Anson Investments Master Fund LP
c/o Anson Advisors Inc. 155 University Ave., Suite 207
Toronto, ON Canada M5H3B7

Anson East Master Fund LP
c/o Anson Advisors Inc. 155 University Ave., Suite 207
Toronto, ON Canada M5H3B7

Re: Modification of the Senior Secured Convertible Notes under the 2022 Purchase Agreement and certain other terms

Dear Sirs:

Reference is made to that (i) certain Securities Purchase Agreement (as modified from time to time, the "**2022 Purchase Agreement**"), dated as of June 30, 2022, between the Company and the purchasers identified therein, which are the same as the three addressees listed above (collectively, the "**2022 Investors**"), (ii) the Senior Secured Convertible Promissory Notes (as modified from time to time, the "**2022 Senior Secured Convertible Notes**"), (iii) the Warrants and (iv) the other transaction documents, as modified from time to time, referred to collectively, as the "**2022 Transaction Documents**"). Capitalized terms used but not defined herein shall have the meanings given to them in the 2022 Purchase Agreement, or if not defined therein, in the 2022 Senior Secured Convertible Notes, or if not defined therein, in the applicable 2022 Transaction Document, in each case as of the date hereof.

This letter agreement (this "**Letter Agreement**") confirms our recent discussions about, among other matters, certain modifications to the 2022 Senior Secured Convertible Notes.

- (1) This Letter Agreement shall be deemed to be a 2022 Transaction Document;
- (2) Subject to Paragraph 3, the Parties agree that the revised Conversion Price established in paragraph (3) shall be at least equal to the "Minimum Price"¹ set forth in The Nasdaq Stock Market Rule 5635.
- (3) The Conversion Price and Floor Price of the 2022 Senior Secured Convertible Notes which remain outstanding as of even date hereof shall be \$0.7512 ("Temporary Reset Price"), such Conversion Price and Floor Price to become effective as of the date of this Letter Agreement and apply through May 12, 2023;
- (4) The Temporary Reset Price effected pursuant to this Letter Agreement does not constitute a Dilutive Issuance or require an adjustment of the Floor Price (other than solely to effect paragraph (3)) or Conversion Price under the Transaction Documents.
- (5) To the extent any Purchaser receives Common Stock in payment of interest or a redemption notice pursuant to Sections 2(a) or 6(b) of the 2022 Senior Secured Convertible Notes at the Temporary Reset Price, it agrees that any true-up payment owed in cash thereunder shall be deferred for one hundred twenty (120) days (May 12, 2023).
- (6) To the extent the Company has insufficient shares of Common Stock registered for resale by a Purchaser(s) it shall use its best efforts to register additional shares of Common Stock with the Commission.

¹ For purposes of this Letter Agreement the Parties will apply the definition contained in The Nasdaq Stock Market Rule 5635(d)(1)(A), where "Minimum Price" means a price that is the lower of: (i) the Nasdaq Official Closing Price (as reflected on Nasdaq.com) immediately preceding the signing of this Letter Agreement; or (ii) the average Nasdaq Official Closing Price of the Common Stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of this Letter Agreement.

- (7) Accelerations that are permitted under the 2022 Notes for any given month may be made over four conversion notices instead of two conversion notices during the period from the date of this letter until May 12, 2023.

The Company hereby agrees, for itself and its Subsidiaries, that the Guarantors continue to guaranty, pursuant to the Guaranty, as primary obligor and not as surety, the full and punctual payment when due of the obligations owing under the 2022 Senior Secured Convertible Notes and the other 2022 Transaction Documents as modified hereby (as limited by the original terms of the Guaranty) and that the terms hereof shall not affect in any way their obligations and liabilities, as expressly modified hereby, under the 2022 Transaction Documents. The Company, for itself and its Subsidiaries, hereby reaffirms (a) all such obligations and liabilities and agrees that such obligations and liabilities shall remain in full force and effect and (b) the security interests granted under the Transaction Documents and agrees that such security interests shall continue to secure such obligations and liabilities.

This Letter Agreement is a Transaction Document and is limited as written. As of the date first written above, each reference in the Purchase Agreement or any other applicable 2022 Transaction Document to "**this Agreement**," "**hereunder**," "**hereof**," "**herein**," or words of like import, and each reference in the other Transaction Documents to such Purchase Agreement or other 2022 Transaction Documents (including, without limitation, by means of words like "**thereunder**," "**thereof**" and words of like import), shall refer to the 2022 Purchase Agreement as modified thereby, and this Letter Agreement and the 2022 Purchase Agreement shall be read together and construed as a single agreement. The execution, delivery and effectiveness of this Letter Agreement shall not, except as expressly provided herein, (A) waive or modify any right, power or remedy under, or any other provision of, any 2022 Transaction Document or (B) commit or otherwise obligate any Purchaser to enter into or consider entering into any other amendment, waiver or modification of any 2022 Transaction Document.

All communications and notices hereunder shall be given as provided in the 2022 Transaction Documents. This Letter Agreement (a) shall be governed by and construed in accordance with the law of the State of Nevada, (b) is for the exclusive benefit of the parties hereto and the other Purchasers and beneficiaries of the 2022

Purchase Agreement and, together with the other Transaction Documents, constitutes the entire agreement of such parties, superseding all prior agreements among them, with respect to the subject matter hereof, (c) may be modified, waived or assigned only in writing and only to the extent such modification, waiver or assignment would be permitted under the 2022 Transaction Documents (and any attempt to assign this Letter Agreement without such writing shall be null and void), (d) is a negotiated document, entered into freely among the parties upon advice of their own counsel, and it should not be construed against any of its drafters and (e) shall survive the satisfaction or discharge of the amounts owing under the 2022 Transaction Documents. The fact that any term or provision of this Letter Agreement is held invalid, illegal or unenforceable as to any person in any situation in any jurisdiction shall not affect the validity, enforceability or legality of the remaining terms or provisions hereof or the validity, enforceability or legality of such offending term or provision in any other situation or jurisdiction or as applied to any person.

This Letter Agreement is expressly conditioned on the Company's Board of Directors approving this Letter Agreement and all undertakings thereto in all respects and providing written evidence of the same to the Investors by January 12, 2023.

Kindly confirm your agreement with the above by signing in the space indicated below and by PDFing a partially executed copy of this letter to the undersigned, and which may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement.

Very truly yours,

ENSYSCE BIOSCIENCES, INC.

By: /s/ Dr. Lynn Kirkpatrick
Dr. Lynn Kirkpatrick
Chief Executive Officer

AGREED AND ACCEPTED:

3i, LP

By: /s/ Maier Tarlow
Name: Maier Tarlow
Title: Manager On Behalf Of The GP

Anson Investments Master Fund LP

By: /s/ Amin Nathoo
Name: Amin Nathoo
Title: Director, Anson Advisors Inc.

Anson East Master Fund LP

By: /s/ Amin Nathoo
Name: Amin Nathoo
Title: Director, Anson Advisors Inc.
