

CURIS INC
Form 10-K/A
July 03, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A
AMENDMENT NO. 1

(Mark one)

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

For the fiscal year ended December 31, 2002

OR

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

Commission File Number 000-30347

CURIS, INC.

(Exact Name of Registrant as Specified in Its Charter)

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DELAWARE
(State or Other Jurisdiction of
Incorporation or Organization)

04-3505116
(I.R.S. Employer Identification No.)

61 Moulton Street

Cambridge, Massachusetts 02138

(Address of Principal Executive Offices, Including Zip Code)

617-503-6500

(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, \$0.01 par value per share

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K 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 an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes No

As of June 28, 2002, the aggregate market value of the Common Stock held by non-affiliates of the Registrant was approximately \$35,142,000 based on the closing sale price of \$1.22 of the Registrant's Common Stock on the NASDAQ National Market on such date.

As of February 28, 2003, 31,720,837 shares of the Registrant's Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

The Registrant's definitive Proxy Statement for the Annual Meeting of Stockholders scheduled to be held on June 12, 2003, to be filed with the Commission not later than 120 days after the close of the Registrant's fiscal year, has been incorporated by reference in whole or in part, into Part III Items 10, 11, 12 and 13 of this Annual Report on Form 10-K.

This Amendment No. 1 on Form 10-K/A to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 is being filed to amend Part IV, Item 15 Exhibits, Financial Statement Schedules, and Reports on Form 8-K in order to include Exhibits No. 23.1 and 23.2, the Consent of Independent Accountants, and the Notice Regarding the Consent of Arthur Andersen, LLP, respectively, each of which was inadvertently omitted from the Registrant's Annual Report on Form 10-K as initially filed.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

(a) Documents Filed as a Part of this Form 10-K:

1. *Financial Statements.* The Consolidated Financial Statements are included in the 2002 Annual Report, portions of which are filed as an exhibit to this Annual Report on Form 10-K. The Consolidated Financial Statements include: Consolidated Balance Sheets, Consolidated Statements of Operations and Comprehensive Loss, Consolidated Statements of Cash Flows, Consolidated Statements of Changes in Stockholder's Equity, and Notes to Consolidated Financial Statements.
2. *Exhibits.* The Exhibits listed in the Exhibit Index immediately preceding such Exhibits are filed as part of this Annual Report on Form 10-K.

(b) Current Reports on Form 8-K.

1. On November 15, 2002, the Company filed a Current Report on Form 8-K to report under Item 5 (OTHER EVENTS) that it had issued a press release announcing the Company's financial results for the third quarter ended September 30, 2002.
2. On December 9, 2002, the Company filed a Current Report on Form 8-K to report under Item 5 (OTHER EVENTS) that it had licensed, on November 26, 2002, its broad bone morphogenic protein (BMP) technology portfolio to Ortho Biotech Products, L.P., a member of the Johnson & Johnson family of companies.

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.

CURIS, INC.

By:

/s/ DANIEL R. PASSERI

Daniel R. Passeri
President and Chief Executive
Officer

Date: July 3, 2003

CERTIFICATIONS

I, Daniel R. Passeri, certify that:

1. I have reviewed this amendment No. 1 to annual report on Form 10-K/A of Curis, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: July 3, 2003

/s/ DANIEL R. PASSERI

Name: Daniel R. Passeri

President and Chief Executive Officer

I, Christopher U. Missling, certify that:

1. I have reviewed this amendment No. 1 to annual report on Form 10-K/A of Curis, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - d) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - e) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: July 3, 2003

/s/ CHRISTOPHER U. MISSLING

Name: Christopher U. Missling

Senior Vice President and Chief Financial Officer

EXHIBIT INDEX

The following exhibits are filed herewith or incorporated herein by reference:

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 3.1 | Restated Certificate of Incorporation of Curis. (Previously filed with the SEC as Exhibit 3.3 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on June 19, 2000 and incorporated herein by reference.) |
| 3.2 | Amended and Restated By-laws of Curis. (Previously filed with the SEC as Exhibit 3.2 to the Registration Statement on Form S-1 of Curis on December 20, 2000 and incorporated herein by reference.) |
| 3.3 | Certificate of Designations of Curis, Inc. (previously filed as an exhibit to the Post-Effective Amendment No. 1 on Form S-3 to the Registration Statement on Form S-1 of Curis, Inc. (filed August 10, 2001 (File No. 333-50906) and incorporated herein by reference). |
| 4.1 | Form of Curis Common Stock Certificate. (Previously filed with the SEC as Exhibit 4.1 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on May 5, 2000, and incorporated herein by reference.) |
| 4.2 | Registration Rights Agreement, dated as of July 18, 2001, among Curis, Elan International Services, Ltd. and Elan Pharma International Limited. (Previously filed with the SEC as Exhibit 4.1 to the Quarterly Report on Form 10-Q for the period ended June 30, 2001 (File No. 0-30347) and incorporated herein by reference.) |
| 4.3 | Convertible Promissory Note, dated July 18, 2001, made by Curis in favor of Elan Pharma International Ltd. (Previously filed with the SEC as Exhibit 4.2 to the Quarterly Report on Form 10-Q for the period ended September 30, 2001 (File No. 0-30347) and incorporated herein by reference.) |
| 4.4 | Security Agreement, dated June 14, 2002, between Curis and Boston Private Bank & Trust Company. (Previously filed with the SEC as Exhibit 10.3 to the Quarterly Report on Form 10-Q for the period ended June 30, 2002 (File No. 0-30347) and incorporated herein by reference.) |
| 10.1 | Master Lease Agreement, dated October 6, 1997, between Creative and FINOVA Technology Finance, Inc. (Previously filed with the SEC as Exhibit 10.38 to the Creative Annual Report on Form 10-K for the period ended December 31, 1997 (File No. 0-19910), and incorporated herein by reference.) |
| 10.2 | Amendment to Lease, dated August 9, 2002, between Curis and FPRP Moulton LLC. (Previously filed with the SEC as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended September 30, 2002 (File No. 0-30347) and incorporated herein by reference.) |
| 10.3 | Lease Termination Agreement, dated August 15, 2002, between Curis and David E. Clem and David M. Roby, Trustees of 21 Erie Realty Trust. (Previously filed with the SEC as Exhibit 10.2 to the Quarterly Report on Form 10-Q for the period ended September 30, 2002 (File No. 0-30347) and incorporated herein by reference.) |
| 10.4 | Master Restructuring Agreement, dated as of October 15, 1998, between Creative and Stryker Corporation. (Previously filed as Exhibit 10.10 to the Creative Annual Report on Form 10-K for the period ended December 31, 1998 (File No. 0-19910), and incorporated herein by reference.) |
| 10.5 | Asset Purchase Agreement, dated as of October 15, 1998, between Creative and Stryker Corporation. (Previously filed as Exhibit 10.11 to the Creative Annual Report on Form 10-K for the period ended December 31, 1998 (File No. 0-19910), and incorporated herein by reference.) |
| 10.6 | Irrevocable License Agreement, dated November 20, 1998, between Creative and Stryker Corporation. (Previously filed as Exhibit 10.7 to the Creative Annual Report on Form 10-K for the period ended December 31, 1999 (File No. 0-19910), and incorporated herein by reference.) |

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| Exhibit No. | Description |
|-------------|---|
| 10.7 | Stryker Irrevocable License Agreement, dated November 20, 1998, between Creative and Stryker Corporation. (Previously filed as Exhibit 10.8 to the Creative Annual Report on Form 10-K for the period ended December 31, 1999 (File No. 0-19910), and incorporated herein by reference.) |
| 10.8 | Assignment from Creative to Stryker dated November 20, 1998. (Previously filed as Exhibit 10.9 to the Creative Annual Report on Form 10-K for the period ended December 31, 1999 (File No. 0-19910), and incorporated herein by reference.) |
| 10.9 | Second Amendment to Master Restructuring Agreement, dated October 1, 2002, between Curis and Stryker Corporation. (Previously filed with the SEC as Exhibit 10.5 to the Quarterly Report on Form 10-Q for the period ended September 30, 2002 (File No. 0-30347) and incorporated herein by reference.) |
| 10.10 | CBM Cross-License Agreement, dated as of November 26, 1993, between Creative and Enzon, Inc. (Previously filed with the SEC as Exhibit 10.42 to the Creative Quarterly Report on Form 10-Q for the period ended December 31, 1993 (File No. 0-19910), and incorporated herein by reference.) |
| 10.11 | Enzon Cross-License Agreement, dated as of November 26, 1993, between Creative and Enzon, Inc. (Previously filed with the SEC as Exhibit 10.43 to the Creative Quarterly Report on Form 10-Q for the period ended December 31, 1993 (File No. 0-19910), and incorporated herein by reference.) |
| 10.12 | Cross-License Agreement, dated as of July 15, 1996, among Curis, Genetics Institute, Inc. and Stryker Corporation. (Previously filed with the SEC as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended September 30, 1996 of Genetics Institute, Inc. (File No. 0-14587), filed with the Securities and Exchange Commission on November 6, 1996 and incorporated herein by reference.) |
| 10.13 | License Agreement, dated as of February 12, 1996, between Curis and Leland Stanford Junior University. (Previously filed with the SEC as Exhibit 10.43 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on June 2, 2000, and incorporated herein by reference.) |
| 10.14 | License Agreement, dated as of September 26, 1996 and amended January 15, 1997, among Curis, The Johns Hopkins University and University of Washington School of Medicine. (Previously filed with the SEC as Exhibit 10.44 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on June 2, 2000, and incorporated herein by reference.) |
| 10.15 | License Agreement, dated as of January 1, 1995 and amended July 19, 1995 and August 30, 1996, between Curis and The Trustees of Columbia University in the City of New York. (Previously filed with the SEC as Exhibit 10.45 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on April 3, 2000, and incorporated herein by reference.) |
| 10.16 | License Agreement, dated as of February 9, 1995 and amended January 1, 1997, between Curis and the President and Fellows of Harvard University. (Previously filed with the SEC as Exhibit 10.46 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on June 2, 2000, and incorporated herein by reference.) |
| 10.17 | Amendment to License Agreement, dated as of September 11, 2000, between Curis and Presidents and Fellows of Harvard College. (Previously filed with the SEC as Exhibit 10.2 to the Curis Quarterly Report on Form 10-Q for the period ended September 30, 2000 (File No. 0-30347), and incorporated herein by reference.) |
| 10.18 | Exclusive License Agreement, dated as of November 2, 1998, among Curis and the Board of Trustees of Leland Stanford Junior University and Johns Hopkins University. (Previously filed with the SEC as Exhibit 10.65 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on June 2, 2000, and incorporated herein by reference.) |

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| Exhibit No. | Description |
|-------------|--|
| 10.19 | License Agreement, dated as of February 1, 1997, between Curis and the President and Fellows of Harvard College. (Previously filed with the SEC as Exhibit 10.69 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on April 3, 2000, and incorporated herein by reference.) |
| 10.20 | License and Collaboration Agreement, dated as of January 5, 2001, between Curis and Aegea. (Previously filed with the SEC as Exhibit 10.37 to the Annual Report on Form 10-K for the period ended December 31, 2000 (File No. 0-30347) and incorporated herein by reference.) |
| 10.21 | Warrant Agreement, dated as of October 1, 1997, between Curis and Lighthouse Capital Partners, L.P. (Previously filed with the SEC as Exhibit 10.56 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on March 14, 2000, and incorporated herein by reference.) |
| 10.22 | Warrant Agreement, dated as of December 17, 1999, between Curis and Lighthouse Capital III, L.P. (Previously filed with the SEC as Exhibit 10.61 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on March 14, 2000, and incorporated herein by reference.) |
| 10.23 | Stock Subscription Warrant, dated as of November 21, 1997, between Curis and MM Ventures. (Previously filed with the SEC as Exhibit 10.57 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on March 14, 2000, and incorporated herein by reference.) |
| 10.24 | Warrant Agreement, dated as of September 1, 1999, between Curis and Comdisco, Inc. (Previously filed with the SEC as Exhibit 10.59 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on March 14, 2000, and incorporated herein by reference.) |
| 10.25 | Stock Subscription Warrant, dated as of November 21, 1997, between Curis and Transamerica Business Credit Corp. (Previously filed with the SEC as Exhibit 10.57 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on March 14, 2000, and incorporated herein by reference.) |
| 10.26 | Stock Subscription Warrant No. 2, dated as of November 15, 1999, between Curis and Transamerica Business Credit Corp. (Previously filed with the SEC as Exhibit 10.60 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on March 14, 2000, and incorporated herein by reference.) |
| 10.27 | Stock Subscription Warrant, dated as of July 2, 1998, between Curis and Transamerica Business Credit Corp. (Previously filed with the SEC as Exhibit 10.39 to the Joint Proxy Statement-Prospectus on Form S-4 of Curis on March 14, 2000, and incorporated herein by reference.) |
| 10.28 | Loan Agreement, dated June 14, 2002, between Curis and Boston Private Bank & Trust Company. (Previously filed with the SEC as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended June 30, 2002 (File No. 0-30347) and incorporated herein by reference.) |
| 10.29 | Secured Term Note, dated June 14, 2002, made by Curis in favor of Boston Private Bank & Trust Company. (Previously filed with the SEC as Exhibit 10.2 to the Quarterly Report on Form 10-Q for the period ended June 30, 2002 (File No. 0-30347) and incorporated herein by reference.) |
| 10.30 | Severance Agreement, effective November 1, 2000, between Curis and Daniel R. Passeri. (Previously filed with the SEC as Exhibit 10.2 to the Quarterly Report on Form 10-Q for the period ended March 31, 2001 (File No. 0-30347) and incorporated herein by reference.) |
| 10.31 | Employment Agreement, dated September 20, 2001, between Curis and Daniel R. Passeri. (Previously filed with the SEC as Exhibit 10.3 to the Quarterly Report on Form 10-Q for the period ended September 30, 2001 (File No. 0-30347) and incorporated herein by reference.) |
| 10.32 | Employment Agreement, dated August 1, 2002, between Curis and Christopher U. Missling. (Previously filed with the SEC as Exhibit 10.4 to the Quarterly Report on Form 10-Q for the period ended September 30, 2002 (File No. 0-30347) and incorporated herein by reference.) |

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| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 10.33 | Securities Purchase Agreement, dated as of July 18, 2001, among Curis, Elan International Services, Ltd. and Elan Pharma International Limited. (Previously filed with the SEC as Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended June 30, 2001 (File No. 0-30347) and incorporated herein by reference.) |
| 10.34 | Agreement for Purchase and Sale of Single-Chain Polypeptide Business, dated as of June 29, 2001, between Curis and Micromet AG. (previously filed as an exhibit to the Current Report on Form 8-K (filed July 2, 2001 (File No. 0-30347)) and incorporated herein by reference). |
| 10.35 | Agreement, dated as of November 27, 2002, by and between Curis and Ortho Biotech Products, L.P. (previously filed as an exhibit to the Current Report on Form 8-K (filed December 9, 2002 (File No. 0-30347)) and incorporated herein by reference). |
| 21 | Subsidiaries of Curis. |
| *23.1 | Consent of PricewaterhouseCoopers LLP. |
| *23.2 | Notice Regarding Consent of Arthur Andersen LLP. |
| *99.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| *99.2 | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

Confidential treatment has been granted as to certain portions of this exhibit.
Confidential treatment has been requested as to certain portions of this exhibit.

* filed herewith.

Curis hereby agrees to furnish supplementally any schedules that have been omitted from this exhibit list to the Securities and Exchange Commission upon its request.