

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 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): **December 19, 2017**

**INNOVIVA, INC.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation)

**000-30319**

(Commission File Number)

**94-3265960**

(I.R.S. Employer Identification Number)

**2000 Sierra Point Parkway**

**Suite 500**

**Brisbane, California 94005**

**(650) 238-9600**

(Addresses, including zip code, and telephone numbers, including area code, of principal executive offices)

(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 (see General Instruction A.2. below):

- 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))

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 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On December 19, 2017, in connection with the expected issuance of the final order and judgement (the "Final Order") by the Delaware Court of Chancery (the "Court") with respect to the Verified Complaint Pursuant to Section 225 of the Delaware General Corporation Law (the "DGCL") and for Specific Performance, captioned *Sarissa Capital Domestic Fund LP, et al. v. Innoviva, Inc.* ("Innoviva"), C.A. No. 2017-0309-JRS (the "Specific Performance Litigation"), pursuant to resolutions approved by the Board of Directors of Innoviva (the "Board"), the total number of directors constituting the Board was increased from six (6) to eight (8) directors in accordance with Section 3.2 of Innoviva's Amended and Restated Bylaws, and George W. Bickerstaff, III and Odysseas Kostas, M.D. were appointed as directors to serve until Innoviva's 2018 annual meeting of stockholders or until their respective successors have been duly elected and qualified. On December 19, 2017, Innoviva issued a press release announcing the implementation of the Final Order and the appointment of Mr. Bickerstaff and Dr. Kostas as directors. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Pursuant to Innoviva's non-employee director compensation program, upon their respective appointment, each of Mr. Bickerstaff and Dr. Kostas received (i) a restricted stock unit award covering 9,071 shares of Innoviva common stock (the "Initial RSU") and (ii) a restricted stock unit award covering 5,442 shares of Innoviva common stock (the "Pro Rata RSU"). The Initial RSU vests in two equal annual installments and the Pro Rata RSU vests in a single installment at the earlier of the next annual meeting of stockholders or one-year grant anniversary, in each case subject to the respective director's continuous service through the applicable vesting date, except that in the event of the respective director's death or disability or in the event of a change of control prior to their termination of services, the Initial RSU and the Pro Rata RSU will immediately vest in full. Each of Mr. Bickerstaff and Dr. Kostas will also receive an annual cash retainer of \$50,000 for his role as a Board member.

Each of Mr. Bickerstaff and Dr. Kostas have entered into an indemnification agreement with Innoviva requiring Innoviva to indemnify him to the fullest extent permitted under Delaware law with respect to his services as a director. The indemnification agreement is in the form entered into with Innoviva's other directors and executive officers. This form of indemnification agreement is attached hereto as Exhibit 99.2 to this Current Report on Form 8-K.

The Board has determined that each of Mr. Bickerstaff and Dr. Kostas qualifies as an independent director of the Board under the applicable independence rules of (A) the Securities and Exchange Commission and (B) the Nasdaq Global Select Market listing standards. Additionally, there are no transactions involving Mr. Bickerstaff or Dr. Kostas that are required to be disclosed pursuant to Item 404(a) of Regulation S-K.

#### **Item 7.01 Regulation FD Disclosure.**

Following the entry of the Final Order, the complaint filed by Sarissa Capital Domestic Fund LP and certain of its affiliates under Section 220 of the DGCL, captioned *Sarissa Capital Domestic Fund LP v. Innoviva, Inc.*, C.A. No. 2017-0216-JRS, will be dismissed with prejudice.

The information in Item 7.01 of this Current Report on Form 8-K is being furnished and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such a filing.

#### **Item 9.01 Financial Statements and Exhibits.**

##### **(d) Exhibits**

99.1 [Press Release of Innoviva, Inc., dated December 19, 2017.](#)

99.2 [Form of Indemnification Agreement between Innoviva, Inc. and each of its directors and executive officers \(incorporated by reference to Exhibit 10.11 to Innoviva Inc.'s Registration Statement on Form S-1 \(SEC File No. 333-116384\)\) filed with the SEC on June 10, 2004.](#)

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#### **SIGNATURE**

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.

**INNOVIVA, INC.**

Date: December 19, 2017

By: /s/ Eric d'Esparbes  
**Eric d'Esparbes**  
**Chief Financial Officer**

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## *Innoviva and Sarissa Implement Court Order*

*Appoints George Bickerstaff, III and Odysseas Kostas, M.D. to the Board*

**Brisbane, Calif. — December 19, 2017** — Innoviva, Inc. (the “Company” or “Innoviva”) (NASDAQ: INVA) today announced it implemented the Delaware Court of Chancery’s order enforcing the oral settlement agreement with Sarissa Capital Domestic Fund LP and certain of its affiliates (together, “Sarissa”) in connection with the Company’s 2017 annual meeting of stockholders, held on April 20, 2017. Pursuant to the Court order, the Company has expanded the size of the Company’s Board of Directors (the “Board”) from six to eight members and appointed George Bickerstaff, III and Odysseas Kostas, M.D. as independent directors, bringing the number of independent directors to seven members. In addition, pursuant to the Court’s order, Sarissa is terminating its previous litigation under Section 220 of the Delaware General Corporation Law.

“We are pleased that this chapter is now behind us, enabling our Board and management team to focus our full attention on growing Innoviva, and continuing to generate value for our investors. It is clear Sarissa, Mr. Bickerstaff and Dr. Kostas see the potential of Innoviva, and we respect their willingness to work collaboratively to drive sustainable shareholder value today and into the future. Our Board remains committed to delivering value to all investors,” said Innoviva Chairman of the Board, William H. Waltrip.

Alexander Denner, founder of Sarissa, stated: “I am happy for the Court’s decision and believe that George and Odysseas will be strong additions to the Company’s Board in the shared goal of enhancing shareholder value. Innoviva’s Board has publicly stated that it respects the Court’s decision, and as a shareholder, I look forward to future productive dialogue.”

### **Additional Biographical Information**

#### **George Bickerstaff, III**

Mr. Bickerstaff, 62, currently serves as a Managing Director of M.M. Dillon & Co., LLC, an investment banking firm. Prior to joining M.M. Dillon & Co., LLC, Mr. Bickerstaff held various positions with Novartis International AG, a global leader in pharmaceuticals and consumer health, including Chief Financial Officer of Novartis Pharma AG. Mr. Bickerstaff currently serves on the board of directors of Inovio Pharmaceuticals, Inc., CareDx, Inc. and Cardax, Inc. Mr. Bickerstaff previously served on the board of directors of ARIAD Pharmaceuticals, Inc. until it was acquired by Takeda Pharmaceutical Company Limited in February 2017.

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#### **Odysseas Kostas, M.D.**

Odysseas Kostas, M.D., 43, is a Partner and Senior Analyst at Sarissa Capital Management LP. Sarissa Capital focuses on improving the strategies of companies to enhance shareholder value. Prior to joining Sarissa Capital, Dr. Kostas served as a Director at Evercore ISI (formerly ISI), covering the biotechnology and pharmaceutical industries. Previously, he practiced internal medicine as part of the Yale New Haven Health System and was engaged as a consultant to various biotechnology companies. Dr. Kostas currently serves on the board of directors of Enzon Pharmaceuticals.

### **About Innoviva**

Innoviva is focused on bringing compelling new medicines to patients in areas of unmet need by leveraging its significant expertise in the development, commercialization and financial management of bio-pharmaceuticals. Innoviva’s portfolio is anchored by the respiratory assets partnered with Glaxo Group Limited (GSK), including RELVAR<sup>®</sup>/BREO<sup>®</sup> ELLIPTA<sup>®</sup>, ANORO<sup>®</sup> ELLIPTA<sup>®</sup> and TRELEGY<sup>®</sup> ELLIPTA<sup>®</sup>, which were jointly developed by Innoviva and GSK. Under the agreement with GSK, Innoviva is eligible to receive associated royalty revenues from RELVAR<sup>®</sup>/BREO<sup>®</sup> ELLIPTA<sup>®</sup> and ANORO<sup>®</sup> ELLIPTA<sup>®</sup>. In addition, Innoviva retains a 15 percent economic interest in future payments made by GSK for TRELEGY<sup>®</sup> ELLIPTA<sup>®</sup> and earlier-stage programs partnered with Theravance BioPharma, Inc.. For more information, please visit Innoviva’s website at [www.inva.com](http://www.inva.com).

ANORO<sup>®</sup>, RELVAR<sup>®</sup>, BREO<sup>®</sup> and ELLIPTA<sup>®</sup> are trademarks of the GlaxoSmithKline group of companies.

### **Forward-Looking Statements**

This press release contains certain “forward-looking” statements as that term is defined in the Private Securities Litigation Reform Act of 1995 regarding, among other things, statements relating to goals, plans, objectives and future events, including expected cost savings. Innoviva intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 21E of the Securities Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. The words “anticipate”, “expect”, “goal”, “intend”, “objective”, “opportunity”, “plan”, “potential”, “target” and similar expressions are intended to identify such forward-looking statements. Such forward-looking statements involve substantial risks, uncertainties and assumptions. These statements are based on the current estimates and assumptions of the management of Innoviva as of the date of this press release and are subject to risks, uncertainties, changes in circumstances, assumptions and other factors that may cause the actual results of Innoviva to be materially different from those reflected in the forward-looking statements. Important factors that could cause actual results to differ materially from those indicated by such forward-looking statements include, among others, risks related to: expected cost savings, lower than expected future royalty revenue from respiratory products partnered with GSK, the commercialization of RELVAR<sup>®</sup>/BREO<sup>®</sup> ELLIPTA<sup>®</sup>, ANORO<sup>®</sup> ELLIPTA<sup>®</sup> and TRELEGY<sup>®</sup> ELLIPTA<sup>®</sup> in the jurisdictions in which these products have been approved; the strategies, plans and objectives of Innoviva (including Innoviva’s growth strategy and corporate development initiatives beyond the existing respiratory portfolio); the timing, manner, amount and planned growth of anticipated potential capital returns to shareholders

(including, without limitation, statements regarding Innoviva’s expectations of future purchases under its capital return programs, including the accelerated share repurchase plan and future cash dividends); the status and timing of clinical studies, data analysis and communication of results; the potential benefits and mechanisms of action of product candidates; expectations for product candidates through development and commercialization; the timing of regulatory approval of product candidates; and projections of revenue, expenses and other financial items. Other risks affecting Innoviva are described under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in Innoviva’s Annual Report on Form 10-K for the year ended December 31, 2016 and Innoviva’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2017, which are on file with the Securities and Exchange Commission (“SEC”) and available on the SEC’s website at [www.sec.gov](http://www.sec.gov). In addition to the risks described above and in Innoviva’s other filings with the SEC, other unknown or unpredictable factors also could affect Innoviva’s results. Past performance is not necessarily indicative of future results. No forward-looking statements can be guaranteed and actual results may differ materially from such statements. Given these uncertainties, you should not place undue reliance on these forward-looking statements. The information in this press release is provided only as of the date hereof, and Innoviva assumes no obligation to update its forward-looking statements on account of new information, future events or otherwise, except as required by law.

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