

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): February 16, 2023

DIFFUSION PHARMACEUTICALS INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

000-24477
(Commission File
Number)

30-0645032
(I.R.S. Employer
Identification No.)

300 East Main Street, Suite 201
Charlottesville, Virginia
(Address of principal executive offices)

22902
(Zip Code)

(434) 220-0718
(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 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, par value \$0.001 per share	DFN	NASDAQ Capital Market

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 1.02 Termination of a Material Definitive Agreement

Information required by Item 1.02 of Form 8-K included in Items 2.05 or 5.02 of this Current Report is incorporated herein by reference.

Item 2.05 Costs Associated with Exit or Disposal Activities

On February 16, 2023, in connection with its previously announced ongoing strategic review process and efforts to utilize and preserve assets in a manner that maximizes value for its stockholders, Diffusion Pharmaceuticals Inc. (the “Company” or “Diffusion”) committed to a reduction in force that is expected to impact six of the Company’s 13 current employees. The reduction is a cash preservation measure and impacts employees primarily in the Company’s clinical operations function. As previously announced, as part of the strategic review process, Diffusion is actively evaluating potential transactions involving its current lead product candidate, trans sodium crocetinate (“TSC”), including a sale or out-license. In connection with this process and pending its conclusion, the Company has paused significant portions of its TSC development activities, including initiation of the Company’s previously announced Phase 2 study of TSC in newly diagnosed GBM patients. Diffusion expects to record a one-time charge of approximately \$1.1 million in the first quarter of 2023 in connection with the reduction in force, primarily related to one-time termination benefits to be paid in cash, which is expected to be completed in March 2023.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

As part of the reduction in force, the Company determined that Dr. Christopher D. Galloway, M.D., the Company’s Chief Medical Officer, will depart Diffusion effective March 1, 2023. Dr. Galloway has served as the Company’s Chief Medical Officer since October 2020.

In connection with the departure of Dr. Galloway and certain other executive employees exiting as part of the reduction in force that are party to an employment agreement with the Company, Diffusion intends to enter into a separation letter agreement and release with each such employee dated as of the employee’s last day of employment (the “Separation Agreement”). Pursuant to the terms of the Separation Agreement, the departing employee party thereto (the “Executive”) will be entitled to separation benefits in accordance with the terms of the employee’s employment agreement, including a lump-sum payment of nine months (75%) of the Executive’s current annual base salary and a pro-rated annual cash bonus for the current calendar year based on the number of days served as an Executive during 2023. All options to purchase Company common stock held by the Executive that are outstanding and vested as of the separation date will remain exercisable for a period of three months from the date of separation, in accordance with their respective terms. In addition, the Company will also provide a lump-sum payment in respect of continuation health insurance coverage premiums for the Executive and the Executive’s eligible dependents for a period of twelve months after the separation date.

As consideration for the separation benefits, pursuant to the Separation Agreement, the Executive will agree to release the Company and certain related parties, including the Company’s stockholders, directors, officers, and employees, from all claims and liabilities arising prior to the date of the Separation Agreement under federal and state laws and, as applicable, reaffirms the confidentiality, non-competition, non-solicitation, non-disparagement and certain other customary provisions in the Executive’s employment agreement, which, except as otherwise set forth in the Separation Agreement, shall terminate effective as of the Executive’s separation date.

The foregoing summary of the Separation Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text thereof, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Forward-Looking Statements

This Current Report on Form 8-K includes express and implied forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as amended, including the regarding the Company's ongoing strategic alternative review process; expected costs and savings associated with the Company's reduction in force; and the Company's entry into one or more Separation Agreements. The Company may, in some cases, use terms such as "believes," "estimates," "anticipates," "expects," "plans," "intends," "may," "could," "might," "will," "should," "approximately," or other words that convey uncertainty of future events or outcomes to identify these forward-looking statements. Although the Company believes that it has a reasonable basis for each forward-looking statement contained herein, forward-looking statements by their nature involve risks and uncertainties, known and unknown, many of which are beyond the Company's control and, as a result, the Company's actual results could differ materially from those expressed or implied in any forward-looking statement. Particular risks and uncertainties include, among other things, those related to: the Company's ongoing strategic alternative review process; the negotiation (if any) and execution of individual Separation Agreements; the risk that the Company may not realize expected cost savings from the reduction in force, including the anticipated decrease in operational expenses, at the levels it expects; the internal and external costs required for its ongoing and planned activities, and the resulting impact on expense and use of cash, may be higher than expected which may cause the Company to use cash more quickly than it expects or change or curtail some of its plans or both; the Company's expectations as to expenses, cash usage and cash needs may prove not to be correct for other reasons such as changes in plans or actual events being different than its assumptions; general economic, political, business, industry, and market conditions, including the ongoing COVID-19 pandemic, inflationary pressures, and geopolitical conflicts; and the other factors discussed under the heading "Risk Factors" in the Company's filings most recent Annual Report on Form 10-K and other filings with the U.S. Securities and Exchange Commission. Any forward-looking statements in this press release speak only as of the date hereof (or such earlier date as may be identified) and, except as required by applicable law, rule, or regulation, the Company undertakes no obligation to update any such statements after the date hereof.

Item 9.01 – Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description
10.1	Form of Separation Agreement and General Release by and between Diffusion Pharmaceuticals Inc. and certain executive employees
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: February 16, 2023

DIFFUSION PHARMACEUTICALS INC.

By: /s/ William Elder

Name: William Elder

Title: General Counsel & Corporate Secretary



February 16, 2023

[NAME]
[ADDRESS 1]
[ADDRESS 2]

Re: Separation from Employment and General Release

Dear [____],

This letter agreement and general release (this "**Agreement**") sets forth the terms of your separation from employment with Diffusion Pharmaceuticals Inc. (together with its subsidiaries, "**Diffusion**" or the "**Company**") effective March 1, 2023 (the "**Separation Date**"). References in this Agreement to "you" and "your" refer to [____].

1. **Separation from Employment.** Your employment as the Company's [____] Officer, as well as your employment and all other positions you currently hold or held with the Company or any of its affiliates (including, without limitation, as a director, employee, officer or manager) terminate on the Separation Date. All benefits and perquisites of employment are ceased as of the Separation Date, except that you will receive, to the extent not already paid to you, the Accrued Benefits (as defined in your employment agreement with the Company, dated as of [____] (as amended and/or restated from time to time, the "**Employment Agreement**"). All payments due to you from the Company or any of its affiliates from and after the date of this Agreement will be determined under the applicable provisions of this Agreement. You and the Company agree that you are not entitled to any further compensation or benefits from the Company or any of its affiliates other than (i) the Accrued Benefits, (ii) if applicable, the Separation Benefits (as defined below), and (iii) without duplication of any Accrued Benefits or Separation Benefits, the following:
 - a. You will retain any vested balance in your Diffusion 401(k) account;
 - b. You will be entitled to retain all Diffusion purchased computer and electronic equipment in your possession, provided that you must allow the Company the ability to remove/disconnect your access to Diffusion's systems and technology infrastructure; and
 - c. Diffusion will not oppose any application for unemployment compensation you may make, if any
 2. **Separation Benefits.** Subject to your execution and non-revocation of this Agreement and your compliance with the terms of this Agreement and the terms of the Employment Agreement that survive the Separation Date as described below in Section 5(a), the Company will pay or provide you with the following payments and benefits, less applicable taxes and withholdings (collectively, such payments and benefits, the "**Separation Benefits**"):
 - a. An amount equal to \$[____], representing nine months of your current base salary, to be paid as a lump-sum on the first Company payroll date after the Effective Date (as defined below);
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- b. An amount equal to \$[____], representing your target annual bonus for the 2023 calendar year multiplied by a fraction (A) the numerator of which is 60 (i.e., the number of days during calendar year 2023 on which you served as the Company's [____], and (B) the denominator of which is 365, to be paid in cash as a lump-sum on the first Company payroll date after the Effective Date (as defined below);
 - c. In lieu of the COBRA Benefit (as defined in your Employment Agreement), an amount equal to \$[____], representing potential future premium payments for continued coverage in Diffusion's group health plans pursuant to Virginia Code §38.2-3541 (the "**Virginia Mini-COBRA Law**"), to be paid in cash as a lump-sum on the first Company payroll date after the Effective Date (as defined below);
 - d. You will retain all options to purchase shares of Diffusion common stock granted to you under Diffusion's equity incentive plans that have vested as of the Separation Date, which, in accordance with the terms of your previously granted option award agreements, will remain exercisable for a period of three (3) months after the Separation Date.
3. **Virginia Mini-COBRA Law.** If timely elected, you and your eligible dependents may be eligible for continuation or conversion coverage under Diffusion's group health plans pursuant to the Virginia Mini-COBRA Law. **IF YOU WISH TO CONTINUE COVERAGE UNDER THE VIRGINIA MINI-COBRA LAW, IT IS ESSENTIAL THAT YOU PROPERLY AND TIMELY ELECT SUCH COVERAGE IN ACCORDANCE WITH THE INSTRUCTIONS THAT WILL BE PROVIDED BY DIFFUSION'S THIRD-PARTY ADMINISTRATOR FOLLOWING THE SEPARATION DATE. DIFFUSION CANNOT MAKE THIS ELECTION FOR YOU.**
4. **Complete General Release of Claims.**
- a. In consideration of the Separation Benefits, and other good and valuable consideration to which you would not otherwise be entitled, you (on behalf of yourself, and your heirs, executors, and assigns) hereby irrevocably release and discharge the Company and its past, present and future subsidiaries, divisions, affiliates and parents; each of their respective current and former officers, directors, shareholders, employees, attorneys, agents, benefit plans, and/or owners, in their individual and official capacities; and any other person or entity claimed to be jointly or severally liable with the Company or any of the aforementioned persons or entities (the "**Released Parties**") from any and all claims and/or causes of action, known or unknown, contingent or noncontingent, accrued or unaccrued, which you may have or could claim to have against any of the Released Parties up to and including the date you sign this Agreement. The general release in this paragraph includes, but is not limited to: (i) all claims arising from or during your employment or service, or as a result of the termination of your employment or service, in any case, with any of the Released Parties; (ii) all claims arising under the Employment Agreement; (iii) all claims arising under any Plan or any of the Options; (iv) any other claims for unpaid or withheld wages, severance, paid time off or vacation pay, benefits, bonuses and/or other compensation of any kind, including claims arising under any Diffusion equity incentive plan or equity-based awards granted to you thereunder; (v) any other claims of retaliation or wrongful discharge, or of discrimination and/or harassment based on sex, race, religion, color, creed, disability, handicap, citizenship, national origin, age or any other factor prohibited by federal, state or local law, including, without limitation, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and/or the Americans with Disabilities Act; (vi) any claims under the Corporate and Criminal Fraud Accountability Act of 2002 (also known as the Sarbanes Oxley Act), the Employee Retirement Income Security Act, or the Family and Medical Leave Act; (vii) any claims under Title 40 of the Virginia Code, the Virginia Equal Pay Act, the Virginia Human Rights Act, the Virginia Labor and Employment Code, the Virginians with Disabilities Act, the Virginia whistleblower statute (Va. Code Ann § 40.1-27.3), the Virginia wage payment law (Va. Code Ann § 40.1-29 et seq.); (viii) any claims under the Delaware Discrimination in Employment Act, the Delaware Persons with Disabilities Employment Protections Act, the Delaware Whistleblowers' Protection Act, the Delaware jury duty leave law (Del. Code Ann. tit. 10, § 4515), the Delaware polygraph testing statute (Del. Code Ann. tit. 19, § 704), the Delaware telephone, electronic mail, and Internet monitoring statute (Del. Code Ann. tit. 19, § 705), the Delaware social media statute (Del. Code Ann. tit. 19, § 709A), the Delaware compensation history statute (Del. Code Ann. tit. 19, § 709B); (ix) all claims arising under any similar federal, state, or local statute, rule, regulation or ordinance, or under the common law, of any other jurisdiction; (x) all claims for attorneys' fees, costs, or expenses; and (xi) any other statutory or common law claims, now existing or hereinafter recognized, including, but not limited to, breach of contract, quasi-contract, detrimental reliance, libel, slander, fraud, wrongful discharge, promissory estoppel, equitable estoppel, misrepresentation, or intentional infliction of emotional distress.
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- b. The release in Section 4(a) (the “**Release**”) applies fully to protect the past, present, and future directors, officers, employees, stockholders, attorneys, and other agents of Diffusion, as well as its affiliates, the directors, officers, employees, attorneys, and other agents of such affiliates, and any benefit plans of Diffusion and/or its affiliates. Further, the Release applies fully to release the rights of your heirs, agents, successors, assigns, and spouse (if any) concerning the matters described therein. It is the intention of you and the Company that the language relating to the description of released claims in this Agreement shall be given the broadest possible interpretation permitted by law. It is understood that nothing in this Agreement is to be construed as an admission on behalf of any of the Released Parties of any wrongdoing (with any such wrongdoing being expressly denied).
- c. Notwithstanding the foregoing, the Release shall not apply to, and you are not releasing, any claims (i) in respect of any of your rights under this Agreement (including, without limitation, to the Separation Benefits); (ii) relating to your right to receive workers’ compensation benefits; (iii) relating to your right to continue your group health benefits in accordance with the Virginia Mini-COBRA Law; (iv) relating to any express right you have to indemnification for acts performed or omissions while an officer, employee, director or manager of the Company or any of its subsidiaries, as provided under the organizational documents of the Company or such subsidiary, under any applicable insurance policy or otherwise; and (v) that cannot be waived as a matter of law. Furthermore, for the avoidance of doubt, nothing in the Release or otherwise in this Agreement shall restrict your rights to (x) make disclosures specifically required under applicable law or (y) provide truthful statements or testimony before, or otherwise assist in any investigation or proceeding brought by, any self-regulatory organization, state or federal regulatory authority, administrative agency, of Diffusion’s internal compliance department regarding your employment with Diffusion, unlawful employment practices, or any other possible violations of applicable laws, rules, or regulations.
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5. **Covenant Not to Sue.**

- a. You agree and covenant not to institute or join any lawsuit (either individually, with others, or as part of a class), in any forum, pleading, raising, or asserting any claim(s) barred or released by this Agreement.
- b. Notwithstanding Section 5(a), you understand that nothing in this Agreement precludes you from filing a charge with, cooperating with, communicating with, or providing information to, the U.S. Equal Employment Opportunity Commission, U.S. Securities and Exchange Commission, or other government agency, or in connection with any proceedings by any such agency. You agree, however, that you will not seek or accept any relief obtained on your behalf by any government agency, private party, class, or otherwise with respect to any claims released in this Agreement, provided that this Agreement does not limit your right to receive an award for information provided to any government agency.

6. **Continuing Obligations.**

- a. Surviving Provisions of the Employment Agreement. The Employment Agreement is terminated effective as of the Separation Date, but you acknowledge and agree that you remain bound by (i) Section 2.1, (ii) Sections 4.3 through 4.17, (iii) Article 5, and (iv) any corresponding definitions in Article 1, in each case, of the Employment Agreement in accordance with their terms, each of which remain in effect notwithstanding the termination of the Employment Agreement.
 - b. Return of Property. Subject to Section 1(b) above, you represent that you have returned (and have not retained) in good working condition any and all property, equipment, documents, and other information, confidential or otherwise, of the Company or any of its affiliates that was in your possession, custody, or control.
 - c. Material Non-Public Information. You acknowledge that the Company is a reporting company under the Securities Exchange Act of 1934, as amended, and its equity securities are currently traded on the NASDAQ Capital Market. You hereby acknowledge and agree that you shall not (i) trade in the securities of the Company while in possession of material, non-public information regarding the Company or (ii) communicate any such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.
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- d. Confidential Information. You will continue to protect and will not disclose to any person or other third-party any of Diffusion's confidential or proprietary information of which you are aware.
- e. Supplemental Separation Agreement and Release. If you sign this Agreement prior to the Separation Date, you agree (i) you will continue to diligently and conscientiously devote the your business time, attention, energy, skill, and best efforts to the business and affairs of Diffusion through the Separation Date, (ii) to sign a Supplemental Separation Agreement and General Release which will restate the terms of the Release through and including the Separation Date and (iii) that Diffusion's obligations with respect to the Separation Payment will not apply until and unless you sign such Supplemental Separation Agreement and General Release.

7. Miscellaneous.

- a. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, irrespective of conflicts of law principles, and you and the Company hereby agree that all disputes arising under or relating to this Agreement, your employment or other service with the Company or any of its affiliates or the termination thereof, in each case, shall be resolved in accordance with Sections 5.2 and 5.3 of the Employment Agreement (including, without limitation, the **WAIVER OF JURY TRIAL** provision set forth therein).
 - b. This Agreement is solely for the purpose of resolving and concluding amicably all possible matters between you and Diffusion and nothing in this Agreement shall be construed as an admission or concession of liability or wrongdoing by you or by Diffusion.
 - c. This Agreement embodies the complete understanding and agreement between you and Diffusion, and, except to the extent explicitly set forth herein with respect to the Employment Agreement, supersedes any and all prior agreements, oral or written, express or implied, except that this Agreement does not supersede or affect any prior agreement between you and Diffusion concerning Diffusion's confidential information.
 - d. This Agreement may not be modified, supplemented, or terminated without the express written consent of both you and Diffusion, making specific reference to this Agreement. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.
 - e. The Company, but not you, may assign its rights and obligations under this Agreement, and such rights and obligations inure to the benefit of, and are binding upon, the Company ' s successors and assigns. You and the Company intend that the terms of this Agreement be considered severable, such that if any provision of this Agreement is adjudged to be invalid for whatever reason, such invalidity will not affect any other provision of this Agreement, and such other provisions will remain in full force and effect. The principle of construction that all ambiguities are to be construed against the drafter will not be employed in the interpretation of this Agreement. Rather, it is agreed that this Agreement should not be construed for or against any party. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may be executed in counterparts and delivered by facsimile transmission or electronic transmission in "portable document format," each of which shall be an original and which taken together shall constitute one and the same document.
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8. **Acknowledgements.** You acknowledge, represent, covenant, and agree that:

- you have read carefully the terms of this Agreement, including the Release;
- you have had an opportunity to and have been encouraged to review this Agreement, including the Release, with an attorney;
- you understand the meaning and effect of the terms of this Agreement, including the Release;
- you were given as much time as you needed – and in no event less than twenty-one (21) days – to determine whether you wished to enter into this Agreement, including the Release;
- your entry into and execution of this Agreement, including the Release, is your own free and voluntary act without compulsion of any kind; and
- no promise or inducement to enter into this Agreement not expressed herein has been made to you.

9. **Effective Date.** You may revoke this Agreement for a period of seven (7) days following the day you sign it. If you choose to revoke this Agreement following execution, you must do so in writing, the writing must be received by Diffusion via e-mail to the Company's General Counsel, and it must be received by Diffusion within that seven (7) day period. Accordingly, this Agreement shall not become effective or enforceable until 12:00 a.m. on the eighth (8th) day following your signature hereof (the "**Effective Date**").

[Remainder of Page Intentionally Left Blank]

By signing this Agreement, you acknowledge that you have carefully reviewed this Agreement, that you have had an opportunity to consult with counsel of your choice, that you have entered into this Agreement freely and voluntarily and without reliance on any promises not expressly contained herein, that you have been afforded an adequate time to review carefully the terms of this Agreement, and that this Agreement will not be deemed void or avoidable by claims of duress, deception, mistake of fact or otherwise.

Sincerely,

DIFFUSION PHARMACEUTICALS INC.

Robert J. Cobuzzi, Jr., Ph.D.
Chief Executive Officer

I have reviewed the Agreement as set forth above, I understand the Agreement, and, intending to be legally bound by my signature below, knowingly, and voluntarily accept all its terms and conditions.

Name: [_____]

Date

Address for Notices:

