

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 21, 2020

Innovate Biopharmaceuticals, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-37797
(Commission
File Number)

27-3948465
(I.R.S. Employer
Identification No.)

8480 Honeycutt Road, Suite 120, Raleigh, NC 27615
(Address of principal executive offices) (Zip Code)

(919) 275-1933
(Registrant's telephone number, include 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 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:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock \$0.0001 Par Value	INNT	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in 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 8.01. Other Events.

On January 21, 2020, Innovate Biopharmaceuticals, Inc. (the "Company") entered into a letter agreement (the "Letter Agreement") with RDD Pharma Ltd. ("RDD"), INNT Merger Sub 1 Ltd. ("Merger Sub") and OrbiMed Israel Partners, Limited Partnership (the "Shareholder Representative"). Pursuant to the Letter Agreement, the Company, RDD, Merger Sub and the Shareholder Representative agreed to waive certain terms of the Agreement and Plan of Merger and Reorganization, as amended, (the "Merger Agreement") previously filed with the Securities and Exchange Commission on October 7, 2019 and December 17, 2019. Except as waived in the Letter Agreement, all of the terms and conditions set forth in the Merger Agreement remain in full force and effect.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
Exhibit 99.1	Letter Agreement, dated January 21, 2020

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.

Innovate Biopharmaceuticals, Inc.

Date: January 22, 2020

By: /s/ Edward J. Sitar

Edward J. Sitar

Chief Financial Officer

RDD Pharma LTD.
31 Habarzel St.
Ramat Hachayal
Tel-Aviv 69710 Israel

January 21, 2020

Innovate Biopharmaceuticals, Inc.
8480 Honeycutt Road, Suite 200
Raleigh, North Carolina, 27615
Attention: Sandeep Laumas, M.D.
Email: sl@innovatebiopharma.com
Dear Dr. Laumas:

This letter agreement confirms the mutual waiver by each of RDD Pharma Ltd. (the “**Company**”), Innovate Biopharmaceuticals, Inc. (“**Innovate**”), INNT Merger Sub 1 Ltd. (“**Merger Sub**”) and OrbiMed Israel Partners, Limited Partnership (the “**Shareholder Representative**”), of the following provisions set forth in that certain Agreement and Plan of Merger and Reorganization, dated October 6, 2019, as amended December 17, 2019 (the “**Agreement**”), among the Company, Innovate, Merger Sub and the Shareholder Representative, as follows:

- (i) each of the Company, Innovate, Merger Sub and the Shareholder Representative hereby waive in its entirety the requirement contained in Section 5.11(b) of the Agreement relating to the resignation of Roy Proujansky, M.D., from the Board of Directors of Innovate immediately upon receipt of the Innovate Shareholder Approval;
 - (ii) each of the Company, Innovate, Merger Sub and the Shareholder Representative hereby waive in their entirety the requirements set forth in Sections 5.10(d), 5.10(e) and 5.10(f) of the Agreement with respect to the Options Tax Ruling, the Interim Options Tax Ruling and the Withholding Tax Ruling; provided, that such waiver is conditioned upon the due execution and delivery of an agreement by and between Innovate and the Exchange Agent (the “**Exchange Agent Agreement**”), containing the following terms: **(A)** all shares of Innovate capital stock held by the Exchange Agent which a holder of Certificates or Book-Entry Shares as of immediately prior to the Effective Time has a right to receive pursuant to the Agreement shall be released from the Exchange Fund and delivered to such holder only upon such holder delivering to the Exchange Agent a Valid Tax Certificate issued by the ITA regarding the exemption from withholding of Israeli Tax from the Merger Consideration payable to such holder under the Agreement, such Valid Tax Certificate to be acceptable to the Exchange Agent in form and substance; **(B)** until any shares of Innovate capital stock have been delivered to the applicable former holder of Certificates or Book-Entry Shares in accordance with the
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terms of the Exchange Agent Agreement and the Agreement, such shares shall be held in favor and for the benefit of Innovate (provided that the rights of the former holders of Certificates and Book-Entry Shares under the Agreement will not be diminished as a result thereof); and (C) upon the lapse of twelve (12) months from the Effective Time, any shares of Innovate capital stock which have not been delivered to the applicable former holder of Certificates or Book-Entry Shares in accordance with the terms of the Exchange Agent Agreement and the Agreement due to such holder's failure to provide the Exchange Agent with a Valid Tax Certificate as referred to in Subsection (A) above, shall be delivered to Innovate in accordance with Section 1.6(d) of the Agreement;

- (iii) each of the Company, Innovate, Merger Sub and the Shareholder Representative hereby waive in their entirety the restrictions set forth in Section 4.4(b) related to (x) the sale, issuance, reservation for issuance, set aside, grant and authorization of additional shares of capital stock of the Company or other rights for shares of capital stock of the Company, (y) amendments to the Company Charter, and (z) the Company's entering into a Company Material Contract with existing Company Shareholders or other existing holders of the Company's equity securities; provided, that OrbiMed Israel Partners, Limited Partnership must retain at least 40% of the fully diluted share capital of the Company; For the avoidance of doubt, such waiver will not result in any change in the RDD Fully Diluted Ownership Ratio or otherwise impact the ability of the Company to consummate the transactions contemplated by the Agreement at Closing; and
- (iv) each of the Company, Innovate, Merger Sub and the Shareholder Representative hereby waive any inaccuracy in the representations and warranties set forth in Section 2.2 of the Agreement, and any other representations and warranties related to the outstanding capitalization of the Company included in the Agreement; provided, that OrbiMed Israel Partners, Limited Partnership must retain at least 40% of the fully diluted share capital of the Company; Such representations and warranties will be deemed updated, and Innovate will be able to rely upon, the capitalization information reflected in the Allocation Certificate delivered prior to Closing in the same manner as if such information had been included in the Agreement *ab initio*.

No party may assert that a condition precedent has not been satisfied for failure to comply with the covenants that the parties have waived pursuant to this side letter agreement. Except as waived hereby for purposes of Closing, all of the conditions precedent to Closing set forth in the Agreement shall remain in full force and effect as set forth therein. Furthermore, except as waived by this letter agreement, the terms and conditions of the Agreement remain in full force and effect. The parties hereto agree to use their commercially reasonable best

efforts to cause Innovate to execute and deliver the Exchange Agent Agreement including the provisions described in paragraph (ii) above.

Any terms not defined above shall have the meanings set forth in the Agreement.

Sincerely,

RDD PHARMA LTD.

By: /s/ John Temperato
Name: John Temperato
Title: Chief Executive Officer

Agreed to and accepted:

INNOVATE BIOPHARMACEUTICALS, INC.

By: /s/ Edward J. Sitar
Name: Edward J. Sitar
Title: Chief Financial Officer

INNT MERGER SUB 1 LTD.

By: /s/ Edward J. Sitar
Name: Edward J. Sitar
Title: Authorized Signatory

SHAREHOLDER REPRESENTATIVE:
ORBIMED ISRAEL PARTNERS, LIMITED PARTNERSHIP

/s/ Nissim Darvish
Name: Nissim Darvish
By: OrbiMed Israel Biofund GP, L.P.
Its General Partner

By: OrbiMed Israel GP Limited
Its General Partner

[Signature Page to Side Letter Agreement – Waivers]

Cc:

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