

**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): June 23, 2020

Precision BioSciences, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38841
(Commission
File Number)

20-4206017
(IRS Employer
Identification No.)

302 East Pettigrew St., Suite A-100, Durham, North Carolina 27701
(Address of principal executive offices) (Zip Code)

(919) 314-5512
(Registrant's telephone number, including area code)

N/A
(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))

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, par value \$0.000005 per share	DTIL	The Nasdaq Global Select Market

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.

Item 1.01. Entry into a Material Definitive Agreement.

On June 23, 2020, Precision BioSciences, Inc. and its wholly owned subsidiary, Elo Life Systems, Inc. (collectively, the “Company”), as borrower, and Pacific Western Bank (“Bank”), as lender, entered into the Third Amendment to Loan and Security Agreement (“Amendment No. 3”) to the loan and security agreement dated as of May 15, 2019 (as amended by the First Amendment to Loan and Security Amendment, effective September 18, 2019, and the Second Amendment to Loan and Security Amendment, effective December 3, 2019, the “Original Agreement” and, as amended by Amendment No. 3 (as defined below), the “Agreement”)

The terms of Amendment No. 3 (a) decreases the aggregate principal amount of advances on a revolving line of credit (the “Revolving Line”) from \$50.0 million to \$30.0 million and (b) extends the maturity date of the Revolving Line to June 23, 2022, provided that, if the Company receives aggregate cash proceeds of at least \$125.0 million from the issuance of the Company’s equity securities and/or upfront cash proceeds from strategic partnerships on terms and conditions reasonably satisfactory to the Bank, the maturity date shall then instead be June 23, 2023 (the “Revolving Maturity Date”).

Under the terms of Amendment No. 3, the interest rate increased to a variable annual rate equal to the greater of (a) 2.75% above the Prime Rate (as defined in the Original Agreement), and (b) 6.00%.

Under the terms of Amendment No. 3, (a) the Company is no longer required to pay a fee based on the unused portion of the Revolving Line; (b) the early termination fee (the “Early Termination Fee”), which shall be payable if the Agreement is terminated prior to the Revolving Maturity Date for any reason, including Bank’s election to terminate following the occurrence of an Event of Default (as defined in the Original Agreement), is decreased to \$600,000 and (c) the Company is obligated to pay a final payment fee (the “Final Payment Fee”) on the soonest to occur of (i) the Revolving Maturity Date, (ii) the date that the Company repays all advances and elects to terminate the Revolving Line, and (iii) the date that the advances become due or the Bank elects to terminate the Agreement in connection with the occurrence of an event of default, in an amount equal to one percent (1.00%) of the maximum principal amount of the advances outstanding at any time. Subject to the Early Termination Fee and the Final Payment Fee, the Company may prepay any advances under the Revolving Line without penalty or premium at any time.

Under the terms of Amendment No. 3, in the event of (a) any merger or consolidation of the Company with or into another entity (except one in which the holders of equity of the Company immediately prior to such merger or consolidation continue to hold at least a majority of the voting power of the equity interests of the surviving entity), (b) any sale of all or substantially all of the assets of the Company and its subsidiaries taken as a whole (in one or more related and contemporaneous transactions), or (c) closing of one or more related and contemporaneous sales or issuances of the Company’s equity or Subordinated Debt (as defined in the Original Agreement) securities and/or up-front cash proceeds from one or more strategic partnerships in which the aggregate gross cash proceeds to the Company are at least \$50.0 million, a success fee will be due of \$135,000 if paid on or before June 30, 2021 and \$275,000 if paid after June 30, 2021.

Under the terms of Amendment No. 3, the Company must also maintain an aggregate balance of unrestricted cash at Bank (not including amounts in certain specified accounts) equal to or greater than \$10,000,000. Amendment No. 3 also provides that the Company requirement to deliver an annual budget shall be complied with as soon as available, but no later than the earlier of (i) 90 days after the end of each fiscal year of (ii) 15 days following approval by Company’s Board of Directors.

The foregoing description of Amendment No. 3 does not purport to be complete and is qualified in its entirety by reference to Amendment No. 3, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K (“Form 8-K”) and incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 of this Form 8-K regarding the Company’s direct financial obligations under the Agreement is incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1†	<u>Third Amendment to the Loan and Security Agreement, dated June 23, 2020, among Precision BioSciences, Inc., Elo Life Systems, Inc. and Pacific Western Bank.</u>

†Portions of this exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

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.

Date: June 26, 2020

PRECISION BIOSCIENCES, INC.

By: /s/ Matthew Kane
Matthew Kane
President and Chief Executive Officer

Certain information marked as [***] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**THIRD AMENDMENT TO
LOAN AND SECURITY AGREEMENT**

This Third Amendment to Loan and Security Agreement (this “**Amendment**”) is entered into as of June 23, 2020, by and among PACIFIC WESTERN BANK, a California state chartered bank (“**Bank**”), and PRECISION BIOSCIENCES, INC. and ELO LIFE SYSTEMS, INC. (individually and collectively, jointly and severally, “**Borrower**”).

RECITALS

Borrower and Bank are parties to that certain Loan and Security Agreement dated as of May 15, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**Agreement**”). The parties desire to amend the Agreement in accordance with the terms of this Amendment, such amendment to become effective as of the Third Amendment Date.

NOW, THEREFORE, the parties agree as follows:

1) Amendments.

a) Section 2.1 (b) (i) of the Agreement is amended to read as follows:

(i) Amount. Subject to and upon the terms and conditions of this Agreement, Borrower may request Advances in an aggregate outstanding principal amount not to exceed the Revolving Line any time prior to the Revolving Maturity Date. Advances may be repaid and reborrowed at any time prior to the Revolving Maturity Date. On the Revolving Maturity Date, all Advances shall be immediately due and payable. Subject to Sections 2.5(c) and 2.5(f), Borrower may prepay any Advances without penalty or premium at any time.

b) Section 2.3 (a) (i) of the Agreement is amended to read as follows:

(i) Advances. Except as set forth in Section 2.3(b), the Advances shall bear interest, on the outstanding daily balance thereof, at a variable annual rate equal to the greater of (A) 2.75% above the Prime Rate, and (B) 6.00%.

c) Section 2.5 of the Agreement is amended to read as follows:

(a) Facility Fee. None.

(b) Bank Expenses. On the Closing Date, all Bank Expenses incurred through the Closing Date, and, after the Closing Date, all Bank Expenses, as and when they become due.

(c) Early Termination Fee. If this Agreement is terminated before the Revolving Maturity Date for any reason, including Bank’s election to terminate following the occurrence of an Event of Default, on the date of such termination, a fee in an amount equal to Six Hundred Thousand Dollars (\$600,000).

(d) Unused Fee. None.

(e) Success Fee. Upon the occurrence of a Success Fee Event, (i) a fee of \$135,000 if paid on or before June 30, 2021, and (ii) a fee of \$275,000 if paid after June 30, 2021 (the “Success Fee”). Borrower shall deliver reasonable advance written notice to Bank of a Success Fee Event, and shall pay Bank the Success Fee within five (5) days upon receipt of proceeds upon the consummation of a Success Fee Event. This Section 2.5(e) shall survive termination of this Agreement.

(f) Final Payment Fee. On the soonest to occur of (i) the Revolving Maturity Date, (ii) the date that Borrower repays all Advances and elects to terminate the Revolving Line, and (iii) the date that the Advances become due or Bank elects to terminate this Agreement in connection with the occurrence of an Event of Default, a fee equal to one percent (1.00%) of the maximum principal amount of the Advances outstanding at any time.

d) Section 6.2 (a) (iii) of the Agreement is amended to read as follows:

(iii) an annual budget approved by Borrower's Board of Directors as soon as available, but no later than the earlier of (i) 90 days after the end of each fiscal year of (ii) 15 days following approval by Borrower's Board of Directors.

e) Section 6.6 of the Agreement is amended to read as follows:

6.6 Primary Depository. Within 60 days after the Third Amendment Date, Borrower shall maintain and shall cause of its Subsidiaries to maintain the lesser of (a) \$100,000,000, or (b) substantially all cash (other than cash held in Excluded Accounts) in depository and operating accounts with Bank, provided all cash held outside Bank shall be subject to an account control agreement in favor of Bank. Notwithstanding the foregoing, Precision UK may maintain a bank account in the United Kingdom, with such account not subject to an account control agreement in favor of Bank, so long as the balance in such account does not exceed £1,500,000 (or its US Dollar equivalent) at any time.

f) Section 6.7 of the Agreement is amended to read as follows:

6.7 Financial Covenants. Borrower shall at all times maintain the following covenant:

(a) Minimum Cash. At all times, an aggregate balance of unrestricted cash at Bank (excluding any amounts held in Excluded Accounts) equal to or greater than \$10,000,000. Borrower acknowledges and agrees that any request by Borrower or any other Person to pay or otherwise transfer funds that would cause Borrower's balance of Cash at Bank to be less than the amount required pursuant to this Section 6.7(a) shall constitute an Event of Default under this Agreement.

g) Exhibit A to the Agreement is amended by amending or restating, or adding, in appropriate alphabetical order, as applicable, the following defined terms to read as follows:

"Credit Card Maturity Date" means June 23, 2022, provided that if Borrower achieves the Extension Milestone, then "Credit Card Maturity Date" shall instead mean June 23, 2023.

"Extension Milestone" means Borrower has delivered evidence acceptable to Bank that Borrower has received aggregate gross Cash proceeds of not less than \$125,000,000 from the issuance of Borrower's equity securities and/or upfront Cash proceeds from strategic partnerships on terms and conditions reasonably satisfactory to Bank.

"Revolving Line" means a Credit Extension of up to \$30,000,000.

"Revolving Maturity Date" means June 23, 2022, provided that if Borrower achieves the Extension Milestone, then "Revolving Maturity Date" shall instead mean June 23, 2023.

"Success Fee Event" is (a) any merger or consolidation of Borrower with or into another entity (except one in which the holders of equity of the Borrower immediately prior to such merger or consolidation continue to hold at least a majority of the voting power of the equity interests in the surviving entity), (b) any sale of all or substantially all of the assets of Borrower and its Subsidiaries taken as a whole (in one or more related and contemporaneous transactions), or (c) closing of one or more related and contemporaneous sales or issuances of Borrower's equity or Subordinated Debt securities and/or up-front cash proceeds from one or more strategic partnerships in which the aggregate gross cash proceeds to Borrower are at least \$50,000,000.

"Third Amendment Date" means June 23, 2020.

h) Exhibit D to the Agreement is amended as set forth in Exhibit D attached hereto.

2) Unless otherwise defined, all initially capitalized terms in this Amendment shall be as defined in the Agreement. The Agreement, as amended hereby, shall be and remain in full force and effect in accordance with its terms. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Agreement, as in effect prior to the date hereof. Borrower ratifies and reaffirms the continuing effectiveness of all agreements entered into in connection with the Agreement and the security interest as granted as of the Closing Date continues without novation. Unused Fees accruing before the Third Amendment Date are not refundable. The Early Termination Fee provided for in Section 2.5(c) in effect before the Third Amendment Date is superseded by the fee provided for in this Amendment in respect of Section 2.5(c).

3) Borrower represents and warrants that the representations and warranties contained in the Agreement are true and correct in all material respects as of the date of this Amendment (provided, that those representations and warranties expressly referring to

another date are true and correct in all material respects as of such date, and provided further that any representation or warranty that contains a materiality qualification therein is true and correct in all respects). No Event of Default or failure of condition has occurred or exists, or would exist with notice or lapse of time or both under the Agreement or any other Loan Document. A true and correct copy of each of Borrower's certificate of incorporation and bylaws, as in effect as of the Third Amendment Date has been delivered to Bank.

- 4) This Amendment and any documents executed in connection herewith or pursuant hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, offers and negotiations, oral or written, with respect thereto and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Amendment; except that any financing statements or other agreements or instruments filed by Bank with respect to Borrower remain in full force and effect.
- 5) This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.
- 6) The terms of Article 11 of the Agreement are incorporated by reference herein, *mutatis mutandis*.
- 7) As a condition to the effectiveness of this Amendment, Bank shall have received, in form and substance reasonably satisfactory to Bank, the following:
 - a) this Amendment, duly executed by Borrower and Bank;
 - b) an officer's certificate of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Amendment;
 - c) payment of Bank Expenses, which may be debited from any of Borrower's deposit account maintained with Bank; and
 - d) such other documents and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO THIRD AMENDMENT TO LOAN AND SECURITY AGREEMENT]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

PRECISION BIOSCIENCES, INC.

By: /s/ Abid Ansari
Name: Abid Ansari
Title: CFO

ELO LIFE SYSTEMS, INC.

By: /s/ Fayaz Khazi
Name: Fayaz Khazi
Title: CEO

PACIFIC WESTERN BANK

By: /s/ Scott Hansen
Name: Scott Hansen
Title: EVP

EXHIBIT D
COMPLIANCE CERTIFICATE

[]**

SCHEDULE OF EXCEPTIONS

Permitted Indebtedness (Exhibit A) – [***]

Permitted Investments (Exhibit A) – [***]

Permitted Liens (Exhibit A) – [***]

Prior Names (Section 5.5) –

Elo Life Systems, Inc. was formerly known as Precision PlantSciences, Inc.

Litigation (Section 5.6) – [***]

Inbound Licenses (Section 5.12) – [***]