

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A
(Amendment No. 2)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2019

or

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____.

Commission File No. 001-35569

CHEMBIO DIAGNOSTICS, INC.

(Exact name of registrant as specified in its charter)

Nevada

88-0425691

(State or other jurisdiction of incorporation or organization)

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

555 Wireless Boulevard, Hauppauge, NY

11788

(Address of principal executive offices)

(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

Trading symbol

Name of each exchange on which registered

Common Stock, \$0.01 par value

CEMI

The NASDAQ Stock Market LLC

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 every Interactive Data File required to be submitted 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 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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth 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 Exchange Act). Yes No

As of the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of voting and non-voting common equity held by non-affiliates was \$106,974,102.

As of April 29, 2020, the registrant had 17,548,910 shares of common stock outstanding.

Documents Incorporated By Reference: None.

EXPLANATORY NOTE

We are filing this Amendment No. 2 on Form 10-K/A, or this Amendment No. 2, to amend our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, or the 2019 Form 10-K, as filed with the Securities and Exchange Commission, or SEC, on March 13, 2020, as amended on April 29, 2020, which we refer to as Amendment No. 1. The sole purpose of this Amendment No. 2 is to correct errors in the table of beneficial ownership of common stock included in Item 12 of Amendment No. 1, and as such, only sets forth Item 12.

This Amendment No. 2 amends the cover page, Item 12 of Part III, and Item 15 of Part IV of the 2019 Form 10-K, as amended by Amendment No. 1. In addition, as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, or the Securities Exchange Act, new certifications by our principal executive officer and principal financial officer are filed as exhibits to this Amendment No. 2.

No attempt has been made in this Amendment No. 2 to modify or update the other disclosures presented in the 2019 Form 10-K, as amended by Amendment No. 1. This Amendment No. 2 does not reflect events occurring after the date of the filing of the 2019 Form 10-K or Amendment No. 1, as applicable, or modify or update those disclosures that may be affected by subsequent events. Accordingly, this Amendment No. 1 should be read in conjunction with the 2019 Form 10-K, as amended by Amendment No. 1 and with our other filings with the SEC.

TABLE OF CONTENTS

	<u>Page</u>
PART III	
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	5
PART IV	
Item 15. Exhibits, Financial Statement Schedules	8
Signatures	10

Unless the context requires otherwise, the words “ChemBio,” “our,” “our company,” “us,” “we” and similar terms refer to ChemBio Diagnostics, Inc. and its consolidated subsidiaries.

FORWARD-LOOKING STATEMENTS

This Amendment contains statements reflecting our views about our future performance that constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are generally identified through the inclusion of words such as “anticipate,” “believe,” “contemplate,” “could,” “estimate,” “expect,” “forecast,” “intend,” “may,” “objective,” “outlook,” “plan,” “potential,” “project,” “seek,” “should,” “strategy,” “target,” “will,” “would” or variations of such words or similar expressions. All statements addressing our future operating performance, and statements addressing events and developments that we expect or anticipate will occur in the future, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are based upon currently available information, operating plans, and projections about future events and trends.

Forward-looking statements inherently involve risks and uncertainties that could cause actual results to differ materially from those predicted or expressed in this Amendment. These risks and uncertainties include those described in “Item 1A. Risk Factors” of the 2019 Form 10-K. Investors are cautioned not to place undue reliance on any forward-looking statements, which speak only as of the date they are made. We undertake no obligation to update any forward-looking statement or statistical estimate, whether as a result of new information, future events or otherwise.

PART III**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The following table sets forth the number of outstanding shares of common stock beneficially owned, and the percentage of the class beneficially owned, as of April 29, 2020, by:

- each person known to us to be the beneficial owner of more than five percent of the then-outstanding shares of common stock;
- each named executive officer included in “Executive Compensation—Summary Compensation Table,” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as amended;
- each current director and each nominee for election as a director; and
- all of our executive officers, directors and director nominees as a group.

The number of shares of common stock beneficially owned by each person is determined under the rules of the SEC. Under these rules, beneficial ownership includes any shares as to which the individual has sole or shared voting power or investment power and also any shares that the individual has the right to acquire by June 28, 2020 (sixty days after April 29, 2020) through the exercise or conversion of a security or other right. Unless otherwise indicated, each person has sole investment and voting power, or shares such power with a family member, with respect to the shares set forth in the following table. The inclusion in this table of any shares deemed beneficially owned does not constitute an admission of beneficial ownership of those shares for any other purpose. As of April 29, 2020, there were 17,548,910 shares of common stock outstanding. Shares not outstanding, but deemed beneficially owned by virtue of the right of a person to acquire those shares, are treated as outstanding only for purposes of determining the number and percent of shares of common stock owned by such person or group.

Unless otherwise noted below, the address of each person listed in the table is in care of Chembio Diagnostics, Inc., 555 Wireless Boulevard, Hauppauge, New York 11788.

Beneficial Owner	Common Stock Beneficially Owned	
	Shares	%
5% Stockholders		
Norman H. Pessin(1) 500 Fifth Avenue, Suite 2240 New York, NY 10010	1,367,587	7.8%
Nantahala Capital Management, LLC(2) 130 Main Street, 2 nd Floor New Canaan, CT 06840	1,239,983	7.1%
Laurence W. Lytton(3) 467 Central Park West New York, New NY 10025	1,010,718	5.8%
Royce & Associates, LP(4) 745 Fifth Avenue New York, NY 10151	991,492	5.6%
Named Executive Officers and Directors		
Neil A. Goldman(5)	129,236	*
Javan Esfandiari(6)	128,773	*
Gail S. Page(7)	88,815	*
Katherine L. Davis	90,143	*
John G. Potthoff(8)	65,897	*
Mary Lake Polan(9)	26,522	*
John J. Sperzel III(10) 91 Hartwell Avenue Lexington, MA 02421	31,815	*
Richard L. Eberly	0	*
All executive officers and directors as a group (8 persons)(11)	587,293	3.3%

- * Less than 1%.
- (1) Based on an amended Schedule 13D filed on July 18, 2019.
- (2) Based on a Schedule 13G filed on February 14, 2020. As of December 31, 2019, Nantahala may be deemed to be the beneficial owner of 1,239,983 shares held by funds and separately managed accounts under its control, and as the managing members of Nantahala, each of Messrs. Wilmot B. Harkey and Daniel Mack may be deemed to be a beneficial owner of those shares.
- (3) Based on a Schedule 13G filed on March 20, 2020. Of the shares, 273,264 are held for the benefit of the Lytton-Kambara Foundation, 120,048 shares for the benefit of the AWL Family LLC, 21,000 for the benefit of the IKL Trust, 13,200 for the benefit of the WWL Trust, 9,100 for the benefit of the KLL Trust, and 45,290 shares for the benefit of other accounts of which the reporting person is deemed to have beneficial ownership.
- (4) Based on a Schedule 13G filed on January 21, 2020.
- (5) Include (a) 20,725 restricted shares, one-half of which will vest on each of October 8, 2020 and 2021, and (b) options to acquire 41,666 shares.
- (6) Include (a) 25,907 restricted shares, one-half of which will vest on each of October 8, 2020 and 2021, and (b) options to acquire 20,000 shares.
- (7) Include (a) 30,864 restricted stock units scheduled to vest in full on May 15, 2020, and (b) options to acquire 28,125 shares.
- (8) Include options to acquire 28,125 shares.
- (9) Include options to acquire 18,750 shares.
- (10) Does not include shares of common stock underlying certain options that were received by Mr. Sperzel during his time as our Chief Executive Officer and President and that had vested as of the time of his resignation. The compensation committee of the board has determined that Mr. Sperzel failed to exercise such options in a timely manner prior to their expiration. Mr. Sperzel has asserted that he continues to have the right to exercise those options to acquire 266,666 shares for an aggregate exercise price of \$943,126.
- (11) Include, in addition to the restricted shares and options described in notes (5) through (10), (a) 6,098 restricted stock units and (b) options to acquire 36,000 shares. Do not include any shares held by Mr. Sperzel.

Equity Compensation Plan Information

The following table provides information as of December 31, 2019 with respect to shares of common stock that may be issued under equity plans and standalone option grants:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants	Number of Securities to be Issued Upon Exercise of Outstanding Restricted Stock Units	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans
Equity compensation plans approved by stockholders(1)	642,625	\$ 5.79	13,817	\$ 9.65	2,173,667
Equity compensation plans not approved by stockholders	—	—	—	—	—
Totals	642,625		13,817		2,173,667

- (1) “Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights” consists of 99,132 shares under the 2008 Stock Incentive Plan, 336,625 shares under the 2014 Stock Incentive Plan, and 206,868 shares issued outside of those plans. “Number of Securities to be Issued Upon Exercise of Outstanding Restricted Stock” consists of 13,817 shares under the 2014 Stock Incentive Plan. “Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans” consists of 2,173,667 shares available under the 2019 Omnibus Incentive Plan.

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following is filed as part of the 2019 Form 10-K:

- (1) Index to Consolidated Financial Statements in Item 8 of 2019 Form 10-K.

All schedules were omitted because they are not applicable, not required under the instructions, or the requested information is shown in the consolidated financial statements or related notes thereto.

(b) The following exhibits are included herein or incorporated herein by reference.

Exhibit No.	Description
3.1	Articles of Incorporation, as amended, of Chembio Diagnostics, Inc.
3.2	Amended and Restated Bylaws, of Chembio Diagnostics, Inc.
4.1	Warrant to Purchase Common Stock dated as of September 3, 2019, issued by Chembio Diagnostics, Inc. to Perceptive Credit Holdings II, LP
10.1(a)*	2008 Stock Incentive Plan, as amended
10.1(b)*	Form of Option for 2008 Stock Incentive Plan
10.2(a)*	2014 Stock Incentive Plan
10.2(b)*	Form of Option for 2014 Stock Incentive Plan
10.3*	2019 Omnibus Incentive Plan
10.4*	Restated Annual Incentive Bonus Plan of Chembio Diagnostics, Inc., adopted as of March 15, 2019
10.5*†	Employment Agreement, dated as of March 4, 2020 and effective as of March 16, 2020, between Chembio Diagnostics, Inc. and Richard L. Eberly
10.6*	Letter agreement dated January 17, 2020, between Chembio Diagnostics, Inc. and Gail S. Page
10.7(a)*	Employment Agreement dated March 5, 2016 between Chembio Diagnostics, Inc. and Javan Esfandiari
10.7(b)*	Amendment No. 1 dated March 20, 2019 between Chembio Diagnostics, Inc. and Javan Esfandiari, amending the Employment Agreement dated March 5, 2016
10.8*	Employment Agreement dated September 14, 2017 between Chembio Diagnostics, Inc. and Sharon Klugewicz
10.9(a)*	Employment Agreement dated December 18, 2017 between Chembio Diagnostics, Inc. and Neil A. Goldman
10.9(b)*	Amendment No. 1 dated January 21, 2019 between Chembio Diagnostics, Inc. and Neil A. Goldman, amending Employment Agreement dated December 18, 2017
10.10*	Offer Letter dated October 19, 2016 between Worldwide Workplace Ireland and Robert Passas, with respect to employment by Chembio Diagnostics Systems, Inc.
10.11	Separation and Release Agreement, dated January 7, 2020, between Chembio Diagnostics, Inc. and John J. Sperzel III
10.12(a)	Lease Agreement, dated February 15, 2017, between Horseblock Associates and Chembio Diagnostics, Inc. with respect to 3661 Horseblock Road, Medford, New York, as amended
10.12(b)	Agreement of Sublease dated February 5, 2019 between Chembio Diagnostic Systems Inc., as sublessor, and Reliance Communications of New Jersey, LLC, as sublessee, with respect to 3661 Horseblock Road, Medford, New York, as amended
10.13	Lease Agreement, dated February 4, 2013, between Sherwood Corporate Center LLC and Chembio Diagnostics, Inc. with respect to 91-1A Colin Drive, Holbrook, New York, as amended on September 19, 2017
10.14	Lease Agreement dated February 5, 2019 between Myra Properties, LLC, as lessor, and Chembio Diagnostic Systems Inc., as lessee, with respect to 555 Wireless Boulevard, Hauppauge, New York.
10.15†	Credit Agreement and Guaranty dated as of September 3, 2019, among Chembio Diagnostics, Inc., as the Borrower, the Guarantors from time to time party thereto, and Perceptive Credit Holdings II, LP and its successors and assigns party thereto, as Administrative Agent and as a Lender
14.1	Ethics Policy
21.1	List of Subsidiaries of Chembio Diagnostics, Inc.
23.1	Consent of BDO USA, LLP, Independent Registered Public Accounting Firm

31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1ç	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Definition Linkbase Document
101.LAB	XBRL Taxonomy Label Linkbase Document
101.PRE	XBRL Taxonomy Presentation Linkbase Document

* Indicates management contract or compensatory plan.

† Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby undertakes to furnish copies of omitted exhibits and schedules upon request by the Securities and Exchange Commission, provided that it may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934 for exhibits and schedules so furnished.

‡ Certain sensitive personally identifiable information in this exhibit was omitted by means of redacting a portion of the text and replacing it with [***].

ç The certifications attached as Exhibit 32.1 accompany the Annual Report on Form 10-K pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed “filed” by the registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

SIGNATURE

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

CHEMBIO DIAGNOSTICS, INC.

Dated: May 6, 2020

By: /s/ Neil A. Goldman

Name: Neil A. Goldman

Title: Executive Vice President and Chief Financial Officer

CERTIFICATION

I, Richard L. Eberly, certify that:

1. I have reviewed the Form 10-K of Chembio Diagnostics, Inc.;
2. Based on my knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;
3. Based on my knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in the report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in the report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by the report based on such evaluation; and
 - (d) Disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 6, 2020

/s/ Richard L. Eberly
Richard L. Eberly
Chief Executive Officer and President

CERTIFICATION

I, Neil A. Goldman, certify that:

1. I have reviewed the Form 10-K of Chembio Diagnostics, Inc.;
2. Based on my knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;
3. Based on my knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in the report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in the report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by the report based on such evaluation; and
 - (d) Disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 6, 2020

/s/ Neil A. Goldman

Neil A. Goldman

Executive Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K (the "Report") of Chembio Diagnostics, Inc. (the "Company") for the year ended December 31, 2019, each of the undersigned Richard L. Eberly, the Chief Executive Officer and President of the Company, and Neil A. Goldman, the Executive Vice President and Chief Financial Officer of the Company, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of the undersigned's knowledge and belief:

- (1) The Form 10-K for the year ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 10-K for the year ended December 31, 2019 fairly presents, in all material respects, the financial condition and results of operations of Chembio Diagnostics, Inc. for the periods presented therein.

Dated: May 6, 2020

/s/ Richard L. Eberly

Richard L. Eberly
Chief Executive Officer and President

Dated: May 6, 2020

/s/ Neil A. Goldman

Neil A. Goldman
Executive Vice President and Chief Financial Officer
