
**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): February 4, 2020

Akorn, Inc.

(Exact Name of Registrant as Specified in Charter)

Louisiana

(State or Other Jurisdiction of Incorporation)

001-32360

(Commission File Number)

72-0717400

(I.R.S. Employer Identification Number)

**1925 W. Field Court
Suite 300**

Lake Forest, Illinois 60045

(Address of principal executive offices, including zip code)

(847) 279-6100

(Registrant's telephone number, including area code)

(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:

- 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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (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.

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, No Par Value	AKRX	The NASDAQ Global Select Market

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

As a result of Akorn, Inc.'s (the "Company's") on-going exploration of strategic alternatives, on February 4, 2020, the compensation committee of the board of directors (the "Board") of the Company recommended, and the Board approved, retention programs for the Company's executive officers and all other U.S. salaried exempt employees for 2020.

The 2020 retention program for the Company's executive officers (the "Participants") provides a prepaid retention payment (the "Retention Bonus") to each Participant, subject to the terms of a letter agreement (the "Letter Agreement").

Pursuant to the Letter Agreement, a portion of the Retention Bonus is subject to repayment by the Participant if the Company's Quality Metric (as defined in the Letter Agreement) is not satisfied as of December 31, 2020 (the "Completion Date"). In addition, in the event that the Participant's employment with the Company terminates for any reason other than a Qualifying Termination (as defined in the Letter Agreement) prior to the Completion Date and a Change of Control (as defined in the Letter Agreement), such Participant will be required to repay the Participant's Retention Bonus to the Company, net of certain tax adjustments.

A total aggregate of approximately \$39.4 million was approved for payment under the retention programs for the Company's U.S. salaried exempt employees for 2020, including for the Company's executive officers named below. The amount of the Retention Bonuses paid to our President and CEO and named executive officers were: (1) \$3,600,000 for President and Chief Executive Officer Douglas Boothe; (2) \$1,489,500 for Chief Financial Officer Duane Portwood; (3) \$1,451,400 for General Counsel Joseph Bonaccorsi; and (4) \$1,155,000 for Chief Commercial Officer Jonathan Kafer. The retention programs for the Company's executive officers and other U.S. salaried exempt employees replace the traditional incentive compensation programs for 2020.

The above summary of the Retention Program is qualified in its entirety by reference to the complete terms and conditions as set forth in the Letter Agreement, the form of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and incorporated by reference into this Item 5.02.

Item 9.01. Financial Statements and Exhibits.

[10.1](#) [Form Letter Agreement](#)

104 Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

Exhibit No.

Description of Exhibit

[10.1](#)

[Form Letter Agreement](#)

104

Cover Page Interactive Data File - the cover page XBRL tags are 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.

Dated: February 10, 2020

Akorn, Inc.

By: /s/ Duane A. Portwood

Name: Duane A. Portwood

Title: Chief Financial Officer

Personal and Confidential

February 4, 2020

c/o Akorn, Inc.
1925 West Field Court, Suite 300
Lake Forest, Illinois 60045

Re: Retention Bonus

Dear :

On behalf of Akorn, Inc. (the "Company"), I am pleased to offer you the opportunity to receive a retention bonus as set forth below if you agree to the terms and conditions contained in this letter agreement (this "Agreement"), which will be effective as of the date you execute and return a copy of this Agreement (such date, the "Effective Date").

1. Retention Bonus. Subject to the terms and conditions set forth herein, you will receive a cash lump sum payment in an amount equal to \$ (the "Retention Bonus"), on or about February 7, 2020. You hereby agree that, if your employment with the Company terminates for any reason other than a Qualifying Termination (as defined below) prior to the earlier to occur of December 31, 2020 (the "Completion Date") and a Change of Control (as defined below), then you will be required to repay to the Company the After-Tax Value (as defined below) within 10 days following such termination of employment. You further agree that, if the Quality Metric (as defined below) is not satisfied as of the Completion Date, then you will be required to repay to the Company an amount equal to \$ within 10 days following Completion Date.

2. Certain Definitions. For purposes of this Agreement:

"After-Tax Value" means the aggregate amount of the Retention Bonus net of any taxes you are required to pay in respect thereof and determined taking into account any tax benefit that may be available in respect of such repayment. The Company shall determine in good faith the After-Tax Value, which determination shall be final, conclusive, and binding.

"Cause" (a) has the meaning set forth in your Individual Agreement; or (b) if you are not party to an Individual Agreement or such Individual Agreement does not define such term, then the "Cause" means (i) failure to perform the duties of your position in a satisfactory manner; (ii) fraud, misappropriation, embezzlement, or acts of similar dishonesty; (iii) conviction of a felony involving moral turpitude; (iv) illegal use of drugs or excessive use of alcohol in the workplace; (v) intentional and willful misconduct that may subject the Company or its subsidiaries to criminal or civil liability; (vi) breach of your duty of loyalty, including the diversion or usurpation of corporate opportunities properly belonging to the Company or its subsidiaries; (vii) willful disregard of Company policies and procedures; or (viii) breach of any of the material terms of any Individual Agreement.

“Change of Control” has the meaning set forth in the Company’s 2017 Omnibus Incentive Compensation Plan as in effect on the Effective Date.

“Code” means the Internal Revenue Code of 1986, as amended.

“Disability” means “permanent and total disability” within the meaning of Section 22(e)(3) of the Code.

“FDA” means the U.S. Food and Drug Administration.

“Good Reason” (a) has the meaning set forth in your Individual Agreement; or (b) if you are not party to an Individual Agreement or if such Individual Agreement does not define such term, then the term “Good Reason” means (i) a change in your employment status or responsibilities with the Company that represents a material and adverse change from your status or responsibilities, or the assignment to you of any employment duties or responsibilities that are materially inconsistent with your employment status or responsibilities, or any action by the Company that results in a marked diminution in your position, authority, duties, or responsibilities (in either case, without sole regard to any change in title or the Company’s status as a public or private entity); (ii) a reduction in your base salary for employment with the Company to a level below that in effect at any time previously (other than as part of a comprehensive reduction in salary applicable to employees of the Company generally so long as the reduction applicable to you is comparable to the reduction applied to other employees of the Company at the same career level as you); or (iii) the Company’s requirement that you be based at any place outside a 50-mile radius from your then current job location or residence without your written consent, except for travel that is reasonably necessary in connection with the Company’s business.

“Individual Agreement” means any employment or severance agreement between the Company or one of its subsidiaries, on the one hand, and you, on the other hand, that is in effect as of the Effective Date.

“Qualifying Termination” means the termination of your employment with the Company (a) by the Company for a reason other than Cause, (b) by you with Good Reason, or (c) due to your death or Disability, in each case, if, and only if, you execute (or, if applicable, your legal representative or estate executes) a general release of claims in favor of the Company and its affiliates containing customary terms and conditions for the release of employment-related claims, and such release becomes irrevocable, within 60 days following your termination of employment, in which case the effective date of the Qualifying Termination will be deemed to have occurred on your date of termination of employment. If you do not (or, if applicable, your legal representative or estate does not) execute and deliver such release (or if such release is revoked in accordance with its terms), then your termination of employment will not constitute a Qualifying Termination and you will be required to repay the After-Tax Value as set forth in Section 1 within 10 days following the expiration of such 60-day period.

“Quality Metric” means that all Company-owned manufacturing sites are at least at a “voluntary action indicated” status with the FDA and, if the FDA has not inspected any such sites, then there has been third-party verification that all Company-owned manufacturing sites that were in “official action indicated” status prior to January 1, 2020 have effectively completed all corrective actions committed to FDA and are otherwise in substantial compliance with all FDA requirements.

3. Withholding Taxes. The Company may withhold from any amounts payable to you hereunder such federal, state, and local taxes as the Company determines in its sole discretion may be required to be withheld pursuant to any applicable law or regulation.

4. No Right to Continued Employment. Nothing in this Agreement will confer upon you any right to continued employment with the Company (or its affiliates or their respective successors) or interfere in any way with the right of the Company (or its affiliates or their respective successors) to terminate your employment at any time.

5. Other Benefits. The Retention Bonus is a special payment to you and will not be taken into account in computing the amount of compensation for purposes of determining any bonus, incentive, pension, retirement, death, or other benefit under any other bonus, incentive, pension, retirement, insurance, or other employee benefit plan of the Company, unless such plan or agreement expressly provides otherwise. Except as set forth herein, any payment made pursuant to this Agreement shall not be subject to clawback or disgorgement.

6. Governing Law. This Agreement will be governed by, and construed under and in accordance with, the internal laws of the State of Illinois, without reference to rules relating to conflicts of laws.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original but all of which taken together will constitute one and the same instrument.

8. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between you and the Company with respect to the subject matter hereof and supersedes any and all prior agreements or understandings between you and the Company with respect to the subject matter hereof, whether written or oral. This Agreement may be amended or modified only by a written instrument executed by you and the Company.

9. Section 409A Compliance. The intent of the parties is that the Retention Bonus be exempt from the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance promulgated thereunder, and accordingly, to the maximum extent permitted, this Agreement shall be interpreted in a manner consistent therewith.

[Signature Page Follows]

This Agreement is intended to be a binding obligation on you and the Company. If this Agreement accurately reflects your understanding as to the terms and conditions of the Retention Bonus, please sign, date, and return to me one copy of this Agreement. You should make a copy of the executed Agreement for your records.

Very truly yours,

AKORN, INC.

By: _____

Name:

Title:

The above terms and conditions accurately reflect our understanding regarding the terms and conditions of the Retention Bonus, and I hereby confirm my agreement to the same.

Name:

Date: _____

[Signature Page to Letter Agreement]
