

SPECTRUM PHARMACEUTICALS INC

Form 10-Q/A

November 18, 2013

Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q/A

Amendment No. 1

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2013

.. **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 001-35006

SPECTRUM PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of

incorporation or organization)

11500 South Eastern Avenue, Suite 240

Henderson, Nevada
(Address of principal executive offices)

(702) 835-6300

93-0979187
(I.R.S. Employer

Identification No.)

89052
(Zip Code)

(Registrant's telephone number, including area code)

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

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 August 5, 2013, 63,307,719 shares of the registrant's common stock were outstanding.

Table of Contents

Explanatory Note

We are filing this Amendment No. 1 to our Quarterly Report on Form 10-Q for the period ended June 30, 2013 to amend and restate portions of our original Quarterly Report for this period (the Original Report). This Amendment No. 1 amends and restates the following items from the Original Report: (A) Part I, Item 1 Financial Statements, (B) Part I, Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations, (C) Part I, Item 4 Controls and Procedures, and (D) Part II, Item 1A Risk Factors.

The disclosures set forth in these items in the Original Report, that are amended by this Amendment No. 1 include:

Amendments to Part I, Item 1 Financial Statements, to restate our financial results for the three and six months ended June 30, 2013 and 2012 to reflect: (i) \$2.1 million and \$4.2 million of intangible asset amortization in the three and six months ended June 30, 2013, respectively; (ii) a reduction in operating expenses related to certain accounts payable and other accrued obligations accounts which had the effect of overstating our consolidated operating expenses by \$0.1 million and \$0.5 million for the three months ended June 30, 2013 and 2012, respectively, and by \$0.5 million and \$1.0 million for the six months ended June 30, 2013 and 2012, respectively; (iii) the impact on our intangible assets, goodwill, and income tax accounts for the effects of items (i) and/or (ii) within our balance sheet as of December 31, 2012 and June 30, 2013; and (iv) resulting reclassifications within our statements of cash flows for the six months ended June 30, 2013 and 2012 for (i), (ii), and (iii).

Amendments to Part I, Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect the above-described restatement of our financial results.

Amendments to Part I, Item 4 Controls and Procedures, to describe changes in our disclosure controls and procedures and our internal controls over financial reporting to address a material weakness.

Amendments to Part II, Item 1A Risk Factors, to add an additional risk factor regarding our internal controls over financial reporting as a result of the identification of a material weakness in our financial reporting. The restatement results from errors related to our accounting for the acquisition of Allos Therapeutics, Inc. in September 2012. We designated an acquired intangible asset as in-process research & development (IPR&D), which should have instead been designated at the acquisition date as a definite-lived intangible asset, as described above within (i).

Also, during the financial statement close process for the quarter ended September 30, 2013, management identified an accounting issue related to an over-accrual of accounts payable and accrued obligations that accumulated between January 1, 2007 through June 30, 2013, as described above within (ii).

The combined impact of the adjustments to the applicable line items in our consolidated financial statements for the periods subject to restatement (collectively, the Restated Periods) is set forth in Note 1A, Restatement of Condensed Consolidated Financial Statements, included in Part I, Item 1, of this Form 10-Q. Management has also concluded that, as of June 30, 2013, our internal controls over financial reporting were not effective due to a material weakness in our controls over our accounting for, and reporting of, the over-accrual of accounts payable and accrued

obligations.

We believe that presenting the restated information regarding the Restated Periods in this Form 10-Q allows investors to review all pertinent data in a single presentation. In addition, the Company's periodic reports to be filed during fiscal 2013 will include the restated 2012 comparable prior period and year-to-date periods. Accordingly, investors should rely only on the financial information and other disclosures regarding the Restated Periods in this Form 10-Q or in future filings with the Securities and Exchange Commission, as applicable, and not on any previously issued or filed reports, earnings releases or similar communications relating to these periods. The restatement has no effect on our net cash used in operating activities or on our cash and cash equivalents or short-term investments for the Restated Periods.

Table of Contents

SPECTRUM PHARMACEUTICALS, INC.

FORM 10-Q/A FOR THE QUARTER ENDED JUNE 30, 2013

INDEX

	Page
PART I	
<u>FINANCIAL INFORMATION (AS RESTATED)</u>	
ITEM 1. <u>FINANCIAL STATEMENTS (unaudited)</u>	
<u>Condensed Consolidated Balance Sheets as of June 30, 2013 and December 31, 2012</u>	3
<u>Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2013 and 2012</u>	4
<u>Condensed Consolidated Statements of Comprehensive (Loss) Income for the three and six months ended June 30, 2013 and 2012</u>	5
<u>Condensed Consolidated Statements of Cash Flows for the six months ended June 30, 2013 and 2012</u>	6
<u>Notes to Condensed Consolidated Financial Statements</u>	7
ITEM 2. <u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	40
ITEM 3. <u>QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u>	50
ITEM 4. <u>CONTROLS AND PROCEDURES</u>	50
PART II	
<u>OTHER INFORMATION</u>	
ITEM 1. <u>LEGAL PROCEEDINGS</u>	52
ITEM 1A. <u>RISK FACTORS</u>	54
ITEM 6. <u>EXHIBITS</u>	55
<u>SIGNATURES</u>	56

Item 2 through 5 of Part II have been omitted because they are not applicable with respect to the current reporting period.

Table of Contents**PART I: FINANCIAL INFORMATION****ITEM 1. Financial Statements****SPECTRUM PHARMACEUTICALS, INC.****Condensed Consolidated Balance Sheets**

(In thousands, except share data)

(Unaudited)

	June 30, 2013 (As Restated)	December 31, 2012 (As Restated)
ASSETS		
Current Assets:		
Cash and equivalents	\$ 121,103	\$ 139,698
Marketable securities	3,312	3,310
Accounts receivable, net of allowance for doubtful accounts of \$239 and \$228, respectively	52,379	92,169
Inventories, net	15,312	14,478
Prepaid expenses and other current assets	7,149	2,745
Deferred tax asset	13,027	12,473
Total current assets	212,282	264,873
Property and equipment, net	2,004	2,548
Intangible assets, net	196,786	200,234
Goodwill	7,246	7,279
Deferred tax asset	29,676	23,276
Other assets	8,755	6,745
TOTAL ASSETS	\$ 456,749	\$ 504,955
LIABILITIES AND STOCKHOLDERS EQUITY		
Current Liabilities:		
Accounts payable and other accrued obligations	\$ 83,592	\$ 93,811
Accrued compensation and related expenses	4,363	4,835
Deferred revenue	2,000	12,300
Deferred development costs	3,251	856
Accrued drug development costs	9,089	11,441
Total current liabilities	102,295	123,243
Deferred revenue and other credits less current portion	3,680	2,937
Deferred development costs, less current portion	15,400	11,377

Edgar Filing: SPECTRUM PHARMACEUTICALS INC - Form 10-Q/A

Deferred payment contingency		2,287
Other long-term obligations	6,130	1,430
Revolving line of credit	50,000	75,000
Total liabilities	177,505	216,274
Commitments and contingencies		
Stockholders' Equity:		
Preferred stock, \$0.001 par value; 5,000,000 shares authorized:		
Series B junior participating preferred stock, \$0.001 par value; 1,500,000 shares authorized; no shares issued and outstanding		
Series E convertible voting preferred stock, \$0.001 par value and \$10,000 stated value; 2,000 shares authorized; 20 shares issued and outstanding at June 30, 2013 and December 31, 2012, respectively (aggregate liquidation value of \$240)	123	123
Common stock, \$0.001 par value; 175,000,000 shares authorized; 60,284,571 and 60,026,675 shares issued and outstanding at June 30, 2013 and December 31, 2012, respectively	60	60
Additional paid-in capital	468,653	463,710
Accumulated other comprehensive gain	1,050	273
Accumulated deficit	(190,642)	(175,485)
Total stockholders' equity	279,244	288,681
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 456,749	\$ 504,955

See accompanying notes to unaudited condensed consolidated financial statements.

Table of Contents**SPECTRUM PHARMACEUTICALS, INC.****Condensed Consolidated Statements of Operations**

(In thousands, except share and per share data)

(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013 (As Restated)	2012 (As Restated)	2013 (As Restated)	2012 (As Restated)
Revenues:				
Product sales, net	\$ 32,213	\$ 65,627	\$ 61,559	\$ 122,411
License and contract revenue	1,019	3,075	10,340	6,150
Total revenues	33,232	68,702	71,899	128,561
Operating costs and expenses:				
Cost of product sales (excludes amortization of purchased intangible assets)	7,268	11,574	14,050	20,247
Selling, general and administrative	22,584	23,176	44,598	41,305
Research and development	10,460	9,288	22,343	17,819
Amortization and impairment of purchased intangibles	5,449	1,636	9,894	2,566
Total operating costs and expenses	45,761	45,674	90,885	81,937
(Loss) income from operations	(12,529)	23,028	(18,986)	46,624
Other income (expense), net	(163)	(1,507)	(1,481)	(1,369)
(Loss) income before income taxes	(12,692)	21,521	(20,467)	45,255
Benefit (provision) for income taxes	2,971	(3,171)	5,310	19,932
Net (loss) income	\$ (9,721)	\$ 18,350	\$ (15,157)	\$ 65,187
Net (loss) income per share:				
Basic	\$ (0.16)	\$ 0.31	\$ (0.26)	\$ 1.11
Diluted	\$ (0.16)	\$ 0.29	\$ (0.26)	\$ 1.02
Weighted average shares outstanding:				
Basic	58,977,295	58,763,700	58,995,735	58,617,530
Diluted	58,977,295	63,387,003	58,995,735	63,666,546

See accompanying notes to unaudited condensed consolidated financial statements.

Table of Contents**SPECTRUM PHARMACEUTICALS, INC.****Condensed Consolidated Statements of Comprehensive (Loss) Income**

(In thousands)

(Unaudited)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2013	2012	2013	2012
	(As Restated)	(As Restated)	(As Restated)	(As Restated)
Net (loss) income	\$ (9,721)	\$ 18,350	\$ (15,157)	\$ 65,187
Other comprehensive (loss) income, net of tax:				
Unrealized gain (loss) on securities	99	(369)	967	(301)
Foreign currency translation adjustment	57	3	171	3
Income tax	(37)		(361)	
Other comprehensive income (loss), net	119	(366)	777	(298)
Total comprehensive (loss) income	\$ (9,602)	\$ 17,984	\$ (14,380)	\$ 64,889

See accompanying notes to condensed consolidated financial statements.

Table of Contents**SPECTRUM PHARMACEUTICALS, INC.****Condensed Consolidated Statements of Cash Flows**

(In thousands)

(Unaudited)

	Six Months Ended	
	June 30,	
	2013	2012
	(As Restated)	(As Restated)
Cash Flows From Operating Activities:		
Net (loss) income	\$ (15,157)	\$ 65,187
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Amortization of deferred revenue	(10,300)	(6,150)
Depreciation and amortization	10,772	4,043
Stock-based compensation	5,671	6,097
Deferred income tax benefit	(6,039)	(31,493)
Provision (recovery) for bad debt	44	(31)
Provision for inventory obsolescence	1,041	437
Change in fair value of Allos deferred development costs and deferred payment contingency	(2,869)	
Impairment of intangible assets	1,023	
Foreign currency remeasurement loss	654	1,354
Excess tax benefits from share-based compensation		(2,181)
Changes in operating assets and liabilities:		
Accounts receivable, net	39,746	(33,105)
Inventories, net	(1,875)	2,639
Prepaid expenses and other assets	(5,691)	(950)
Accounts payable and other accrued obligations	(11,495)	36,489
Accrued compensation and related expenses	(472)	1,717
Accrued drug development costs	(2,352)	277
Deferred revenue and other credits	743	619
Net cash provided by operating activities	3,444	44,949
Cash Flows From Investing Activities:		
Sales and maturities of marketable securities		57,797
Purchases of marketable securities		(11,944)
Acquisition of Melphalan license	(3,000)	
Purchases of property and equipment	(127)	(302)
Purchases of available for sale securities		(622)

Acquisition of ZEVALIN Rights		(25,435)
Net cash (used in) provided by investing activities	(3,127)	19,494
Cash Flows From Financing Activities:		
Proceeds from issuance of common stock from stock option exercises	1,137	2,523
Proceeds from contributions to ESPP	197	372
Payments to acquire treasury stock	(1,652)	(317)
Repurchase of shares to satisfy minimum tax withholding for restricted stock vesting	(410)	(326)
Proceeds from Munidpharma collaboration amendment	7,000	
Proceeds from revolving line of credit	100,000	
Repayment of revolving line of credit	(125,000)	
Repayment of capital leases		(9)
Excess tax benefits from share-based compensation		2,181
Net cash (used in) provided by financing activities	(18,728)	4,424

Effect of exchange rates on cash

Trustee and Administrator of the Plan

The trustee of the Plan is Vanguard Fiduciary Trust Company (Vanguard). The trustee holds all assets of the Plan in accordance with provisions of the agreement with the Company. All assets of the Plan are with the investment plan accounts of Vanguard. Vanguard is also the record keeper of the Plan.

Eligibility

All non-excludable employees of the Company who have obtained the age of 18 and who have completed three months of service in which they were credited with at least 250 hours of service or who have completed one year of service are eligible to participate in the Plan. Excludable employees include leased employees, members of a collective bargaining unit, commissioned salespersons, independent contractors and non-resident aliens. All former employees of Key and H&P who became employees of the Company effective September 30, 2002, as part of the merger, were immediately eligible to participate in the Plan. All former employees of Magnum Hunter and Gruy who became employees of the Company effective July 1, 2005 were immediately eligible to participate in the Plan. Employees may enter the Plan on the first day of each calendar month after meeting plan requirements. A participant may modify his/her deferral election beginning the first pay period of each month if desired.

Contributions

A participant may enter into a salary reduction agreement with the Company whereby the amount withheld is contributed to the Plan during the plan year on behalf of each participant (as an employee's elective 401(k) deferred salary contribution). In no event shall the portion of earnings to be deferred be less than 1% of the participant's earnings nor more than 50% of the participant's pre-tax annual compensation, as defined in the Plan document, subject to annual Internal Revenue Code (IRC) dollar limits (\$14,000 for 2005).

The Company will then make a matching contribution to the Plan during the plan year, on behalf of each participant, equal to 100% of the contributions made by the participant pursuant to the written salary reduction agreement between the participant and the Company. In no event, however, shall the Company's matching contribution, on behalf of a participant, exceed an amount equal to 5% of each participant's eligible compensation, as defined in the Plan document. The Plan also allows for a profit-sharing contribution by the employer. There was no profit-sharing contribution for the year ended December 31, 2005.

Employees can make rollover contributions from other qualified plans if certain criteria are met as outlined in the Plan document. The Plan also allows catch-up contributions for participants over the age of 50 based on IRC limitations (\$4,000 for 2005.)

Participant Accounts

Each participant's account is credited with the participant's contributions, the Company's matching contributions, earnings and losses on investments, and is charged with the participant's withdrawals and distributions on a daily basis. The investment earnings or losses are allocated to each participant's account in the proportion that the balance of each participant's account bears to the total balance of all participants in each investment fund. The benefit to which a participant is entitled is the benefit that can be provided from the participant's vested account. Participants may elect to transfer balances between investment funds within their account at any time.

Investment Options

Participants may direct the investment of their account balance into various investment options offered by the Plan. Currently, the Plan offers various investment options in registered investment companies, a common/collective trust and Cimarex common stock for participants.

Participant Loans

An employee may, with the consent of the plan administrator, borrow the lesser of \$50,000 or one-half of their vested account balance. Participants may not have more than one loan outstanding at any time and the minimum original loan amount is \$1,000. Participants may not apply for another loan within 6 months of the date on which the previous loan was paid in full. With respect to participants whose loans were transferred from the H&P Plan who had more than one loan outstanding, the loans are permitted to be repaid according to their existing terms. The maximum loan term is five years, except for a loan to acquire a participant's principal residence which may have a term of ten years. A participant's loan shall become due and payable if such participant fails to make a principal and/or interest payment as provided in the loan agreement, subject to a short grace period. The loans are secured by the balance in the participant's account, and bear interest at a rate of 1% above prime rate. Interest rates for the loans range from 5.25% to 10.50%. Principal and interest are paid ratably through payroll deductions.

Vesting

A participant is immediately fully vested in that portion of his/her account attributable to 401(k) deferred salary contribution and rollover contributions. For participants whose date of hire is after October 1, 2002, the vested percentage in that portion of the account attributable to employer contributions is based on the credited service in a plan year as defined in the Plan document, in accordance with the following schedule:

Completed years of credited service with the Employer	Vested Percentage
1	25%
2	50%
3	75%
4 or more	100%

For purposes of vesting, years of service are computed based on employment date anniversaries. Participants are credited with prior years of service earned with Key or H&P. A year of service is defined in the Plan document as any year in which a participant has at least one hour of service. Participants also become fully vested in their accounts upon reaching normal retirement age (62), death or disability.

Employees of both Key and H&P on September 30, 2002 who became employees of Cimarex on October 1, 2002 or at any time thereafter are or will be (if not yet participating in the Plan) 100% vested. Employees of Magnum Hunter and Gruy who became employees of the Company on July 1, 2005 will receive credit toward vesting for their prior years of service with Magnum Hunter and Gruy.

Forfeitures

At December 31, 2005 and 2004, amounts held in the forfeiture account totaled \$111,064 and \$87,357, respectively. These amounts can be used to reduce future employer contributions. During 2005, forfeitures were utilized to fund true-up contributions and earnings in the amount of \$8,019. Remaining unused forfeiture amounts are currently unallocated to participant accounts.

Plan Expenses

Administrative expenses are paid by the Company. Loan fees are paid by Plan participants.

Termination of Employment

A participant who terminates employment prior to the normal retirement age of 62 is entitled to 100% of the value of his/her account attributable to participant contributions, plus the vested percentage of the value of the his/her account attributable to the employer's contributions.

Plan Termination

Although it has not expressed any intent to do so, the Company has the right under the Plan to terminate the Plan, subject to the provisions of ERISA. In the event the Plan is terminated all participant accounts would immediately become fully vested, and the assets would be distributed among the participants in accordance with the terms set forth in the Plan.

Payment of Benefits

Upon termination of service, death, disability or attainment of normal retirement age of 62, a participant may elect to receive lump sum distributions equal to the vested value of the participant's account, or transfer the vested balance to another qualified retirement plan or individual retirement account. Participants formerly with the Key Plan or H&P Plan may elect any distribution form available under those plans. Effective March 28, 2005, immediate lump-sum distributions are to be made to terminated participants if the participant's vested account balance, net of rollover contributions, is \$1,000 or less (prior to March 28, 2005, if \$5,000 or less.)

Participants may also take certain voluntary in-service withdrawals and hardship withdrawals if certain criteria are met.

Voting Rights of Company Common Stock

The trustee, Vanguard, holds the shares of Cimarex common stock on behalf of the Plan. Each participant or beneficiary of a deceased participant shall have the right to direct the trustee as to the manner of voting and the exercise of all other rights which a shareholder of record has with respect to shares of Company stock which have been allocated to the participant's account including, but not limited to, the right to sell or retain shares in a public or private tender offer. Participants direct the trustee to vote by submission of timely participant directions. Shares held by Vanguard for which timely participant directions are not received are voted in the same proportion as the shares for which the trustee received timely participant directions, except in the case where to do so would be inconsistent with the provisions of Title I of ERISA.

**2. Summary of
Significant Accounting
Policies**

Basis of Accounting

The financial statements of the Plan are prepared using the accrual method of accounting.

Use of Estimates

The preparation of financial statements in accordance with U.S. generally accepted accounting principles requires the Plan Administrator to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Valuation of Investments and Income Recognition

The Plan's investments are stated at fair value. Shares of registered investment companies are valued at quoted market prices, which represent the net asset value of shares held by the Plan at year-end. Units of the common/collective trust (Vanguard Retirement Savings Trust) are valued at net asset value at year-end. The value of the account is expressed in units. The common stock fund is valued at year-end unit closing price (comprised of year-end market price plus uninvested cash position). Participant loans are stated at cost, which approximates fair value.

Purchases and sales of investments are recorded on a trade-date basis. Interest income is accrued when earned. Dividend income is recorded on the ex-dividend date. Capital gain distributions are included in dividend income. The net appreciation in the fair value of investments consists of the realized gains (losses) and the unrealized appreciation (depreciation) on those investments.

Payment of Benefits

Benefits are recorded when paid.

3. Investments During 2005, the Plan's investments (including gains and losses on investments bought and sold, as well as held during the year ended December 31, 2005) appreciated in value as follows:

For the Year Ended December 31,	2005	
Registered investment companies	\$	646,126
Common stock		1,173,187
	\$	1,819,313

Investments, which exceed five percent of net assets available for plan benefits are identified on the accompanying Statements of Net Assets Available for Plan Benefits.

4. Income Tax Status The prototype plan, which the Company adopted, obtained its latest determination letter on December 20, 2001. The Internal Revenue Service has stated that the prototype plan is qualified and the related trust is tax-exempt. The Plan has received a separate determination letter for the Plan as adopted dated October 30, 2003. The Plan has been amended since receiving the determination letter, however, the Plan administrator believes that the Plan is designed and is currently being operated in compliance with the applicable requirements of the IRC. Therefore, no provision for income taxes has been included in the Plan's financial statements.

5. Related Party Transactions

The Plan invests in shares of registered investment companies and units of a common/collective trust managed by an affiliate of Vanguard. Vanguard acts as trustee for the Plan. The Plan also invests in Cimarex common stock, common stock of the Plan sponsor, which also qualifies as a related party transaction. Transactions in such investments qualify as party-in-interest transactions, which are exempt from the prohibited transaction rules.

6. Concentrations, Risks and Uncertainties

The Plan invests in registered investment company investments, a common/collective trust and common stock of the Company. Registered investment companies and common/collective trusts invest in various investment securities, which are exposed to various risks such as interest rate, market and credit risk. Shares of the Company's common stock are also exposed to the same risks. Investment in the Company's common stock represents 30.1% and 27.4% of the net assets available for plan benefits as of December 31, 2005 and 2004, respectively. Due to the level of risk associated with certain investment securities and the level of uncertainty related to changes in the value of investment securities, it is at least reasonably possible that changes in value in the near term would materially affect the amounts reported in the Statement of Net Assets Available for Plan Benefits and the Statement of Changes in Net Assets Available for Plan Benefits.

Additionally, certain registered investment companies' investments are invested in the securities of foreign companies, which involve special risks and considerations not typically associated with investing in U.S. companies. These risks include devaluation of currencies, less reliable information about issuers, different securities transaction clearance and settlement practices and possible adverse political and economic developments. Moreover, securities of many foreign companies and their markets may be less liquid and their prices more volatile than those of securities of comparable U.S. companies.

Supplemental Schedule

Cimarex Energy
Co. 401(k) PlanSchedule H, line 4i - Schedule of Assets
(Held at End of Year) December 31, 2005

December 31, 2005				EIN: 45-0466694 Plan Number 001	
(a)	(b)	(c)	(d)	(e)	(f)
Identity of Issue	Description of Investment	Shares/Units	Cost	Current Value	
* Vanguard Retirement Savings Trust	Common/Collective Trust	4,979,534.570	(1)	\$ 4,979,535	
* American Funds EuroPacific Growth Fund	Registered Investment Company	26,081.700	(1)	1,071,958	
* Vanguard 500 Index Fund Investor Shares	Registered Investment Company	30,649.061	(1)	3,522,190	
* Vanguard Explorer Fund	Registered Investment Company	16,205.325	(1)	1,217,182	
* Vanguard Extended Market Index Fund Investor Shares	Registered Investment Company	36,805.752	(1)	1,260,965	
* Vanguard Intermediate-Term Treasury Fund Investor Shares	Registered Investment Company	62,164.057	(1)	679,453	
* Vanguard LifeStrategy Conservative Growth Fund	Registered Investment Company	15,090.725	(1)	233,755	
* Vanguard LifeStrategy Growth Fund	Registered Investment Company	29,402.670	(1)	617,456	
* Vanguard LifeStrategy Income Fund	Registered Investment Company	27,854.137	(1)	375,752	
* Vanguard LifeStrategy Moderate Growth Fund	Registered Investment Company	42,178.593	(1)	779,039	
* Vanguard Total Bond Market Index Fund	Registered Investment Company	158,014.239	(1)	1,589,623	
* Vanguard Total International Stock Index Fund	Registered Investment Company	60,555.627	(1)	864,129	
* Vanguard U.S. Growth Fund	Registered Investment Company	109,368.229	(1)	1,963,160	
* Vanguard Wellington Fund Investor Shares	Registered Investment Company	72,303.224	(1)	2,194,403	
* Vanguard Windsor II Fund Investor Shares	Registered Investment Company	72,661.160	(1)	2,276,474	
* Cimarex Energy Co. Common Stock	Company Stock Fund	243,223.797	(1)	10,461,055	
* Participant Loans	5.25% to 10.50%, various maturity dates		(1)	523,491	
				\$	34,609,620

* Related party interest as defined by ERISA.

(1) The cost of participant-directed investments is not required to be disclosed.

See accompanying report of independent registered public accounting firm and notes to financial statements.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant and trustees (or other persons who administer the employee benefit plan) have duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Cimarex Energy Co. (Registrant)

Cimarex Energy Co. 401(k) Plan

Date: June 21, 2006

BY: /s/ Paul Korus
 Paul Korus
 VP, CFO and Treasurer
 Cimarex Energy Co.

BY: /s/ Richard S. Dinkins
 Richard S. Dinkins
 VP - Human Resources of Cimarex
 Energy Co. and Plan Administrator of the
 Cimarex Energy Co. 401(k) Plan
