

As filed with the Securities and Exchange Commission on December 5, 2022

Registration No. 333-267294

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**POST-EFFECTIVE AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

THERIVA BIOLOGICS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Nevada

*(State or Other Jurisdiction of
Incorporation or Organization)*

13-3808303

*(I.R.S. Employer
Identification Number)*

**9605 Medical Center Drive, Suite 270
Rockville, Maryland 20850
(734) 332-7800**

*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive
Offices)*

**Steven A. Shallcross
Chief Executive Officer and Chief Financial Officer
Theriva Biologics, Inc.
9605 Medical Center Drive, Suite 270
Rockville, Maryland 20850
(734) 332-7800**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code of Agent for Service)

With copies to:

**Leslie Marlow, Esq.
Patrick J. Egan, Esq.
Hank Gracin, Esq.
Blank Rome LLP
1271 Avenue of the Americas
New York, New York 10020
Telephone: (212) 885-5000**

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest

reinvestment plans, check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. "

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 413(b) under the Securities Act, check the following box. "

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

Large accelerated filer "

Non-accelerated filer ☒

Accelerated filer "

Smaller reporting company ☒

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 to Section 7(a)(2) (B) of the Securities Act. "

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 1 is being filed solely for the purposes of filing an updated Exhibit 23.2 to the Registration Statement on Form S-3 (Registration Statement No. 333-267294), originally filed with the Securities and Exchange Commission on September 6, 2022, and will become effective upon filing pursuant to Rule 462(d) under the Securities Act of 1933, as amended. This Amendment No. 1 does not reflect events occurring after the original filing date of the Registration Statement on Form S-3, or modify or update the disclosures therein in any way other than as required to reflect the amendment described above. Accordingly, this Amendment No. 1 consists only of the facing page, this explanatory note, Part II of the Registration Statement, and an updated Exhibit 23.2. The prospectus is unchanged and has been omitted.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. *Other Expenses of Issuance and Distribution.*

The following sets forth the estimated costs and expenses, all of which shall be borne by the Registrant, in connection with the offering of the securities pursuant to this Registration Statement:

	Amount
SEC registration fee	\$ 324
Legal fees and expenses	20,000
Accountant's fees and expenses	5,000
Printing and engraving expenses	2,000
Miscellaneous	2,676
Total	\$ 30,000

Item 15. *Indemnification of Directors and Officers.*

Section 78.138 of the Nevada Revised Statute provides that a director or officer is not individually liable to the corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven that (1) his act or failure to act constituted a breach of his fiduciary duties as a director or officer and (2) his breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

This provision is intended to afford directors and officers protection against and to limit their potential liability for monetary damages resulting from suits alleging a breach of the duty of care by a director or officer. As a consequence of this provision, stockholders of our company will be unable to recover monetary damages against directors or officers for action taken by them that may constitute negligence or gross negligence in performance of their duties unless such conduct falls within one of the foregoing exceptions. The provision, however, does not alter the applicable standards governing a director's or officer's fiduciary duty and does not eliminate or limit the right of our company or any stockholder to obtain an injunction or any other type of non-monetary relief in the event of a breach of fiduciary duty.

The Registrant's Articles of Incorporation, as amended, and amended and restated bylaws provide for indemnification of directors, officers, employees or agents of the Registrant to the fullest extent permitted by Nevada law (as amended from time to time). Section 78.7502 of the Nevada Revised Statute provides that such indemnification may only be provided if the person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Registrant and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Item 16. *Exhibits.*

(a) *Exhibits.*

The following exhibits are either filed as part of this Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 or are incorporated herein by reference:

Exhibit Number	Description
3.1	<u>Certificate of Incorporation, as amended (Incorporated by reference to (i) Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed October 16, 2008, File No. 001-12584, (ii) Exhibit 3.1 of the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 filed August 14, 2001, File No. 001-12584; and (iii) Exhibits 3.1, 4.1 and 4.2 of the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1998 filed August 14, 1998, File No. 001-12584.)</u>
<u>3.2</u>	<u>Articles of Merger (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed October 19, 2009, File No. 001-12584.)</u>
<u>3.3</u>	<u>Certificate of Merger filed with the Secretary of State of Delaware (Incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K filed October 19, 2009, File No. 001-12584.)</u>
<u>3.4</u>	<u>Articles of Incorporation filed with the Nevada Secretary of State (Incorporated by reference to Exhibit 3.3 of the Registrant's Current Report on Form 8-K filed October 19, 2009, File No. 001-12584.)</u>
<u>3.5</u>	<u>Amended and Restated Bylaws Adopted and Effective October 31, 2011 (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed November 2, 2011, File No. 001-12584.)</u>
<u>3.6</u>	<u>Certificate of Amendment to Articles of Incorporation (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed February 16, 2012, File No. 001-12584.)</u>
<u>3.7</u>	<u>Certificate of Amendment to Certificate of Incorporation. (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed May 18, 2015, File No. 001-12584.)</u>
<u>3.8</u>	<u>Certificate of Amendment to Certificate of Incorporation. (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed September 8, 2017, File No. 001-12584.)</u>
<u>3.9</u>	<u>Certificate of Designations for Series A Preferred Stock to Certificate of Incorporation (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed September 12, 2017, File No. 001-12584.)</u>
<u>3.10</u>	<u>Certificate of Change Pursuant to NRS 78.209 (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed August 13, 2018, File No. 001-12584.)</u>
<u>3.11</u>	<u>Certificate of Amendment to Articles of Incorporation (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed September 26, 2018, File No. 001-12584.)</u>
<u>3.12</u>	<u>Certificate of Designations for Series B Preferred Stock to Certificate of Incorporation (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed October 15, 2018, File No. 001-12584.)</u>

<u>3.13</u>	<u>Certificate of Amendment to Certificate of Designations for Series B Preferred Stock to Certificate of Incorporation (Incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K filed October 15, 2018, File No. 001-12584.)</u>
<u>3.14</u>	<u>Certificate of Amendment to the Certificate of Designation for the Series A Convertible Preferred Stock (Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K/A filed on</u>

[February 1, 2021 File No. 001-12584.\)](#)

- [3.15 Certificate of Designations of Series C Convertible Preferred Stock \(Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed July 29, 2022, File No. 001-12584.\)](#)
- [3.16 Certificate of Designations of Series D Convertible Preferred Stock \(Incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K filed July 29, 2022, File No. 001-12584.\)](#)
- [4.1 Specimen Stock Certificate \(Incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-3 filed on July 3, 2013, File No. 333-189794.\)](#)
- [4.2 Form of Warrant for Purchasers of Units \(Incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on October 10, 2014, File No. 001-12584.\)](#)
- [4.3 Form of Series B Warrant to Purchase Common Stock issued November 18, 2016 \(Incorporated by reference to Exhibit 4.2 of the Registrant's Current Report on Form 8-K filed on November 15, 2016, File No. 001-12584.\)](#)
- [4.4 Form of Warrant Agreement, dated November 18, 2016 between Theriva Biologics, Inc. and Corporate Stock Transfer, Inc. \(Incorporated by reference to Exhibit 4.3 of the Registrant's Current Report on Form 8-K filed on November 15, 2016, File No. 001-12584.\)](#)
- [4.5 Form of Warrant issued December 26, 2017 to InSite Communications \(Incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 10-Q filed May 5, 2018, File No. 001-12584.\)](#)
- [4.6 Warrant Agency Agreement, dated October 15, 2018, by and between Theriva Biologics, Inc. and Corporate Stock Transfer, Inc. \(including the form of warrant certificate\) \(Incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K filed October 15, 2018, File No. 001-12584.\)](#)
- [4.7 Description of Securities of Theriva Biologics, Inc. \(Incorporated by reference to Exhibit 4.7 of the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 filed March 4, 2021, File No. 001-12584.\)](#)
- [4.8 Securities Purchase Agreement between Theriva Biologics, Inc. and MSD Credit Opportunity Master Fund L.P. dated July 28, 2022 \(Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed July 29, 2022, File No. 001-12584.\)](#)
- [4.9 Amendment No. 1 dated as of August 9, 2022 to Securities Purchase Agreement between Theriva Biologics Inc. and MSD Credit Opportunity Master Fund, L.P., dated as of July 28, 2022 \(Incorporated by reference to Exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q filed August 11, 2022, File No. 001-12584.\)](#)
- [5.1* Legal opinion of Parsons Behle & Latimer](#)
- [23.1* Consent of BDO USA, LLP, Independent Registered Public Accounting Firm](#)

[23.2** Consent of KPMG Auditors, S.L.](#)

[23.3* Consent of Parsons Behle & Latimer \(included in Exhibit 5.1\)](#)

[24.1* Power of Attorney \(included on the signature page of the initial Registration Statement\)](#)

* Previously filed

**Filed herewith.

Item 17. Undertakings

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; *provided, however*, that the undertakings set forth in paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement or is contained in a form of prospectus filed pursuant to Rule 424(b) that is a part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such

date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; and

(iii) Each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness; *provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is

asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rockville, State of Maryland, December 5, 2022.

THERIVA BIOLOGICS, INC.

By: /s/ Steven A. Shallcross

Chief Executive Officer,
Chief Financial Officer and Director

Pursuant to the requirements of the Securities Act of 1933, as amended, this Post-Effective Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Steven A. Shallcross Steven A. Shallcross	Chief Executive Officer, Chief Financial Officer and Director (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	December 5, 2022
* Jeffrey J. Kraws	Chairman	December 5, 2022
* Jeffrey Wolf	Director	December 5, 2022
* John Monahan, Ph.D.	Director	December 5, 2022
*By: /s/ Steven A. Shallcross Steven A. Shallcross, Attorney-in-Fact		