UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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 29, 2023

ImmunityBio, Inc.
(Exact name of registrant as specified in its charter)

Delaware	001-37507	43-1979754
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

3530 John Hopkins Court
San Diego, California 92121
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (844) 696-5235

Not Applicable
(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 (see General Instruction A.2. below):

☐ 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 $0.0001 per share	**IBRX**	**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 (17 CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §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 Section13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

Revenue Interest Purchase Agreement

On December 29, 2023 (the "Closing Date"), ImmunityBio, Inc. (the "Company"), entered into a Revenue Interest Purchase Agreement (the "RIPA") with Infinity SA LLC (the "Purchaser Agent"), an affiliate of Oberland Capital Management LLC, as collateral agent and administrative agent for the purchasers party thereto (each, a "Purchaser", and collectively, the "Purchasers"). Pursuant to the RIPA, the Purchasers acquired certain revenue interests (the "Revenue Interests") from the Company for a gross purchase price of $200.0 million (the "First Payment") paid at closing. In addition, the Purchasers may purchase additional Revenue Interests from the Company in exchange for a gross purchase price of $100.0 million (the "Second Payment" and, together with the First Payment, each a "Purchaser Payment" and, collectively, the "Purchaser Payments") following the receipt of approval by the United States Food and Drug Administration of the Company's biologics license application for N-803 in combination with BCG for the treatment of patients with BCG-unresponsive non-muscle invasive bladder cancer with carcinoma in situ with or without Ta or T1 disease on or before June 30, 2024 (the "FDA Approval"). The Second Payment is contingent upon receipt of the FDA Approval and other terms and conditions as set forth in the RIPA. The Purchasers are also entitled to elect, in their sole discretion, to purchase such additional Revenue Interests in exchange for the Second Payment.

As a result of the purchase of the Revenue Interests from the Company, the Purchasers will have a right to receive quarterly payments ("Revenue Interest Payments") from the Company based on net sales of the Company's products during such quarter, which will be tiered payments initially ranging from 3.00% to 7.00% (or after funding of the Second Payment, 4.50% to 10.00%) of the Company's net sales across the entire world, excluding the People's Republic of China, Hong Kong and any territories controlled by the People's Republic of China (the "Covered Territory"); provided that (a) if the aggregate Revenue Interest Payments made to the Purchasers as of the last business day of 2029 (the "Test Date") equal or exceed the aggregate amount of Purchaser Payments made by the Purchasers to the Company pursuant to the RIPA (the "Cumulative Purchaser Payments") as of the Test Date, the initially tiered revenue interest rate will be decreased to a single rate of 1.50% (or after the funding of the Second Payment, 2.25%) of the Company's net sales in the Covered Territory, and (b) if the aggregate Revenue Interest Payments made to the Purchasers as of the Test Date do not equal or exceed the aggregate amount of Cumulative Purchaser Payments as of the Test Date, then as of and following the Test Date, the initially tiered revenue interest rate will be increased for all subsequent calendar years to a single defined rate that, had such increased rate applied to the applicable tiered rate during the period from the Closing Date through and including the Test Date, it would have resulted in the Purchasers having received aggregate Revenue Interest Payments (excluding certain payments detailed in the RIPA) in an amount equal to the Cumulative Purchaser Payments as of the Test Date.

In addition to the Revenue Interest Payments discussed above, if the aggregate Revenue Interest Payments made as of the Test Date do not equal or exceed the amount of the Cumulative Purchaser Payments as of such date, then the Company shall be obligated to make a one-time payment to the Purchasers in an amount equal to 100% of the Cumulative Purchaser Payments as of the Test Date less the aggregate Revenue Interest Payments made as of the Test Date (the "True-Up Payment").

The Purchasers' rights to receive the Revenue Interest Payments shall terminate on the date on which the Purchasers have received Revenue Interest Payments and any True-Up Payment (the "Total Revenue Interest Payments") in an aggregate amount equal to 195% of the then Cumulative Purchaser Payments, unless the RIPA is terminated prior to such date. If the Purchasers have not received Total Revenue Interest Payments equal to 195% of the then Cumulative Purchaser Payments on or before the twelfth anniversary of the RIPA, then the Company shall be obligated to pay to the Purchasers an amount equal to 195% of the then Cumulative Purchaser Payments less the Total Revenue Interest Payments made as of such date.

Under the RIPA, the Company has an option (the "Call Option") to terminate the RIPA and repurchase the Revenue Interests at any time upon advance written notice, subject to certain limitations set forth in the RIPA. Additionally, the Purchasers have an option (the "Put Option") to terminate the RIPA and to require the Company to repurchase the Revenue Interests upon certain enumerated events, including but not limited to non-payment defaults, defaults resulting from the inaccuracy of representations and warranties, covenant defaults, cross default to material indebtedness, bankruptcy and insolvency defaults, material judgment defaults, ERISA defaults, or a change of control. The required purchase price with respect to the Call Option and/or Put Option, as applicable, shall be (a) 120.00% of the Cumulative Purchaser Payments as of such date, if the Purchasers exercise the Put Option (other than in connection with a change of control) on or prior to the first anniversary the Closing Date, (b) 135.00% of the Cumulative Purchaser Payments as of such date, if the Put Option or the Call Option is exercised in connection with a change of control on or prior to the date that is eighteen (18) months after the Closing Date, and (c) in all other cases, (i) 175.00% of the Cumulative Purchaser Payments as of such date, if the Put Option or the Call Option is exercised no later than the date that is thirty six (36) months after the Closing Date, and (ii) 195.00% of the Cumulative Purchaser Payments as of such date, if the Put Option or the Call Option is exercised later than the date that is thirty six (36) months after the Closing Date, minus, in each case, the Total Revenue Interest Payments made to the Purchasers on or prior to such date.

The proceeds of the Purchaser Payments will be used for general corporate purposes, including payment of transaction expenses incurred in connection with the RIPA and related documentation.

The Company's obligations under the RIPA are guaranteed by certain of its subsidiaries meeting materiality thresholds set forth in the RIPA. To secure the Company's obligations under the RIPA and the subsidiary guarantors' obligations under the guarantees, each of the Company and the subsidiary guarantors has granted a security interest in substantially all its assets, subject to certain exceptions and limitations.

The RIPA contains customary affirmative and negative covenants, including covenants that limit or restrict the Company and its subsidiaries' ability to, among other things, incur indebtedness, grant liens, merge or consolidate, dispose of assets, make investments, make acquisitions, enter into certain transactions with affiliates, pay dividends or make distributions, repurchase stock, enter into restrictive agreements and enter into sale and leaseback transactions, in each case subject to certain exceptions set forth in the RIPA.

Stock Purchase and Option Agreement

Also on December 29, 2023 and in connection with the RIPA, the Company entered into a Stock Purchase and Option Agreement (the "SPOA") between the Company and the investors party thereto (each, an "Investor", and collectively, the "Investors") pursuant to which the Investors purchased an aggregate of approximately $10,000,000 of the Company's common stock ("Common Stock") at $4.11 per share in a private placement, and acquired the option to purchase up to an additional $10,000,000 of the Common Stock (the "Option"), at a price per share to be determined by the 30-day trailing volume weighted average price of the Common Stock, calculated from the date of exercise. The Option is exercisable by the Investors any time after the closing of the SPOA, until the earliest of (i) December 29, 2028, (ii) a change of control of the Company, or (iii) a sale of substantially all of the Company's assets. Among other limitations, the Option may only be exercised to the extent that the Common Stock issuable pursuant to such exercise would not exceed 19.9% of the Common Stock outstanding immediately after giving effect to such exercise. The Company has agreed to file a shelf registration statement allowing for the resale of Common Stock acquired under the SPOA and to cause the registration statement to be effective no later than May 15, 2024, or if the Securities and Exchange Commission decides to review such registration statement, no later than June 30, 2024.

Amendment of Nant Capital Notes

Also on December 29, 2023 and in connection with the RIPA, the Company and Nant Capital LLC ("Nant Capital") entered into an Amended and Restated Promissory Note pursuant to which the Company and Nant Capital agreed to extend the maturity dates of certain existing promissory notes with an aggregate principal amount of approximately $505 million held by Nant Capital from December 31, 2024 to December 31, 2025, and to allow Nant Capital, in its sole discretion, to convert up to an aggregate of $380 million of principal, plus accrued and unpaid interest thereon, into shares of Common Stock at a price per share equal to the higher of (i) a 75% premium to the Nasdaq closing price of the Company's common stock two full trading days after the public disclosure of the closing of the RIPA and the related transactions or (ii) the "Minimum Price," as defined in Nasdaq's rule 5635(d), as determined on the Closing Date. The Company and Nant Capital also entered into a letter agreement pursuant to which the Company and Nant Capital agreed to extend the maturity date of an existing convertible promissory note with an aggregate principal amount of approximately $30 million held by Nant Capital from December 31, 2024 to December 31, 2025. Nant Capital and Purchaser Agent also concurrently entered into a Subordination Agreement, pursuant to which all indebtedness of the Company owed to Nant Capital was subordinated to the Company's obligations to the Purchasers under the RIPA.

The foregoing description of the Notes, the RIPA, the SPOA and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the full text of the RIPA, the SPOA and the Letter Agreements, copies of which will be filed with the Company's Annual Report on Form 10-K for the period ended December 31, 2023 and are 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.

To the extent relevant, the information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

To the extent relevant, the information set forth in Item 1.01 above is incorporated by reference into this Item 3.02.

Item 8.01 Other Events.

On January 2, 2023, the Company issued a press release regarding the matters described above. A copy of the press release is filed as Exhibit 99.1 and incorporated by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description of Exhibit
99.1**	Press Release dated January 2, 2024.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

** Furnished herewith.

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.

IMMUNITYBIO, INC.
Registrant

Date: January 2, 2024

By: /s/ David C. Sachs
David C. Sachs
Chief Financial Officer

ImmunityBio Announces $320 Million Investment by Oberland Capital, with $210 Million Funded at Closing, Bringing Total Financing in 2023 to $850 Million

- *Up to $300 million non-dilutive capital exchanged for royalty payments on future ImmunityBio immunotherapy product revenue with up to a $20 million equity investment*
- *Royalty financing includes $200 million funded at closing, and $100 million to be funded contingent upon FDA approval of the Company's BLA for Anktiva® in combination with BCG for NMIBC with PDUFA date of April 23, 2024*
- *Equity investment includes $10 million funded at closing and a five-year option to purchase up to an additional $10 million*
- *Aggregate of $850 million capital raised in 2023, with $320 million from institutional investors and $530 million from founder*

CULVER CITY, Calif., January 2, 2024 — ImmunityBio, Inc. (NASDAQ: IBRX), a clinical-stage immunotherapy company ("ImmunityBio" or the "Company"), today announced an up to $320 million royalty financing and equity investment in the Company by Oberland Capital, with $210 million of gross proceeds received at closing on December 29, 2023. The additional capital provides significant financial resources for the Company to accelerate its commercialization efforts in anticipation of a potential regulatory approval, as well as to expand its pipeline within the broader urological cancer space. The proceeds will also be used to fund ongoing business operations and clinical trials expanding N-803 (Anktiva®) indications into multiple solid tumors.

ImmunityBio's commercialization efforts are in anticipation of potential U.S. Food and Drug Administration ("FDA") approval of Anktiva in combination with Bacillus Calmette-Guérin ("BCG") for the treatment of patients with BCG-unresponsive non-muscle invasive bladder cancer ("NMIBC") with carcinoma *in situ* (CIS) with or without Ta or T1 disease. The Company announced on October 23, 2023 that it had resubmitted its Biologics License Application ("BLA") to the FDA, and announced on October 26, 2023 that the FDA had set a user fee goal date (PDUFA date) for the BLA resubmission of April 23, 2024. The Company's pipeline is based on broad immunotherapy and cell therapy platforms that are designed to attack cancer and infectious pathogens by activating both the innate and adaptive branches of the immune system in an orchestrated manner.

"This transaction raises significant capital for the Company to support important growth plans, yet with limited equity dilution and with a cap on total payments tied to the initial investment," said Richard Adcock, Chief Executive Officer and President of ImmunityBio. "Besides providing a capital source at a key inflection point for ImmunityBio, this investment demonstrates strong confidence by Oberland Capital in our future, and in particular in the potential value of Anktiva in bladder cancer, as well as the direction of our clinical pipeline."

"We are excited to partner with ImmunityBio on the potential launch of Anktiva in the treatment of bladder cancer," said Andrew Rubinstein, Managing Partner at Oberland Capital. "This investment aligns with our strategy of investing in near-commercial stage biopharmaceutical companies with highly differentiated products and deep clinical pipelines."

The investment from Oberland Capital takes the form of a $300 million Revenue Interest Purchase Agreement ("RIPA") that is non-dilutive to current investors, of which $200 million was funded at closing, and $100 million is to be funded contingent upon FDA approval of the Company's BLA for Anktiva in combination with BCG for NMIBC, and subject to other terms and conditions as set forth in the RIPA. Under the terms of the RIPA, Oberland Capital will have a right to receive initially tiered single-digit royalty payments on net sales of the Company's products, which are capped at a multiple of their investment. In addition, the Company has entered into a purchase agreement with Oberland Capital for the private placement of 2,432,894 shares issued at closing, representing $10 million of gross proceeds based on the trailing 30-trading days VWAP. Oberland Capital has also an option to purchase an additional $10 million of common stock at a future date.

In connection with the RIPA, the Company and Nant Capital entered into amendments to extend the maturity dates of certain existing promissory notes with an aggregate principal amount of approximately $505 million from December 31, 2024 to December 31, 2025, and to allow Nant Capital to convert up to an aggregate of $380 million of principal, plus accrued and unpaid interest, into shares of common stock at a price per share equal to a 75% premium to the closing market price on January 3, 2024. Nant Capital and the RIPA Purchaser Agent also concurrently entered into a Subordination Agreement, pursuant to which the Notes were subordinated to the Company's obligations to the Purchasers under the RIPA.

Jefferies LLC acted as exclusive financial advisor to the Company on the transaction.

About ImmunityBio

ImmunityBio is a vertically-integrated, clinical-stage biotechnology company developing next-generation therapies and vaccines that bolster the natural immune system to defeat cancers and infectious diseases. The Company's range of immunotherapy and cell therapy platforms, alone and together, act to drive and sustain an immune response with the goal of creating durable and safe protection against disease. ImmunityBio is applying its science and platforms to treating cancers, including the development of potential cancer vaccines, as well as developing immunotherapies and cell therapies that ImmunityBio believes sharply reduce or eliminates the need for standard high-dose chemotherapy. These platforms and their associated product candidates are designed to be more effective, accessible, and easily administered than current standards of care in oncology and infectious diseases.

N-803 is investigational. Safety and efficacy have not been established by any Health Authority or Agency, including the FDA.

For more information, please visit https://ir.immunitybio.com.

About Oberland Capital

Oberland Capital is a private investment firm formed in 2013 with assets under management of approximately $3.5 billion, focused exclusively on investing in the global healthcare industry and specializing in flexible investment structures customized to meet the specific needs of its transaction partners. Oberland Capital's broad suite of financing solutions includes monetization of royalty streams, acquisition of future product revenues, creation of project-based financing structures, and investments in traditional debt and equity. With a combination of deep industry knowledge and extensive structured finance experience, the Oberland Capital team has a history of creating value for its transaction partners.

For more information, please visit www.oberlandcapital.com or contact Johnna Schifilliti at (212) 257-5850.

Forward Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, such as statements regarding the financing transactions described herein and use of proceeds to be received from such financing, the ultimate amount of proceeds expected to be received, the regulatory review process and timing thereof, ImmunityBio's commercialization strategy for N-803, and ImmunityBio's pipeline and development of therapeutics for cancers and infectious diseases, among others. While ImmunityBio believes the BLA resubmission addresses the issues identified in the FDA's complete response letter, there is no guarantee that the FDA will ultimately agree that such issues have been successfully addressed and resolved. Statements in this press release that are not statements of historical fact are considered forward-looking statements, which are usually identified by the use of words such as "anticipates," "believes," "continues," "goal," "could," "estimates," "scheduled," "expects," "intends," "may," "plans," "potential," "predicts," "indicate," "projects," "seeks," "should," "will," "strategy," and variations of such words or similar expressions. Statements of past performance, efforts, or results of our preclinical and clinical trials, about which inferences or assumptions may be made, can also be forward-looking statements and are not indicative of future performance or results. Forward-looking statements are neither forecasts, promises nor guarantees, and are based on the current beliefs of ImmunityBio's management as well as assumptions made by and information currently available to ImmunityBio. Such information may be limited or incomplete, and ImmunityBio's statements should not be read to indicate that it has conducted a thorough inquiry into, or review of, all potentially available relevant information. Such statements reflect the current views of ImmunityBio with respect to future events and are subject to known and unknown risks, including business, regulatory, economic and competitive risks, uncertainties, contingencies and assumptions about ImmunityBio, including, without limitation, (i) the risks and uncertainties associated with the regulatory review process, (ii) whether or not the FDA will ultimately determine that the BLA resubmission and related actions successfully addresses and resolves the issues identified in the FDA's complete response letter, (iii) uncertainties regarding the timeline of FDA review of the resubmitted BLA, (iv) any inability to successfully work with the FDA to find a satisfactory solution to address any concerns in a timely manner or at all during the review process for the BLA, including any inability to provide the FDA with data, analysis or other information sufficient to support an approval of the BLA, (v) the ability of ImmunityBio and its third party contract manufacturing organizations to adequately address the issues raised in the CRL, (vi) any potential facility re-inspections that may be required regarding ImmunityBio's third party contract manufacturing organizations or otherwise and results therefrom, (vii) whether the FDA accepts the data and results as included in the BLA resubmission at levels consistent with the published results, or at all, (viii) whether the FDA approval milestone necessary to achieve the second payment of $100 million in connection with the financing transaction described herein will be achieved, (ix) ImmunityBio's ability to comply with the terms, conditions, covenants, restrictions and obligations set forth in the revenue interest purchase agreement and related transaction documents, (x) the ability of ImmunityBio to continue its planned preclinical and clinical development of its development programs through itself and/or its investigators, and the timing and success of any such continued preclinical and clinical development and planned regulatory submissions, (xi) ImmunityBio's ability to retain and hire key personnel, (xii) ImmunityBio's ability to obtain additional financing to fund its operations and complete the development and commercialization of its various product candidates, (xiii) ImmunityBio's ability to successfully commercialize its product candidates and uncertainties around regulatory reviews and approvals, (xiv) ImmunityBio's ability to scale its manufacturing and commercial supply operations for its product candidates and future approved products, and (xv) ImmunityBio's ability to obtain, maintain, protect and enforce patent protection and other proprietary rights for its product candidates and technologies. More details about these and other risks that may impact ImmunityBio's business are described under the heading "Risk Factors" in the Company's Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC") on March 1, 2023 and the Company's Form 10-Q filed with the SEC on November 9, 2023, and in subsequent filings made by ImmunityBio with the SEC, which are available on the SEC's website at www.sec.gov. ImmunityBio cautions you not to place undue reliance on any forward-looking statements, which speak only as of the date hereof. ImmunityBio does not undertake any duty to update any forward-looking statement or other information in this press release, except to the extent required by law.

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