

NEOGENOMICS INC
Form 10-K/A
November 13, 2017

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-K/A

Amendment No. 1

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2016

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF
1934

For the transition period from _____ to _____

Commission File Number: 001-35756

NEOGENOMICS, INC.

(Exact name of registrant as specified in its charter)

Nevada 74-2897368
(State or other jurisdiction of (IRS Employer

incorporation or organization) Identification No.)
12701 Commonwealth Drive, Suite 9, Fort Myers, FL 33913

(Address of principal executive offices, Zip code)

(239) 768-0600

(Registrant's telephone number, including area code)

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Securities registered pursuant to Section 12(b) of the Act: Name of each exchange on which registered:
Common Stock, par value \$0.001 per share NASDAQ Capital Market
Securities registered pursuant to Section 12(g) of the Act: Common Stock par value \$0.001 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated Filer

Non-accelerated filer (Do not check if smaller reporting company) Smaller reporting company
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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act): Yes No

As of June 30, 2016, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$573.9 million, based on the closing price of the registrant's common stock of \$8.04 per share on June 30, 2016.

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The number of shares outstanding of the registrant's Common Stock, par value \$0.001 per share, as of March 09, 2017:
78,822,928

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its 2017 Annual Meeting of stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K.

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Explanatory Note

NeoGenomics, Inc. (the “Company,” “we,” “us,” or “our”) is filing this Amendment No. 1 on Form 10-K/A (this “Amendment” to its annual report on Form 10-K for the fiscal year ended December 31, 2016, which was originally filed on March 14, 2017 (the “Original Filing”), to amend and restate Item 9A of Part II, “Controls and Procedures,” with respect to (1) our conclusions regarding the effectiveness of our disclosure controls and procedures and our internal control over financial reporting and (2) Crowe Horwath LLP’s related attestation report.

As required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), new certifications of our principal executive officer and principal financial officer are also being filed as exhibits to this Amendment. This Amendment should be read in conjunction with the Original Filing, which continues to speak as of the date of the Original Filing. The Amendment does not include any changes to the consolidated financial statements and, except as specifically noted above, this Amendment does not modify or update disclosures in the Original Filing. Accordingly, this Amendment does not reflect events occurring after the filing of the Original Filing or modify or update any related or other disclosures.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2016. At the time that the Original Filing was filed, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective. Subsequent to this evaluation, we identified a material weakness in our internal control over financial reporting and our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure procedures were not effective and were not operating at a reasonable assurance level as of December 31, 2016. This material weakness in the Company’s internal control over financial reporting and the Company’s remediation efforts are described below.

Notwithstanding the material weakness in our internal control over financial reporting as of December 31, 2016, management has concluded that the consolidated financial statements included in the Original Filing present fairly, in all material respects, our financial position, results of operations and cash flows.

Management’s Report on Internal Control over Financial Reporting (Revised)

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) or 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive and principal financial officer and effected by the Company’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures: (1) that pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the

Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, however, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2016. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control—Integrated Framework (2013 Framework).

In our Original Filing, management concluded that our internal control over financial reporting was effective as of December 31, 2016. Management subsequently concluded that the material weakness described below existed as of December 31, 2016. As a result, management has concluded that we did not maintain effective internal control over financial reporting as of December 31, 2016. The

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effectiveness of our internal control over financial reporting as of December 31, 2016 has been audited by Crowe Horwath LLP, an independent registered public accounting firm, as stated and attested to in their report that is included herein.

During an internal analysis conducted in the third quarter of 2017, we identified an error in the revenue reported in our Form 10-K for the year ended December 31, 2016. We determined that certain unbillable tests were inadvertently included in the revenue accrual recorded for the periods beginning in the fourth quarter of 2016 through the second quarter of 2017. These unbillable tests were worked through our laboratory, however we were unable to produce a final result on the sample. The tests were reported back to the ordering physician as Quantity Not Sufficient (“QNS”) or Test Not Performed (“TNP”). Although we incur costs attempting to test these QNS and TNP samples, and often attempt to get a result more than once, we cannot bill payors for any tests in which a full result is not reported. As a result of the inclusion of these unbillable tests in the monthly revenue accrual, revenue was overstated. The Company has a policy of writing off any unbilled tests greater than six months old and many of these tests were written off via this process. The Company assessed the extent of the error on each reported period. As a result of the error, the net impact to revenue reported in the 10-K for the year ended December 31, 2016 has been determined to be immaterial.

The Company did not design and operate controls with a level of precision sufficient to identify unbillable tests included in the monthly revenue accrual. Management has concluded that this deficiency constitutes a material weakness in our internal control over financial reporting. Nonetheless, we have concluded that this material weakness does not require a restatement or change in our consolidated financial statements for any prior annual or interim period. We have taken certain remediation steps to address the material weakness referenced above, and to improve our internal control over financial reporting as described below.

- We have filled the open position of Vice President and Principal Accounting Officer and we are providing additional resources to our finance team by actively recruiting for a Corporate Controller.
- We are re-designing and implementing effective review and approval controls over the accurate recording, presentation, and disclosure of revenue.
- We have reviewed, identified and corrected errors in the recognition of revenue.
- We have established steps in our monthly closing process to improve our internal control over financial reporting. These steps include:
 - a. monthly review of revenue reports by the Director of Billing to ensure that all unbilled tests outstanding for 60 days or greater are appropriate for accrual and will ultimately be billed out
 - b. monthly review of revenue reports by the Assistant Controller to ensure that revenue is not being accrued for tests that based on laboratory results are determined to be unbillable

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

However, as noted above, we will be implementing changes to our internal control over financial reporting to address the material weakness described above.

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders NeoGenomics, Inc.

Fort Myers, Florida

We have audited the accompanying consolidated balance sheets of NeoGenomics, Inc. as of December 31, 2016 and 2015, and the related consolidated statements of operations, redeemable convertible preferred stock and stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2016. We also have audited NeoGenomics, Inc.'s internal control over financial reporting as of December 31, 2016, based on criteria established in the 2013 Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)". NeoGenomics, Inc.'s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying "Management's Report on Internal Control Over Financial Reporting". Our responsibility is to express an opinion on these consolidated financial statements and an opinion on the company's internal control over financial reporting based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the consolidated financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our report dated March 13, 2017, we expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting. As described in the following paragraph, the Company subsequently identified a material weakness in its internal control over financial reporting. Accordingly, management has revised its assessment about the effectiveness of the Company's internal control over financial reporting, and our present opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2016, as expressed herein, is different from that expressed in our previous report.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management's report.

The Company did not design and operate controls with a level of precision sufficient to identify unbillable tests included in the monthly revenue accrual.

This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended December 31, 2016.

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In our opinion, because of the effect of the material weakness identified above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2016, based on criteria established in the 2013 Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of NeoGenomics, Inc. as of December 31, 2016 and 2015, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2016 in conformity with accounting principles generally accepted in the United States of America.

Crowe Horwath LLP

Indianapolis, Indiana March 13, 2017 (November 13, 2017 as to the effects of the material weakness)

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PART IV

ITEM 15. EXHIBITS

Exhibit	No. Description of Exhibit	Location
23.1	<u>Consent of Crowe Horwath, LLP</u>	Provided herewith
31.1	<u>Certification by Principal Executive Officer pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>	Provided herewith
31.2	<u>Certification by Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>	Provided herewith
32.1*	<u>Certification by Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>	Provided herewith

* The certification attached as Exhibit 32.1 that accompanies this Form 10-K/A is not deemed filed with the SEC and is not to be incorporated by reference into any filing of NeoGenomics, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date of this Form 10-K/A, irrespective of any general incorporation language contained in such filing..

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 13, 2017 NEOGENOMICS, INC.

By: /s/ Douglas M. VanOort
Name: Douglas M. VanOort
Title: Chief Executive Officer

By: /s/ George A. Cardoza
Name: George Cardoza
Title: Chief Financial Officer