

CHEMBIO DIAGNOSTICS, INC.
Form 10KSB/A
May 20, 2005

U.S. Securities and Exchange Commission

Washington, D.C. 20549

AMENDMENT NO 1 TO

FORM 10-KSB

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

For the fiscal year ended December 31, 2004

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
[No Fee Required]

For the transition period from _____ to _____.

Commission File No. **0-30379**

CHEMBIO DIAGNOSTICS, INC.

(Name of small business issuer in its charter)

Nevada

(State or jurisdiction of incorporation or organization)

88-0425691

(I.R.S. Employer Identification No.)

3661 Horseblock Road, Medford, NY

(Address of principal executive offices)

11763

(Zip Code)

Registrant's telephone number, including area code (631) 924-1135

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

Title of each class

| | |
|------|---|
| | Name of each exchange on which registered |
| None | None |

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, \$0.01 par value
(Title of Class)

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 past 12 months (or for such shorter period that the registrant was required to file such report), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B (§ 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-KSB or any amendment to this Form 10-KSB. [X]

State issuer's revenues for its most recent fiscal year: \$3,305,932.

As of March 28, 2005, the registrant had 7,048,086 common shares outstanding, and the aggregate market value of the common shares held by non-affiliates was approximately \$ 5,497,507. This calculation is based upon the closing sale price of \$0.78 per share on March 28, 2005.

Without asserting that any of the issuer's directors or executive officers, or the entities that own 2,173,184, and 229,464 shares of common stock are affiliates, the shares of which they are beneficial owners have been deemed to be owned by affiliates solely for this calculation.

EXPLANATORY NOTE

The purpose of this Amendment No. 1 to the Form 10-KSB for the fiscal year ended December 31, 2004 is (i) to correct the inadvertent omission of one individual from the executive compensation table in Item 10, (ii) to state in Item 10 that Mr. Pelosof's employment contract with Chembio Diagnostics, Inc. terminates on May 10, 2007, rather than May 10, 2006, and (iii) to file as Exhibit 10.3 Mr. Pelosof's employment agreement. Accordingly, Items 10 and 13, and Exhibit 10.3, are hereby amended and restated in their entirety. The remainder of the information contained in the original filing is not amended hereby.

ITEM 10.**EXECUTIVE COMPENSATION**

The following table summarizes the annual compensation paid to Chembio Diagnostics, Inc.'s named executive officers for the three years ended December 31, 2004, 2003 and 2002:

| Name and Position | Year | Annual Comp Salary | Long-Term Compensation Awards Securities Underlying Stock Options |
|--|-------------|-------------------------------|--|
| Lawrence A. Siebert, President, CEO, Chairman of Board of Chembio Diagnostic Systems Inc. ⁽¹⁾ | 2004 | \$ 182,789 | 160,000 |
| | 2003 | 103,846 | |
| | 2002 | 63,000 | |
| Avi Pelosof, Vice President of Chembio Diagnostic Systems, Inc. ⁽²⁾ | 2004 | 154,635 | 250,000 |
| | 2003 | 83,077 | |
| | 2002 | 80,500 | |
| Javan Esfandiari, Vice President of Chembio Diagnostic Systems, Inc. ⁽³⁾ | 2004 | 129,323 | 110,000 |
| | 2003 | 88,269 | |
| | 2002 | 83,224 | |
| Rick Bruce, Vice President of Chembio Diagnostic Systems Inc. ⁽⁴⁾ | 2004 | 114,286 | 35,000 |
| | 2003 | 110,326 | |
| | 2002 | 106,240 | |
| Konstantin Lyashchenko, Research Director of Chembio Diagnostic Systems, Inc. ⁽⁵⁾ | 2004 | 106,365 | 2,500 |
| | 2003 | 77,885 | |
| | 2002 | 75,500 | |
| Mark L. Baum, President, Secretary and Director of Chembio Diagnostics, Inc. ⁽⁶⁾ | 2004 | 40,000 | |
| | 2003 | | |
| | 2002 | | |

(1)

Mr. Siebert currently is a director, the President and Chief Executive Officer of Chembio Diagnostics, Inc., and the President of Chembio Diagnostic Systems Inc. The compensation information represents compensation earned while employed by Chembio Diagnostic Systems Inc. In 2004, Mr. Siebert received, prior to the merger, 50,000 options exercisable at \$0.75 and 10,000 options exercisable at \$1.00. In addition as part of his contract signed in May 2004, Mr. Siebert received 50,000 options with an exercise price of \$1.20 per share, becoming exercisable in May 2005 and 50,000 options with an exercise price of \$1.50 per share becoming exercisable in May of 2006.

(2)

Mr. Pelosof currently is a Vice President of both Chembio Diagnostics, Inc. and Chembio Diagnostic Systems, Inc. The compensation information represents compensation earned while employed by Chembio Diagnostic Systems Inc. In 2004, Mr. Pelosof received, prior to the merger, 40,000 options exercisable at \$0.75 and 10,000 options exercisable at \$1.00. In addition as part of his contract signed in May 2004, Mr. Pelosof received 100,000 options exercisable at \$0.60 per share, becoming exercisable in May 2004, 50,000 options exercisable with an exercise price of 0.90 per share, becoming exercisable in May 2005 and 50,000 options with an exercise price of \$1.35 per share becoming exercisable in May of 2006.

(3)

Mr. Esfandiari currently is a Vice President of Chembio Diagnostics, Inc. and Chembio Diagnostic Systems, Inc. The compensation information represents compensation earned while employed by Chembio Diagnostic Systems Inc. In 2004, Mr. Esfandiari received, prior to the merger, 30,000 options exercisable at \$0.75 and 5,000 options exercisable at \$1.00. In addition as part of his contract signed in May 2004, Mr. Esfandiari received 25,000 options exercisable at \$0.90 per share, becoming exercisable in May 2005, 25,000 options with an exercise price of \$1.20 per share, becoming exercisable in May 2006 and 25,000 options with an exercise price of \$1.50 per share becoming exercisable in May of 2007.

(4)

Mr. Lyashchenko currently is a Research Director of Chembio Diagnostic Systems, Inc. The compensation information represents compensation earned while employed by Chembio Diagnostic Systems Inc. In 2004, Mr. Lyashchenko received, prior to the merger, 2,500 options with an exercise price of \$1.00.

(5)

Mr. Bruce currently is a vice president of Chembio Diagnostic Systems Inc. The compensation information represents compensation earned while employed by Chembio Diagnostic Systems Inc. Mr. Bruce received, prior to the merger, 20,000 options exercisable at \$0.588, 10,000 options exercisable at \$0.75 and 5,000 options exercisable at \$1.00.

(6)

Mr. Baum currently is a director of Chembio Diagnostics, Inc. The compensation information represents compensation earned while employed by Chembio Diagnostics, Inc.

The following table sets forth certain information regarding stock options granted to the named executive officers as of December 31, 2004.

| <u>Name</u> | <u>Individual Grants</u> | | | |
|---------------------|---|---|---------------------------------------|------------------------|
| | <u>Number of Securities Underlying Options/SARs Granted (#)</u> | <u>Percentage of Total Options/SARs Granted to Employees in Fiscal Year</u> | <u>Exercise or Base Price (\$/Sh)</u> | <u>Expiration Date</u> |
| Lawrence A. Siebert | 50,000 | 6.75% | 1.20 | 5/27/11 |
| Lawrence A. Siebert | 50,000 | 6.75% | 1.50 | 5/27/11 |
| Lawrence A. Siebert | 50,000 | 6.75% | 0.75 | 5/04/11 |
| Lawrence A. Siebert | 10,000 | 1.35% | 1.00 | 5/04/11 |
| Avi Pelossof | 100,000 | 13.51% | 0.60 | 5/27/11 |
| Avi Pelossof | 50,000 | 6.75% | 0.90 | 5/27/11 |
| Avi Pelossof | 50,000 | 6.75% | 1.35 | 5/27/11 |
| Avi Pelossof | 40,000 | 5.40% | 0.75 | 5/04/11 |
| Avi Pelossof | 10,000 | 1.35% | 1.00 | 5/04/11 |
| Javan Esfandiari | 25,000 | 3.38% | 0.90 | 5/27/11 |

| | | | | |
|------------------------|--------|-------|-------|---------|
| Javan Esfandiari | 25,000 | 3.38% | 1.20 | 5/27/11 |
| Javan Esfandiari | 25,000 | 3.38% | 1.50 | 5/27/11 |
| Javan Esfandiari | 30,000 | 4.05% | 0.75 | 5/04/11 |
| Javan Esfandiari | 5,000 | 0.68% | 1.00 | 5/04/11 |
| Richard Bruce | 20,000 | 2.70% | 0.588 | 5/04/11 |
| Richard Bruce | 10,000 | 1.35% | 0.75 | 5/04/11 |
| Richard Bruce | 5,000 | 0.68% | 1.00 | 5/04/11 |
| Konstantin Lyashchenko | 2,500 | 0.34% | 1.00 | 5/04/11 |

There were no options were exercised by the named executive officers in the last fiscal year.

Employment Agreements

Mr. Siebert. On May 5, 2004, Mr. Siebert and the Company entered into an employment agreement, effective May 10, 2004, which terminates on May 10, 2006. Pursuant to the employment agreement Mr. Siebert serves as the President and Chief Executive Officer of the Company and is entitled to receive a base compensation of \$150,000 per year, subject to periodic review by the Board of Directors of the Company. Mr. Siebert is eligible to participate in any profit sharing, stock option, retirement plan, medical and/or hospitalization plan, and/or other benefit plans except for disability and life insurance that the Company may from time to time place in effect for the Company's executives during the term of Mr. Siebert's employment agreement. If Mr. Siebert's employment agreement is terminated by the Company without cause, or if Mr. Siebert terminates his employment agreement for a reasonable basis, including within 12 months of a change in control, the Company is required to pay as severance Mr. Siebert's salary for six months. Mr. Siebert has agreed for a period of two years after the termination of his employment with the Company not to induce customers, agents, or other sources of distribution of the Company's business under contract or doing business with the Company to terminate, reduce, alter, or divert business with or from the Company.

Mr. Pelossof. On May 5, 2004, Mr. Pelossof and the Company entered into an employment agreement, effective May 10, 2004, which terminates on May 10, 2007. Pursuant to the employment agreement Mr. Pelossof serves as the Vice President of Sales, Marketing, and Business Development of the Company and is entitled to receive a base compensation of \$120,000 per year, with annual salary increases of not less than five percent, and subject to periodic review by the Board of Directors of the Company. Mr. Pelossof is eligible to participate in any profit sharing, stock option, retirement plan, medical and/or hospitalization plan, and/or other benefit plans except for disability and life insurance that the Company may from time to time place in effect for the Company's executives during the term of Mr. Pelossof's employment agreement. If Mr. Pelossof's employment agreement is terminated by the Company without cause, or if Mr. Pelossof terminates his employment agreement for a reasonable basis, including within 12 months of a change in control, the Company is required to pay as severance Mr. Pelossof's salary for six months. Mr. Pelossof has agreed for a period of two years after the termination of his employment with the Company not to induce customers, agents, or other sources of distribution of the Company's business under contract or doing business with the Company to terminate, reduce, alter, or divert business with or from the Company.

Mr. Esfandiari. On May 5, 2004, Mr. Esfandiari and the Company entered into an employment agreement, effective May 10, 2004, which terminates on May 10, 2007. Pursuant to the employment agreement Mr. Esfandiari serves as the Director of Research & Development for the Company and is entitled to receive a base compensation of \$115,000 per year, subject to periodic review by the Board of Directors of the Company. Mr. Esfandiari is eligible to participate in any profit sharing, stock option, retirement plan, medical and/or hospitalization plan, and/or other benefit plans except for disability and life insurance that the Company may from time to time place in effect for the Company's executives during the term of Mr. Esfandiari's employment agreement. If Mr. Esfandiari's employment agreement is terminated by the Company without cause, or if Mr. Esfandiari terminates his employment agreement for a reasonable basis, including within 12 months of a change in control, the Company is required to pay as severance Mr. Esfandiari's salary for six months. Mr. Esfandiari has agreed for a period of two years after the termination of his employment with the Company not to induce customers, agents, or other sources of distribution of the Company's business under contract or doing business with the Company to terminate, reduce, alter, or divert business with or from the Company.

Director Compensation

Please see "Certain Relationships and Related Transactions" for a discussion of Mr. Baum's employment agreement and warrants. All independent directors are paid an annual retainer of \$18,000, paid semi-annually and 36,000 stock options, with an exercise price equal to the market price on the date of the grant. One-third of each independent director's stock options are exercisable on the date of grant, one-third become exercisable on the first anniversary of the date of grant, and one-third become exercisable on the second anniversary of the date of grant. In addition, the independent directors are paid \$1,000 in cash for each meeting of the Board of Directors attended, and paid \$500 in cash for each telephonic Board of Directors meeting. Additionally, the independent directors who are members of a committee of the Board of Directors are paid \$500 in cash for each committee meeting attended, or \$750 in cash for each committee meeting attended if that independent director is the committee chairman.

ITEM 13.

EXHIBITS

| Number | Description |
|----------|--|
| 2.1(2) | Agreement and Plan of Merger dated as March 3, 2004 (the Merger Agreement), by and among the Registrant, New Trading Solutions, Inc. (Merger Sub) and Chembio Diagnostic Systems Inc. |
| 2.2(1) | Amendment No. 1 to the Merger Agreement dated as May 1, 2004, by and among the Registrant, Merger Sub and Chembio Diagnostic Systems Inc. |
| 3.1* | Articles of Incorporation, as amended. |
| 3.2(2) | Bylaws. |
| 3.3(1) | Amendment No. 1 to Bylaws dated May 3, 2004. |
| 4.2(1) | Certificate of Designation of the Relative Rights and Preferences of the series A convertible preferred stock of the Registrant. |
| 4.3(1) | Registration Rights Agreement, dated as of May 5, 2004, by and among the Registrant and the Purchasers listed therein. |
| 4.4(1) | Lock-Up Agreement, dated as of May 5, 2004, by and among the Registrant and the shareholders of the Registrant listed therein. |
| 4.5(1) | Form of Common Stock Warrant issued pursuant to the Stock and Warrant Purchase Agreement. |
| 4.6(1) | Form of \$.90 Warrant issued to Mark L. Baum pursuant to the Consulting Agreement dated as of May 5, 2004 between the Registrant and Mark L. Baum. |
| 4.7(1) | Form of \$.60 Warrant issued to Mark L. Baum pursuant to the Consulting Agreement dated as of May 5, 2004 between the Registrant and Mark L. Baum. |
| 4.8(4) | Form of Warrant issued to Placement Agents pursuant to the Series A Convertible Stock Private Placement |
| 4.9(5) | Certificate of Designation of Preferences, Rights, and Limitations of Series B 9% Convertible Preferred Stock of the Registrant. |
| 4.10(5) | Form of Common Stock Warrant issued to Midtown Partners & Co., LLC |
| 4.11(5) | Form of Common Stock Warrant issued pursuant to the Securities Purchase Agreement. |
| 4.12(5) | Registration Rights Agreement, dated as of January 26, 2005, by and among the Registrant and the purchasers listed therein. |
| 10.1(1) | Employment Agreement between the Registrant and Mark L. Baum dated as of May 5, 2004. |
| 10.2(3) | Employment Agreement between the Registrant and Lawrence A. Siebert dated as of May 5, 2004. |
| 10.3 | Employment Agreement between the Registrant and with Avi Pelossof dated as of May 5, 2004. |
| 10.4(3) | Employment Agreement between the Registrant and with Javan Esfandiari dated as of May 5, 2004. |
| 10.5(1) | Series A Convertible Preferred Stock and Warrant Purchase Agreement (the Stock and Warrant Purchase Agreement), dated as of May 5, 2004, by and among the Registrant and the purchasers listed therein. |
| 10.6(3) | License and Supply Agreement dated as of August 30, 2002 by and between Chembio Diagnostic Systems Inc. and Adaltis Inc. |
| 10.8(4) | Contract for Transfer of Technology and Materials with Bio-Manguinhos. |
| 10.9(6) | Agreement with Abbott Laboratories. |
| 10.10(5) | |

Securities Purchase Agreement (the Securities Purchase Agreement), dated as of January 26, 2005, by and among the Registrant and the purchasers listed therein.

- 10.11(6) Amendment No. 1 to Securities Purchase Agreement, dated as of January 28, 2005 by and among the Registrant and the purchasers listed therein.
- 10.12(6) Equity Exchange Agreement, dated as of January 28, 2005, by and between the Registrant and Kurzman Partners, LP.

| Number | Description |
|--------|---|
| 10.13* | 1999 Stock Option Plan. |
| 21(6) | List of Subsidiaries. |
| 23.1* | Consent of Lazar, Levine & Felix LLP, Independent Accountants. |
| 31.1 | Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1 | Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.2 | Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

*

Previously filed with the Registrant's Annual Report on Form 10-KSB for the year ended December 31, 2004, filed with the Commission on March 31, 2005.

(1)

Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on May 14, 2004.

(2)

Incorporated by reference to the Registrant's registration statement on Form SB-2 filed with the Commission on August 23, 1999.

(3)

Incorporated by reference to the Registrant's registration statement on Form SB-2 filed with the Commission on June 7, 2004.

(4)

Incorporated by reference to the Registrant's registration statement on Form SB-2/A filed with the Commission on August 4, 2004.

(5)

Incorporated by reference to the Registrant's current report on Form 8-K filed with the Commission on January 31, 2005.

(6) Incorporated by reference to the Company's registration statement of Form SB-2 filed with the Commission on March 28, 2005.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CHEMBIO DIAGNOSTICS, INC.

Date: May 20, 2005

By /s/ Lawrence A. Siebert

Lawrence A. Siebert

President, Chief Executive Officer and

Chairman of the Board