

**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 5, 2022

Aesther Healthcare Acquisition Corp.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-40793

(Commission
File Number)

87-1309280

(IRS Employer
Identification No.)

**515 Madison Avenue, 8th Floor – Suite 8078
New York, New York 10022**

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(646) 908-2659**

(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 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Units, each consisting of one Class A Ordinary Share and one half of one Redeemable Warrant	AEHAU	The Nasdaq Stock Market LLC
Class A Ordinary Share, par value \$0.0001 per share	AEHA	The Nasdaq Stock Market LLC
Warrants, each warrant exercisable for one Class A Ordinary Share at an exercise price of \$11.50	AEHAW	The Nasdaq Stock Market LLC

Item. 1.01. Entry into a Material Definitive Agreement

As previously disclosed, on August 31, 2022, Aesther Healthcare Acquisition Corp., a Delaware corporation (“Aesther”) entered into an Agreement and Plan of Merger (as may be amended and/or restated from time to time, the “Merger Agreement”) by and among Aesther, AHAC Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Aesther (“Merger Sub”), Aesther Healthcare Sponsor, LLC, Aesther’s sponsor (the “Sponsor”), in its capacity as purchaser representative, Ocean Biomedical, Inc., a Delaware corporation (“Ocean Biomedical”), and Dr. Chirinjeev Kathuria, in his capacity as seller representative (the “Seller Representative,” and together with Aesther, Merger Sub, the Sponsor, Ocean Biomedical, the “Merger Parties”), pursuant to which, among other things, the parties will effect the merger of Merger Sub with and into Ocean Biomedical, with Ocean Biomedical continuing as the surviving entity (the “Merger”), as a result of which all of the issued and outstanding capital stock of Ocean Biomedical shall be exchanged for shares of Class A common stock, par value \$0.0001 per share, of Aesther (the “Share Exchange”) subject to the conditions set forth in the Merger Agreement, with Ocean Biomedical surviving the Share Exchange as a wholly owned subsidiary of Aesther (the Share Exchange and the other transactions contemplated by the Merger Agreement, together, the “Transaction”).

On December 5, 2022, the Merger Parties entered into an Amendment to the Merger Agreement (the “Amendment”). The Amendment amends two provisions in the Merger Agreement. First, the Amendment changes the number of shares of Aesther Common Stock Sponsor is entitled to receive for each dollar Sponsor deposits into the Trust Account to obtain the first and second extensions of time by which Aesther needs to consummate the Merger. Pursuant to the Amendment, Sponsor is entitled to 0.25 additional shares for each dollar deposited into the Trust Account to fund the first extension and 1.05 additional shares for each dollar deposited into the Trust Account to fund the second extension.

The Amendment also amends the Post-Closing Board of Directors and Executive Officers requirements. Pursuant to the Amendment, the Post-Closing Aesther Board will consist of eleven (11) individuals (two of which are appointed by Aesther; eight of which are appointed by Ocean Biomedical prior to the Closing; and one of which will be mutually designated by Aesther and Ocean Biomedical).

The foregoing summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, a copy of which is filed as Exhibit 10.1 and incorporated by reference herein.

Forward-Looking Statements

This filing contains certain statements that are not historical facts and are forward-looking statements within the meaning of the federal securities laws with respect to the proposed Transaction between Aesther and Ocean Biomedical, including without limitation statements regarding the anticipated benefits of the proposed Transaction, the anticipated timing of the proposed Transaction, the implied enterprise value, future financial condition and performance of Ocean Biomedical and the combined company after the closing and expected financial impacts of the proposed Transaction, the satisfaction of closing conditions to the proposed Transaction, the level of redemptions of Aesther’s public stockholders and the products and markets and expected future performance and market opportunities of Ocean Biomedical. These forward-looking statements generally are identified by the words “believe,” “project,” “expect,” “anticipate,” “estimate,” “intend,” “think,” “strategy,” “future,” “opportunity,” “potential,” “plan,” “seeks,” “may,” “should,” “will,” “would,” “will be,” “will continue,” “will likely result,” and similar expressions, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements are predictions, projections and other statements about future events that are based on current expectations and assumptions and, as a result, are subject to risks and uncertainties.

These forward-looking statements are provided for illustrative purposes only and are not intended to serve as, and must not be relied on as, a guarantee, an assurance, a prediction or a definitive statement of fact or probability. Actual events and circumstances are difficult or impossible to predict and will differ from assumptions. Many factors could cause actual future events to differ materially from the forward-looking statements in this communication, including but not limited to: (i) the risk that the proposed Transaction may not be completed in a timely manner or at all, which may adversely affect the price of Aesther's securities; (ii) the risk that the proposed Transaction may not be completed by Aesther's business combination deadline; (iii) the failure to satisfy the conditions to the consummation of the proposed Transaction, including the approval of the Merger Agreement by the stockholders of Aesther, the satisfaction of the minimum net tangible assets and minimum cash at closing requirements and the receipt of certain governmental, regulatory and third party approvals; (iv) the occurrence of any event, change or other circumstance that could give rise to the termination of the Merger Agreement; (v) the failure to achieve the minimum amount of cash available following any redemptions by Aesther's stockholders; (vi) redemptions exceeding anticipated levels or the failure to meet The Nasdaq Global Market's initial listing standards in connection with the consummation of the proposed Transaction; (vii) the effect of the announcement or pendency of the proposed Transaction on Ocean Biomedical's business relationships, operating results, and business generally; (viii) risks that the proposed Transaction disrupts current plans and operations of Ocean Biomedical; (ix) the outcome of any legal proceedings that may be instituted against Ocean Biomedical or against Aesther related to the Merger Agreement or the proposed Transaction ; (x) changes in the markets in which Ocean Biomedical's competes, including with respect to its competitive landscape, technology evolution, or regulatory changes; (xi) changes in domestic and global general economic conditions; (xii) risk that Ocean Biomedical may not be able to execute its growth strategies; (xiii) risks related to the ongoing COVID-19 pandemic and response, including supply chain disruptions; (xiv) risk that Ocean Biomedical may not be able to develop and maintain effective internal controls; (xv) costs related to the proposed Transaction and the failure to realize anticipated benefits of the proposed Transaction or to realize estimated pro forma results and underlying assumptions, including with respect to estimated stockholder redemptions; (xvi) the ability to recognize the anticipated benefits of the proposed Transaction and to achieve its commercialization and development plans, and identify and realize additional opportunities, which may be affected by, among other things, competition, the ability of Ocean Biomedical to grow and manage growth economically and hire and retain key employees; (xvii) the risk that Ocean Biomedical may fail to keep pace with rapid technological developments to provide new and innovative products and services or make substantial investments in unsuccessful new products and services; (xviii) the ability to develop, license or acquire new therapeutics; (xix) the risk that Ocean Biomedical will need to raise additional capital to execute its business plan, which may not be available on acceptable terms or at all; (xx) the risk that Ocean Biomedical, post-combination, experiences difficulties in managing its growth and expanding operations; (xxi) the risk of product liability or regulatory lawsuits or proceedings relating to Ocean Biomedical's business; (xxii) the risk of cyber security or foreign exchange losses; (xxiii) the risk that Ocean Biomedical is unable to secure or protect its intellectual property; and (xxiv) those factors discussed in Aesther's filings with the SEC and that are contained in the preliminary proxy statement (as amended) relating to the proposed Transaction and will be contained in the definitive proxy statement relating to the proposed Transaction.

The foregoing list of factors is not exhaustive. You should carefully consider the foregoing factors and the other risks and uncertainties that are described in Aesther's Annual Report on Form 10-K for the year ended December 31, 2021, and which are described in the "Risk Factors" section of the preliminary proxy statement and the amendments thereto, and will be described in the "Risk Factors" section of the definitive proxy statement, and other documents to be filed by Aesther from time to time with the SEC and which are and will be available at www.sec.gov. These filings identify and address other important risks and uncertainties that could cause actual events and results to differ materially from those contained in the forward-looking statements. Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and while Ocean Biomedical and Aesther may elect to update these forward-looking statements at some point in the future, they assume no obligation to update or revise these forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law. Neither Ocean Biomedical nor Aesther gives any assurance that Ocean Biomedical or Aesther, or the combined company, will achieve its expectations. These forward-looking statements should not be relied upon as representing Aesther's or Ocean Biomedical's assessments as of any date subsequent to the date of this filing. Accordingly, undue reliance should not be placed upon the forward-looking statements.

Additional Information and Where to Find It

In connection with the Merger Agreement and the proposed transaction, Aesther has filed with the U.S. Securities and Exchange Commission (the “SEC”) a preliminary proxy statement on Schedule 14A relating to the proposed transaction and two amendments thereto. This communication is not intended to be, and is not, a substitute for the preliminary proxy statement (as amended) or any other document that Aesther has filed or may file with the SEC in connection with the proposed transaction. Aesther’s stockholders and other interested persons are advised to read the preliminary proxy statement and the amendments thereto, and, when available, the definitive proxy statement and documents incorporated by reference therein filed in connection with the proposed transaction, as these materials will contain important information about Aesther, Ocean Biomedical, the Merger Agreement, and the proposed transaction. When available, the definitive proxy statement and other relevant materials for the proposed transaction will be mailed to stockholders of Aesther as of a record date to be established for voting on the proposed transaction. Before making any voting or investment decision, investors and stockholders of Aesther are urged to carefully read the entire preliminary proxy statement and definitive proxy statement, when it becomes available, and any other relevant documents filed with the SEC, as well as any amendments or supplements to these documents, because they will contain important information about the proposed Transaction. Aesther investors and stockholders will also be able to obtain copies of the preliminary proxy statement (as amended), the definitive proxy statement, and other documents filed with the SEC that will be incorporated by reference therein, without charge, once available, at the SEC’s website at www.sec.gov, or by directing a request to: Aesther Healthcare Acquisition Corp., 515 Madison Avenue, Suite 8078, New York, NY 10022, Attention: Mr. Suren Ajjarapu.

Participants in the Solicitation

Aesther, Ocean Biomedical and their respective directors, executive officers, other members of management and employees may be deemed participants in the solicitation of proxies from Aesther’s stockholders with respect to the proposed transaction. Investors and security holders may obtain more detailed information regarding the names and interests in the proposed transaction of Aesther’s directors and officers in Aesther’s filings with the SEC, including its most recent Annual Report on Form 10-K, the preliminary proxy statement and the amendments thereto, and when filed with the SEC, the definitive proxy statement, and other documents filed with the SEC. Such information with respect to Ocean Biomedical’s directors and executive officers is also included in the preliminary proxy statement (as amended) and will be included in the definitive proxy statement.

No Offer or Solicitation

This filing is not a solicitation of a proxy, consent or authorization with respect to any securities or in respect of the proposed transaction and will not constitute an offer to sell or the solicitation of an offer to buy any securities, nor will there be any sale of securities in any states or jurisdictions in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	<u>Amendment to Agreement and Plan of Merger, dated as of December 5, 2022, by and between Aesther, Merger Sub, Sponsor, Ocean Biomedical, and Dr. Chirinjeev Kathuria.</u>
104	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit)

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.

Aesther Healthcare Acquisition Corp.

Dated: December 8, 2022

By: /s/ Suren Ajjarapu
Suren Ajjarapu
Chief Executive Officer

AMENDMENT TO AGREEMENT AND PLAN OF MERGER

Dated December 5, 2022

This Agreement (the "*Amendment*") amends the Agreement and Plan of Merger dated August 31, 2022 (the "Merger Agreement"), by and among (i) **Aesther Healthcare Acquisition Corp**, a Delaware corporation (together with its successors, the "*Purchaser*"), (ii) **AHAC Merger Sub Inc.**, a Delaware corporation and a wholly-owned subsidiary of the Purchaser ("*Merger Sub*"), (iii) **Aesther Healthcare Sponsor, LLC**, a Delaware limited liability company, (the "*Purchaser Representative*"), (iv) Dr. Chirinjeev Kathuria, (the "*Seller Representative*"), and (v) **Ocean Biomedical, Inc.**, a Delaware corporation (the "*Company*"). The Purchaser, Merger Sub, the Purchaser Representative, the Seller Representative and the Company are sometimes referred to herein individually as a "*Party*" and, collectively, as the "*Parties*". The terms not defined herein shall have the meaning assigned to them in the Merger Agreement.

WHEREAS, the Parties hereto wish to amend the Merger Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises, representations, warranties and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. Section 1.9(d) of the Merger Agreement is hereby replaced in its entirety by the following:

(d) Additionally, for the first Extension obtained by Sponsor, Sponsor will be entitled to receive from the Purchaser at Closing 0.25 additional shares of Purchaser Common Stock for each dollar Sponsor deposited into the Trust Account necessary to obtain the first Extension and for the second Extension obtained by Sponsor, Sponsor will be entitled to receive from the Purchaser at Closing 1.05 additional shares of Purchaser Common Stock for each dollar Sponsor deposited into the Trust Account necessary to obtain the second Extension. Any such deposits would be made by Sponsor in the form of a loan to the Company, and any such loans will be non-interest bearing and payable by the Company upon the Closing in accordance with the Purchaser's Organizational Documents and the IPO Prospectus.

2. Section 5.17(a) of the Merger Agreement is hereby replaced in its entirety by the following:

Post-Closing Board of Directors and Executive Officers.

(a) The Parties shall take all necessary action, including causing the directors of the Purchaser to resign, so that effective as of the Closing, the Purchaser's board of directors (the "**Post-Closing Purchaser Board**") will consist of eleven (11) individuals. Immediately after the Closing, the Parties shall take all necessary action to designate and appoint to the Post-Closing Purchaser Board (i) the two (2) persons that are designated by the Purchaser prior to the Closing (the "**Purchaser Directors**"); (ii) the eight (8) persons that are designated by the Company prior to the Closing (the "Company Directors"), at least four (4) of whom shall be required to qualify as an independent director under Nasdaq rules; and (iii) the one (1) person that is mutually designated by the Purchaser and the Company, whom shall be required to qualify as an independent director under Nasdaq rules. The Post-Closing Purchaser Board directors shall be classified, with respect to the term for which they severally hold office, into three classes. The initial Class I Directors shall serve for a term expiring at the first annual meeting of stockholders to be held following the Closing; the initial Class II Directors shall serve for a term expiring at the second annual meeting of stockholders following the Closing; and the initial Class III Directors shall serve for a term expiring at the third annual meeting of stockholders to be held following the Closing. At each succeeding annual meeting of stockholders, beginning with the first annual meeting of stockholders following the Closing, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Four (4) of the Company Directors shall be Class I, two (2) of the Company Directors shall be Class II and two (2) of the Company Directors shall be Class III. One (1) of the Purchaser Directors shall be Class II and one (1) of the Purchaser Directors shall be Class III. The mutually designated Director shall be Class II. The board of directors of the Surviving Corporation immediately after the Closing shall be the same as the Post-Closing Purchaser Board. At or prior to the Closing, the Purchaser will provide each Purchaser Director with a customary director indemnification agreement, in form and substance reasonably acceptable to such Purchaser Director.

3. Except as explicitly modified hereby, all other terms and provisions of the Merger Agreement shall remain in effect.
4. This Agreement incorporates herein, and shall be deemed to have the same force and effect as if set forth in full herein, all governing law and dispute resolution terms and provisions, including but not limited to Section 9.4, Section 9.5, and Section 9.6, of the Merger Agreement.
5. This Agreement may be executed and delivered (including by facsimile or other electronic transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the undersigned have executed this Amendment to Agreement and Plan of Merger to be signed and delivered as of the date first written above.

THE PURCHASER:

AESTHER HEALTHCARE ACQUISITION CORP

By: /s/ Suren Ajjarapu
Name: Suren Ajjarapu
Title: Chief Executive Officer

THE PURCHASER REPRESENTATIVE:

AESTHER HEALTHCARE SPONSOR, LLC, in the capacity as the Purchaser Representative hereunder

By: /s/ Suren Ajjarapu
Name: Suren Ajjarapu
Title: Managing Member

MERGER SUB:

AHAC MERGER SUB INC.

By: /s/ Suren Ajjarapu
Name: Suren Ajjarapu
Title: Chief Executive Officer

THE COMPANY:

OCEAN BIOMEDICAL, INC.

By: /s/ Chirinjeev Kathuria
Name: Dr. Chirinjeev Kathuria
Title: Executive Chairman

THE SELLER REPRESENTATIVE:

DR. CHIRINJEEV KATHURIA, in the capacity as the Seller Representative hereunder

By: /s/ Chirinjeev Kathuria
Name: Dr. Chirinjeev Kathuria
Title: Seller Representative

[Signature Page to Amendment to Agreement and Plan of Merger]
