

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): **December 15, 2020**

ZIOPHARM Oncology, Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware

(State or Other Jurisdiction
of Incorporation)

001-33038

(Commission File Number)

84-1475642

(IRS Employer
Identification No.)

**One First Avenue, Parris Building 34, Navy Yard Plaza
Boston, Massachusetts**

(Address of Principal Executive Offices)

02129

(Zip Code)

(617) 259-1970

(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 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	ZIOP	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act (17 CFR 230.405) or Rule 12b-2 of the Exchange Act (17 CFR 240.12b-2).

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 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

On December 17, 2020, Ziopharm Oncology, Inc. (“Ziopharm” or the “Company”) notified The Nasdaq Stock Market LLC (“Nasdaq”) that (1) as a result of the removal of two members of the Company’s Audit Committee (the “Audit Committee”) from the Board of Directors of the Company (the “Board”) effective as of December 3, 2020 and December 15, 2020, respectively, the Audit Committee consisted of only one member and no longer consisted of at least three members as required by Nasdaq Rule 5605(c)(2)(A) and (2) as a result of the removal of a member of the Company’s Compensation Committee (the “Compensation Committee”) from the Board effective as of December 15, 2020, the Compensation Committee no longer consisted of at least two independent members as required by Nasdaq Rule 5605(d)(2)(A). Under Nasdaq Rule 5810(c)(2), as a result of having two vacancies on the Audit Committee, the Company believes it will be granted 45 days from the date of notice of non-compliance by Nasdaq to submit a plan of compliance to Nasdaq. After reviewing the Company’s plan, Nasdaq may grant the Company an extension of up to 180 calendar days from the date of notification to regain compliance. The Company plans to rely on the cure period set forth in Nasdaq Rule 5605(d)(4) with respect to the composition of the Compensation Committee. The Company expects to take all necessary steps to regain compliance with the Nasdaq Listing Rules by filling the Audit Committee vacancies and the Compensation Committee vacancy on a timely basis with independent directors who satisfy the applicable requirements of the Nasdaq Listing Rules.

The disclosure in Items 5.02 and Item 5.07 of this Current Report on Form 8-K is incorporated herein by reference.

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

On December 15, 2020, following the consent solicitation (the “WaterMill Consent Solicitation”) by WaterMill Asset Management Corp., Robert W. Postma and certain other individuals (collectively, “WaterMill”), WaterMill delivered consents for stockholder action by written consent in lieu of a meeting of the Company’s stockholders under Section 228 of the General Corporation Law of the State of Delaware (the “DGCL”).

Removal of Director

Effective as of December 15, 2020, stockholders of the Company holding a majority of the Company’s common stock, par value \$0.001 per share (the “Common Stock”) outstanding and entitled to vote as of the record date of October 29, 2020 (the “Record Date”), acted by written consent pursuant to Section 228 of the DGCL to remove Scott Tarriff from the Board. As a result, Mr. Tarriff was removed from the Board with immediate effect.

Election of New Directors

Effective as of December 15, 2020, stockholders of the Company holding a majority of the Company’s Common Stock outstanding and entitled to vote thereon acted by written consent pursuant to Section 228 of the DGCL to elect Jaime Vieser and Holger Weis (together, the “Newly Elected Directors”) to the Board as directors to fill the two vacancies created by the removal of director Mr. Tarriff and the previously reported resignation of Elan Z. Ezickson effective December 3, 2020. The Newly Elected Directors were elected to serve as directors of the Company until the Company’s 2021 annual meeting of stockholders and until their respective successors are duly elected and qualified.

The Board has not yet determined Board committee assignments for the Newly Elected Directors. To the extent that any information called for by Item 5.02(c)(3) is not determined or is unavailable, the Company will provide such information, if required, in an amendment to this Current Report on Form 8-K within four business days after the information is determined or becomes available.

The disclosure in Item 5.07 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Effective as of December 15, 2020, stockholders of the Company holding a majority of the Company’s Common Stock outstanding and entitled to vote thereon acted by written consent in lieu of a stockholder meeting pursuant to Section 228 of the DGCL to repeal any provision of the By-Laws of the Company (the “By-Laws”) that was not included in the By-Laws that were in effect and filed with the U.S. Securities and Exchange Commission (the “SEC”) on September 22, 2020. No provision of the By-Laws was adopted after September 22, 2020, so this action had no effect.

The disclosure in Item 5.07 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

On December 15, 2020, WaterMill delivered consents for stockholder action by written consent in lieu of a stockholder meeting under Section 228 of the DGCL. Pursuant to Section 228 of the DGCL, WaterMill’s proposals became effective when legally valid, unrevoked consents signed by the holders of a majority of the outstanding shares of the Company’s Common Stock entitled to vote, as of the close of business on the Record Date were delivered to the Company within 60 days of the earliest dated written consent delivered to the Company. WaterMill’s proposals provided for (i) the repeal of any provision of the By-Laws in effect at the time Proposal 1 becomes effective, including any amendments thereto, which were not included in the By-Laws that were in effect and filed with the SEC on September 22, 2020 (“Proposal 1”), (ii) the removal, without cause, of four members of the Board: Scott Braunstein, J. Kevin Buchi, Elan Z. Ezickson and Scott Tarriff, and in addition, any other person (other than those elected by the WaterMill Consent Solicitation) elected or appointed to the Board to fill any vacancy on the Board or any newly-created directorships on or after October 15, 2020 and prior to the time that any of the actions proposed to be taken by the WaterMill Consent Solicitation become effective (“Proposal 2”), (iii) the amendment of Article 3, Section 3.3 of the By-Laws to provide that any vacancies on the Board resulting from any newly created directorship(s) or for any cause shall be filled exclusively by the stockholders of the Company (“Proposal 3”), (iv) the amendment of Article 3, Section 3.2 of the By-Laws to provide that the stockholders of the Company have the exclusive ability to fix the size of the Board and to fix the size of the Board at seven directors (“Proposal 4”), and (v) the election of Robert Postma, Jaime Vieser and Holger Weis to serve as directors of the Company until the Company’s 2021 annual meeting of stockholders and until their successors are duly elected and qualified (or, if any such nominee is unable or unwilling to serve as a director of the Company, any other person designated as a nominee by the remaining WaterMill nominee or nominees) (“Proposal 5” and Proposals 1 through 5, collectively, the “WaterMill Proposals”).

Based on the tabulation of the Company’s proxy solicitor, Morrow Sodali LLC (“Morrow”), the final tally of unrevoked consents by the Company’s stockholders delivered to the Company with respect to the WaterMill Proposals is set forth below.

Proposal 1 – Repeal Bylaws Adopted After September 22, 2020. This proposal was approved based on the following results.

Consent	Against Consent	Abstain
137,639,010	743,037	97,109

Proposal 2 – Removal of Directors. This proposal was approved with respect to the removal of Messrs. Braunstein, Ezickson and Tarriff based on the following results. As a result, Mr. Tarriff was removed from the Board.

Director	Consent	Against Consent	Abstain
Scott Braunstein*	106,978,626	3,986,075	27,514,453
J. Kevin Buchi	99,287,332	37,184,011	2,007,811
Elan Z. Ezickson**	134,333,683	3,987,529	157,944
Scott Tarriff	130,105,991	8,240,900	132,265
Any other person elected or appointed to the Board on or after October 15, 2020	99,315,429	37,114,161	2,049,564

* Dr. Braunstein resigned from the Board effective November 15, 2020.

** Mr. Ezickson resigned from the Board effective December 3, 2020.

Proposal 3 – By-Law Amendment Regarding Vacancies. This proposal was not approved based on the following results.

Consent	Against Consent	Abstain
104,390,366	34,007,240	81,548

Proposal 4 – By-Law Amendment Regarding Board Size. This proposal was not approved based on the following results.

Consent	Against Consent	Abstain
104,031,891	32,482,738	1,964,525

Proposal 5 – Election of WaterMill’s Nominees. This proposal was approved with respect to the election of Messrs. Postma, Vieser and Weis based on the following results.

Nominee	Consent	Against Consent	Abstain
Robert Postma	113,813,926	24,565,998	99,230
Jaime Vieser	133,272,520	5,144,206	62,430
Holger Weis	116,602,216	21,830,510	46,430

As of the effective date of the WaterMill Proposals, the Company had only two vacancies on the Board. Pursuant to WaterMill’s definitive consent solicitation statement filed with the SEC on October 30, 2020, if there are less than three vacancies on the Board, the WaterMill nominees receiving the highest number of consents will fill the available vacancies. As a result, Messrs. Vieser and Weis have been elected to the Board as directors.

Item 8.01 Other Events.

On December 16, 2020, the Company issued a press release (the “[Press Release](#)”) relating to the preliminary tally of the consents delivered pursuant to the WaterMill Consent Solicitation. A copy of the Press Release is filed as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

On December 18, 2020, the Company transmitted a copy of a notice to stockholders pursuant to Section 228(e) of the DGCL. A copy of the notice is attached hereto as Exhibit 99.2.

The information set forth above in Item 5.07 Submission of Matters to a Vote of Security Holders is hereby incorporated by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
99.1	Press release of Ziopharm Oncology, Inc., dated December 16, 2020.
99.2	Notice to Stockholders of Ziopharm Oncology, Inc., dated December 18, 2020.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

ZIOPHARM ONCOLOGY, INC.

Date: December 18, 2020

By: /s/ Robert Hadfield

Name: Robert Hadfield

Title: General Counsel and Secretary



ZIOPHARM COMMENTS ON CONSENT SOLICITATION RESULTS

Jaime Vieser and Holger Weis Elected to Board of Directors; Scott Tarriff Departs Board

BOSTON, December 16, 2020 – Ziopharm Oncology, Inc. (Nasdaq: ZIOP) (“Ziopharm” or the “Company”), today issued a statement in connection with the consent solicitation (the “Consent Solicitation”) initiated by WaterMill Asset Management Corp., Mr. Robert W. Postma and certain other individuals (collectively, “WaterMill”). Based on the consents received by the Company, Jaime Vieser and Holger Weis have been formally elected to the Ziopharm Board of Directors (the “Board”), while Chairman Scott Tarriff will depart the Board effective immediately.

The Company’s statement is as follows:

“We sincerely thank our shareholders for all of the helpful feedback and constructive dialogue that they have shared with the Company since our 2020 Annual Meeting. We welcome Messrs. Vieser and Weis as the newest members of Ziopharm’s Board of Directors.

“We also wish to thank Scott Tarriff for his service as a member of the Board since 2015 and as Chairman since 2018. We wish him well in the future. We continue to focus on achieving the high potential that our pipeline offers and delivering significant value to both patients and shareholders.”

The full results of the Consent Solicitation will be disclosed via a Current Report on Form 8-K filing with the U.S. Securities and Exchange Commission (the “SEC”) in due course.

About Ziopharm Oncology, Inc.

Ziopharm is developing non-viral and cytokine-driven cell and gene therapies that weaponize the body’s immune system to treat the millions of people globally diagnosed with a solid tumor each year. With its multiplatform approach, Ziopharm is at the forefront of immuno-oncology with a goal to treat any type of solid tumor. Ziopharm’s pipeline is built for commercially scalable, cost effective T-cell receptor T-cell therapies based on its non-viral Sleeping Beauty gene transfer platform, a precisely controlled IL-12 gene therapy, and rapidly manufactured Sleeping Beauty-enabled CD19-specific CAR-T program. The Company has clinical and strategic partnerships with the National Cancer Institute, The University of Texas MD Anderson Cancer Center and others. For more information, please visit www.ziopharm.com.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as amended, including, but not limited to, statements regarding the business strategy, plans and objectives of Ziopharm management. Forward-looking statements include all statements that are not historical facts, and can be identified by terms such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “hope,” “intend,” “may,” “might,” “objective,” “ongoing,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” or “would” or similar expressions and the negatives of those terms. Any forward-looking statements are based on management’s current expectations of future events and are subject to a number of risks and uncertainties that could cause actual results to differ materially and adversely from those set forth in or implied by such forward-looking statements. Such risks and uncertainties include, among others, the impact of the Consent Solicitation and other activities by WaterMill and/or other investors, the risks and uncertainties disclosed in Ziopharm’s most recent Quarterly Report on Form 10-Q for the quarter ended September 30, 2020 as well as discussions of potential risks, uncertainties and other important factors in any subsequent filings by Ziopharm with the SEC. All information in this press release is as of the date hereof, and Ziopharm undertakes no duty to update the information, except as required by law.

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NOTICE IS HEREBY GIVEN, pursuant to Section 228(e) of the Delaware General Corporation Law, that the holders of a majority of the outstanding shares of common stock of ZIOPHARM Oncology, Inc., a Delaware corporation (the "Company"), have taken the following actions by written consent and without a meeting:

1. Any provision of the By-Laws of the Company (the "By-Laws") that was not included in the By-Laws that were in effect and filed with the U.S. Securities and Exchange Commission on September 22, 2020 was repealed. No provision of the By-Laws was adopted after September 22, 2020, so this action had no effect;
2. Scott Tariff was removed from the Board of Directors of the Company (the "Board") with immediate effect; and
3. Jaime Vieser and Holger Weis were elected to the Board as directors.

The foregoing actions became effective on December 15, 2020.

By order of the Board of Directors.

/s/ Robert Hadfield

General Counsel and Secretary

Boston, Massachusetts
December 18, 2020