Form **8937**
(December 2017)
Department of the Treasury
Internal Revenue Service

Report of Organizational Actions Affecting Basis of Securities

▶ **See separate instructions.**

OMB No. 1545-0123

Part I Reporting Issuer

1 Issuer's name Biora Therapeutics, Inc.	**2 Issuer's employer identification number (EIN)** 27-3950390

3 Name of contact for additional information Biora - Investor Relations	**4** Telephone No. of contact	**5** Email address of contact IR@bioratherapeutics

6 Number and street (or P.O. box if mail is not delivered to street address) of contact 4330 La Jolla Village Drive, Suite 300	**7** City, town, or post office, state, and ZIP code of contact San Diego, CA 92122

8 Date of action 12/19/2023	**9** Classification and description See attachment

10 CUSIP number See attachment	**11** Serial number(s) N/A	**12** Ticker symbol BIOR	**13** Account number(s) N/A

Part II Organizational Action Attach additional statements if needed. See back of form for additional questions.

14 Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action ▶ See attachment

15 Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis ▶ See attachment

16 Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates ▶ See attachment

Part II **Organizational Action** *(continued)*

17 List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based ▶ See attachment

18 Can any resulting loss be recognized? ▶ See attachment

19 Provide any other information necessary to implement the adjustment, such as the reportable tax year ▶ See attachment

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Signature ▶ DocuSigned by: Megan Collins 2327B9C64DC74F7... Date ▶ 4/11/2024 | 4:25 PM EDT

Print your name ▶ Megan Collins Title ▶ Senior Director Corporate Controller

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶			Firm's EIN ▶	
Firm's address ▶			Phone no.	

Send Form 8937 (including accompanying statements) to: Department of the Treasury, Internal Revenue Service, Ogden, UT 84201-0054

Biora Therapeutics, Inc.
FEIN: 27-3950390

Attachment to Form 8937
Report of Organizational Actions Affecting Basis of Securities

Biora Therapeutics, Inc. (the "**Company**") is providing the information contained herein pursuant to the requirements of section 6045B of the Internal Revenue Code of 1986, as amended (the "**Code**"). The discussion contained herein includes a general summary regarding the application of certain U.S. federal income tax laws and regulations to the exchange described below and the potential effects on an exchanging holder's adjusted U.S. tax basis resulting from such transactions.

The information contained herein does not constitute tax advice and does not purport to be complete or to describe the consequences that may apply to particular categories of holders. Holders are urged to consult their own tax and valuation advisors regarding the particular U.S. tax consequences of the transactions described herein and the impact on tax basis resulting from such transactions.

Unless otherwise specified herein, "section" references are to the Code or Treasury regulations promulgated thereunder.

Part I:

Line 9. Classification and description.

- $72.5 million aggregate principal amount of 7.25% Convertible Senior Notes due December 1, 2025 (the "**Convertible Notes**").
- $10.0 million in cash ("**Cash Paid**").
- $6.953 million in accrued interest ("**Accrued Interest**").
- $40.883 million aggregate principal amount of 11.00% / 13.00% Convertible Senior Secured Notes due December 19, 2028 (the "**New Notes**").
- 625,000 shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**").
- 5,039,236 cash warrants to acquire Common Stock, each with an exercise price of $5.50 (the "**Exchange Warrants**").
- 5,084,613 cash warrants to acquire Common Stock, each with an exercise price of $5.00 (the "**Additional Warrants**").
- 7,352,941 cash warrants to acquire Common Stock, each with an exercise price of $1.36 (the "**Commitment Warrants**").

Line 10. CUSIP numbers.

- Convertible Notes – 74319FAA5
- New Notes – 74319FAD9
- Common Stock – 74319F107

Part II:

Line 14. Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action.

On December 18, 2023 (the "**Exchange Date**"), the Company entered into Note Exchange Agreements and Note Purchase Agreements pursuant to which it consummated the following transactions (each an "**Exchange**" and, collectively, the "**Exchanges**") with certain holders of the Convertible Notes (each, an "**Exchange Holder**" and, collectively, the "**Exchange Holders**"):

Investor One

- Exchange Agreement - In exchange for $53.5 million aggregate principal amount of Convertible Notes, the Company issued to an investor ("**Investor One**") (1) $10.43 million in aggregate principal amount of New Notes and (2) 5,039,236 Exchange Warrants.
- Note Purchase Agreement – In exchange for $6.953 million of Accrued Interest, the Company issued to Investor One (1) $6.953 million in aggregate principal amount of New Notes and (2) 2,085,372 Additional Warrants.

Investor Two

- Exchange Agreement - In exchange for $6.0 million aggregate principal amount of Convertible Notes,[1] the Company issued to an investor ("**Investor Two**") (1) $3.75 million in aggregate principal amount of New Notes and (2) 625,000 shares of Common Stock.
- Note Purchase Agreement – In exchange for $3.158 million cash, the Company issued to Investor Two (1) $3.158 million aggregate principal amount of New Notes, (2) 947,160 Additional Warrants, and (4) 2,322,059 Commitment Warrants.

[1] The accrued interest on the Convertible Notes held by Investor Two and Investor Three was paid off by the Company with cash. For purposes of this Form 8937, the cash payment of such accrued interest is treated as a separate transaction, although Exchanging Holders should consult their own tax advisors regarding such treatment.

Investor Three

- Exchange Agreement - In exchange for $13.0 million aggregate principal amount of Convertible Notes, the Company issued to an investor ("**Investor Three**") $9.75 million in aggregate principal amount of New Notes.
- Note Purchase Agreement – In exchange for $6.842 million of cash, the Company issued to Investor Three (1) $6.842 million principal amount of New Notes, (2) 2,052,081 Additional Warrants, and (3) 5,030,882 Commitment Warrants.

Line 15. Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis.

Under U.S. federal income tax law, an exchange is typically expected to result in gain or loss to the person engaging in the exchange under section 1001 unless an exception to recognition applies. Consequently, the Exchange Holders are expected to realize - but, subject to the recapitalization rules discussed below, not necessarily recognize - gain or loss (if any) as a result of the Exchanges.

The tax treatment of an Exchange depends on whether it constitutes a recapitalization under section 368(a)(1)(E) (a "**section 368 recapitalization**"). The determination of whether an Exchange constitutes a section 368 recapitalization depends, *inter alia,* on whether the Convertible Notes constitute "securities" for purposes of section 354. The determination of whether an Exchange constitutes a section 368 recapitalization, and the tax consequences of the Exchange to an Exchange Holder if the Exchange does constitute a section 368 recapitalization may also depend on whether the New Notes constitute "securities" for purposes of section 354. Whether a debt instrument is a security for purposes of section 354 is a determination made based on all of the relevant facts and circumstances. Although it is not entirely clear, it is assumed for purposes of this Form 8937 that the New Notes will be treated as securities.

If the Convertible Notes are determined to constitute securities for purposes of section 354 and the Exchange otherwise qualifies as a section 368 recapitalization in accordance with section 368(a)(1)(E), then the Exchange Holders generally are expected to recognize no gain or loss with respect to the Exchange. An Exchange Holder's adjusted tax basis in the New Notes, Common Stock, and/or warrants received in exchange for its Convertible Notes is expected to be equal to its adjusted tax basis in the Convertible Notes exchanged. An Exchange Holder's aggregate basis in the consideration received for its Convertible Notes is expected to be allocated to the Common Stock, New Notes, and warrants received based on their relative (*i.e.*, proportionate) fair market values. For purposes of making this allocation, any amount of the Common Stock, New Notes, Additional Warrants, and/or Commitment Warrants that is properly treated as received in exchange for the $3.158 million and $6.842 million of Cash Paid by Investor Two and Investor Three, respectively, should be excluded from the allocation described above. Rather, the

Exchange Holder's basis in the portion of the Common Stock, New Notes, Additional Warrants, and/or Commitment Warrants received for cash is expected to be equal to the amount of Cash Paid.

If an Exchange is treated as an exchange that does not qualify as a section 368 recapitalization, including because the Convertible Notes do not constitute securities for purposes of section 354, an Exchange Holder is expected to recognize gain or (subject to other applicable Code provisions) loss with respect to the Exchange. The Exchange Holder's aggregate initial tax basis in the consideration received is expected to equal (1) the issue price of the New Notes acquired, and (2) the fair market value of the other consideration acquired (*i.e*., the Exchange Holder is expected to receive the Common Stock, Exchange Warrants, Additional Warrants, and Commitment Warrants, as the case may be, with a basis that equates to the fair market value of such consideration as of the Exchange Date).

Exchange Holders participating in the Exchanges should consult their own tax and valuation advisors to determine the U.S. federal income tax consequences to them of the Exchanges.

Line 16. Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates.

See response to Line 15 above.

If an Exchange is a section 368 recapitalization, an Exchange Holder's aggregate initial tax basis in the consideration received for its Convertible Notes is expected to equal its aggregate adjusted tax basis in the Convertible Notes. Such aggregate basis is then allocated among the consideration received for the Convertible Notes (*e.g.*, Common Stock, New Notes, and warrants) based on their relative fair market values (though such allocation would not include the amount of any Common Stock, New Notes, Exchange Warrants, Additional Warrants, and/or Commitment Warrants received in exchange for Cash Paid as the portion of such consideration is expected to have a basis equal to the Cash Paid).

If an Exchange is treated as an exchange that does not qualify as a section 368 recapitalization, an Exchange Holder's aggregate initial tax basis in the consideration received is expected to equal (1) the issue price of the New Notes acquired, and (2) the fair market value of the other consideration acquired (*i.e*., the Exchange Holder is expected to receive the Common Stock, Exchange Warrants, Additional Warrants, Commitment Warrants as the case may be, with a basis that equates to the fair market value of such consideration as of the Exchange Date).

Line 17. List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based.

Sections 354, 356, 358, 368, 1001, 1012.

Line 18. Can any resulting loss be recognized?

An Exchange generally should not result in loss being recognized by the Exchange Holders if the Exchange is a section 368 recapitalization.

An Exchange may result in an Exchange Holder recognizing a loss if the Exchange is treated as an exchange that is not a section 368 recapitalization and such Exchange Holder's tax basis in the Convertible Notes exchanged exceeds the fair market value of the consideration received therefor, subject to generally applicable Code rules that may impact the ability of particular Exchange Holders to recognize losses.

Line 19. Provide any other information necessary to implement the adjustment, such as the reportable tax year.

The organizational actions occurred on December 19, 2023. The reportable tax year is 2023 for calendar-year taxpayers.