

XBiotech Inc.  
Form 10-K/A  
July 31, 2018

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 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, 2017**

**Commission file number 001-37437**

**XBIOTECH INC.**

(Exact name of Registrant as specified in its charter)

**British Columbia, Canada**

(State or other jurisdiction of incorporation or organization)

**N/A**

(IRS Employer Identification No.)

**8201 E. Riverside Drive, Bldg. 4, Suite 100**

**Austin TX 78744**

(Address of principal executive offices, including zip code)

**Telephone Number (512) 386-2900**

(Registrant's telephone number, including area code)

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

| <u>Title of each class</u> | <u>Name of each exchange on which registered</u> |
|----------------------------|--------------------------------------------------|
|----------------------------|--------------------------------------------------|

|                                            |                      |
|--------------------------------------------|----------------------|
| Common Stock, par value \$0.0001 per share | NASDAQ Global Market |
|--------------------------------------------|----------------------|

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

None

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 Section 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 Web site, 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 | 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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of December 31, 2017, was approximately \$139,630,732, based upon the closing sales price for the registrant's common stock, as reported on the NASDAQ Global Market. The calculation of the aggregate market value of voting and non-voting common equity excludes 10,387,160 shares of common stock the registrant held by executive officers, directors and shareholders that the registrant concluded were affiliates of the registrant on that date. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of management or policies of the registrant or that such person is controlled by or under common control with the registrant.

As of March 15, 2018, 35,439,272 shares of the registrant's Common Stock were outstanding.

## **EXPLANATORY NOTE**

This Amendment No. 1 on Form 10-K/A ("Amendment") to the Annual Report on Form 10-K of XBiotech Inc. (the "Company") for the fiscal year ended December 31, 2017 (the "Form 10-K"), originally filed with the Securities and Exchange Commission (the "SEC") on March 16, 2018, is being filed for the sole purpose of including language from the introductory portion of paragraph 4 as well as paragraph 4(b) of the Section 302 certification regarding the Company's internal control over financial reporting.

Other than as expressly set forth above, no changes have been made in this Amendment to amend, modify or restate any other information or disclosures presented in the Form 10-K. This Amendment does not reflect events occurring after the original filing of the Form 10-K. As a result, the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017 continues to speak as of March 16, 2018. This Amendment should be read in conjunction with the Company's Form 10-K and other Company filings made with the SEC.

The following exhibits are filed with this amended report:

## EXHIBIT INDEX

| Exhibit Number | Description                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>3.1</u>     | <u>Certificate of Continuation dated September 23, 2005, issued by the Registrar of Companies, Province of British Columbia, Canada (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                         |
| <u>3.2</u>     | <u>Notice of Articles, dated December 8, 2005, issued by the Registrar of Companies, Province of British Columbia, Canada (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                                   |
| <u>3.3</u>     | <u>Articles of XBiotech Inc. (incorporated by reference to Exhibit 3.3 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                                                                                                                                |
| <u>10.1+</u>   | <u>Executive Employment Agreement dated as of March 22, 2005 between XBiotech and John Simard (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                                                              |
| <u>10.2+</u>   | <u>Change in Control Agreement dated as of March 22, 2005 between XBiotech and John Simard (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                                                                 |
| <u>10.3</u>    | <u>Confidentiality and Assignment of Inventions Agreement dated as of March 22, 2005 between XBiotech and John Simard (incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                                      |
| <u>10.4+</u>   | <u>XBiotech 2005 Incentive Stock Option Plan (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                                                                                                               |
| <u>10.5+</u>   | <u>Form of indemnification agreement between XBiotech and each director of XBiotech (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>                                                                                                                                                                                                        |
| <u>10.6</u>    | <u>Agreement of Lease by and between NNN Met Center 4-9, LP and XBiotech USA, Inc. dated January 14, 2008 and the First Amendment dated January 17, 2008, the Second Amendment dated August 2010 and the Third Amendment dated March 2013 and the Fourth Amendment dated February 28, 2015 (incorporated by reference to Exhibit 10.6 to the Company's Registration Statement on Form S-1/A filed with the SEC on March 10, 2015)</u> |
| <u>10.7</u>    | <u>Agreement of Lease by and between NNN Met Center 4-9, LLP and XBiotech USA, Inc. for Suite 600 dated August 16, 2010 and First Amendment dated March 2013 and the Second Amendment dated February 28, 2015 (incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on</u>                                                                                                                               |

Form S-1/A filed with the SEC on March 10, 2015)

10.9 Licensing Agreement dated January 16, 2015 between XBiotech USA, Inc. and Lonza Sales AG (portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 406 of the Securities Act, incorporated by reference to Exhibit 10.9 to the Company's Registration Statement on Form S-1/A filed with the SEC on March 10, 2015)

10.10 Research and Collaboration Agreement dated December 15, 2014 by and between XBiotech USA, Inc. and the South Texas Blood & Tissue Center (portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 406 of the Securities Act of 1933, incorporated by reference to Exhibit 10.10 to the Company's Registration Statement on Form S-1/A filed with the SEC on March 10, 2015)

- 10.11 XBiotech Inc. 2015 Equity Incentive Plan (incorporated by reference to Exhibit 10.11 to the Company's Registration Statement on Form S-1/A filed with the SEC on March 10, 2015)
- 10.12 Common Stock Sales Agreement with H.C. Wainwright & Co. LLC which establishes an at-the-market equity program (filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on September 26, 2016 (File No. 001-37347) and incorporated herein by reference)
- 10.13 Subscription agreements with accredited investors (the "Subscription Agreements") providing for the issuance and sale by the Company of approximately \$31 million of common shares in a registered direct offering (filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 03, 2017 (File No. 001-37347) and incorporated herein by reference)
- 21.1 List of subsidiaries (incorporated by reference to Exhibit 21.1 to the Company's Annual Report on Form 10-K filed with the SEC on March 16, 2018)
- 23.1 Consent of Ernst & Young LLP (incorporated by reference to Exhibit 23.1 to the Company's Annual Report on Form 10-K filed with the SEC on March 16, 2018)
- 31.1\* Certification of the Principal Executive Officer Required Under Rules 13a-14(a) and 15d-14(a) of the Securities Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2\* Certification of the Principal Financial Officer Required Under Rules 13a-14(a) and 15d-14(a) of the Securities Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 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 (incorporated by reference to Exhibit 32.1 to the Company's Annual Report on Form 10-K filed with the SEC on March 16, 2018)
- 32.2 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 (incorporated by reference to Exhibit 32.2 to the Company's Annual Report on Form 10-K filed with the SEC on March 16, 2018)
- 101 The following financial statements from the Xbiotech, Inc. Annual Report on Form 10-K for the year ended December 31, 2017, formatted in Extensive Business Reporting Language (XBRL): (i) consolidated balance sheets, (ii) consolidated statements of operations, (iii) consolidated statements of stockholders' equity, (iv) consolidated statements of cash flows, and (v) notes to consolidated financial statements (detail tagged).

+ Indicates management contract or compensatory plan  
 \* Filed herewith



**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 on July 31, 2018.

**XBIOTECH INC.,**

/S/ JOHN SIMARD

Name: John Simard

Title: President and Chief Executive Officer  
(Principal Executive Officer)