INVIVO THERAPEUTICS HOLDINGS CORP.
Form 4
August 04, 2015

FORM 4

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

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL

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(Print or Type Responses)

1. Name and Address of Reporting Person *
ROBERTS RICHARD JOHN

(Last) (First) (Middle)

C/O INVIVO THERAPEUTICS HOLDINGS CORP., ONE KENDALL SQUARE, SUITE B14402

(Street)

CAMBRIDGE, MA 02139

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
INVIVO THERAPEUTICS HOLDINGS CORP. [NVIV]

3. Date of Earliest Transaction (Month/Day/Year)
07/31/2015

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

__X__ Director _____ 10% Owner
_____ Officer (give title below) _____ Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)	
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amoun or Numbe of Shar
STOCK OPTION (RIGHT TO BUY)	$ 14.55	07/31/2015		A		12,500		07/31/2015	07/31/2025	COMMON STOCK	12,50

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
ROBERTS RICHARD JOHN C/O INVIVO THERAPEUTICS HOLDINGS CORP. ONE KENDALL SQUARE, SUITE B14402 CAMBRIDGE, MA 02139	X			

Signatures

/s/ Elizabeth W. Fraser, Attorney-in-Fact	08/04/2015
**Signature of Reporting Person	Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
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30,820

0

Amortization of discounts and debt issuance costs

3,490

2,619

0

Write off of unamortized deferred debt issuance costs

0

5,224

0

Total interest expense

$

87,479

$

68,141

$

31,396

(1) Includes interest expense related to capital leases.

Interest expense related to the 1.25% Cash Convertible Senior Notes was comprised of the following:

	Year Ended December 31,		
(In thousands)	2017	2016	2015
Coupon interest at 1.25%	$4,312	$4,312	$4,312
Amortization of discounts and debt issuance costs	13,208	12,585	11,994
Total interest expense related to the 1.25% Notes	$17,520	$16,897	$16,306

1.25% Cash Convertible Senior Notes due 2020

On June 18, 2013, we issued $345.0 million aggregate principal amount of the 1.25% Cash Convertible Senior Notes due 2020 (the “1.25% Notes”). The aggregate net proceeds of the 1.25% Notes were $305.1 million, after payment of the net cost of the 1.25% Notes Call Spread Overlay (as described below) and transaction costs.

Interest on the 1.25% Notes is payable semiannually in arrears on January 1 and July 1 of each year, at a fixed annual rate of 1.25% commencing on January 1, 2014. The 1.25% Notes will mature on July 1, 2020 unless repurchased or converted in accordance with their terms prior to such date.

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The 1.25% Notes are convertible only into cash, and not into shares of our common stock or any other securities. Holders may convert their 1.25% Notes solely into cash at their option at any time prior to the close of business on the business day immediately preceding January 1, 2020 only under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period immediately after any five consecutive trading day period in which the trading price per $1,000 principal amount of the 1.25% Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events. On or after January 1, 2020 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their 1.25% Notes solely into cash at any time, regardless of the foregoing circumstances. Upon conversion, in lieu of receiving shares of our common stock, a holder will receive an amount in cash, per $1,000 principal amount of the 1.25% Notes, equal to the settlement amount, determined in the manner set forth in the Indenture.

The initial conversion rate will be 58.1869 shares of our common stock per $1,000 principal amount of the 1.25% Notes (equivalent to an initial conversion price of approximately $17.19 per share of common stock). The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, we will pay a cash make-whole premium by increasing the conversion rate for a holder who elects to convert such holder's 1.25% Notes in connection with such a corporate event in certain circumstances. We may not redeem the 1.25% Notes prior to the maturity date, and no sinking fund is provided for the 1.25% Notes.

If we undergo a fundamental change (as defined in the Indenture), holders may require us to repurchase for cash all or part of their 1.25% Notes at a repurchase price equal to 100% of the principal amount of the 1.25% Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. The Indenture provides for customary events of default, including cross acceleration to certain other indebtedness of ours, and our subsidiaries.

The 1.25% Notes are senior unsecured obligations, and rank senior in right of payment to any of our indebtedness that is expressly subordinated in right of payment to the 1.25% Notes; equal in right of payment to any of our unsecured indebtedness that is not so subordinated; effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables) of our subsidiaries.

The 1.25% Notes contain an embedded cash conversion option. We have determined that the embedded cash conversion option is a derivative financial instrument, required to be separated from the 1.25% Notes and accounted for separately as a derivative liability, with changes in fair value reported in our consolidated statements of operations until the cash conversion option transaction settles or expires. The initial fair value liability of the embedded cash conversion option was $82.8 million, which simultaneously reduced the carrying value of the 1.25% Notes (effectively an original issuance discount). For further discussion of the derivative financial instruments relating to the 1.25% Notes, refer to Note 11, "Derivative Financial Instruments."

The reduced carrying value of the 1.25% Notes resulted in a debt discount that is amortized to the 1.25% Notes' principal amount through the recognition of non-cash interest expense over the expected term of the 1.25% Notes, which extends through their maturity date of July 1, 2020. This has resulted in our recognition of interest expense on the 1.25% Notes at an effective rate approximating what we would have incurred had nonconvertible debt with otherwise similar terms been issued. The effective interest rate of the 1.25% Notes at issuance was 5.4%, which was imputed based on the amortization of the fair value of the embedded cash conversion option over the remaining term of the 1.25% Notes. As of December 31, 2017, we expect the 1.25% Notes to be outstanding until their July 1, 2020 maturity date, for a remaining amortization period of approximately two and a half years. As of December 31, 2017, the if-converted value of the 1.25% Notes did not exceed the 1.25% Notes' principal amount.

In connection with the settlement of the 1.25% Notes, we paid $8.4 million in transaction costs. Such costs have been allocated to the 1.25% Notes, the 1.25% Call Option (as defined below) and the 1.25% Warrants (as defined below). The amount allocated to the 1.25% Notes, or $8.3 million, was capitalized and is being amortized over the expected term of the 1.25% Notes. The remaining aggregate amounts allocated to the 1.25% Call Option and 1.25% Warrants were not significant. The outstanding capitalized amount of transaction costs related to the 1.25% Notes was $2.9 million and is reported as a reduction of long-term debt on our consolidated balance sheet as of December 31, 2017.

Accrued and unpaid interest on the 1.25% Notes of $2.2 million is included in accrued expenses in the accompanying consolidated balance sheet as of December 31, 2017.

1.25% Notes Call Spread Overlay

Also in June 2013, concurrent with the issuance of the 1.25% Notes, we entered into privately negotiated hedge transactions (collectively, the “1.25% Call Option”) and warrant transactions (collectively, the “1.25% Warrants”), with certain of the initial purchasers of the 1.25% Notes (collectively, the “Call Spread Overlay”). Assuming full performance by the counterparties, the 1.25% Call Option is intended to offset cash payments in excess of the principal amount due upon any conversion of the 1.25% Notes. We used $82.8 million of the proceeds from the settlement of the 1.25% Notes to pay for the 1.25% Call Option, and simultaneously received $51.2 million from the sale of the 1.25% Warrants, for a net cash outlay of $31.6 million for the Call Spread Overlay. The 1.25% Call Option is a derivative financial instrument and is discussed further in Note 11, “Derivative Financial Instruments.” The 1.25% Warrants are equity instruments and are further discussed in Note 9, “Stockholders’ Equity.”

Senior Secured Credit Facility Amendment

On September 30, 2015, we entered into a Replacement Facility Amendment (the “2015 Credit Agreement”) to our existing Credit Agreement, dated as of June 28, 2013, as amended on June 8, 2015, with a syndicate of financial institutions and JPMorgan Chase Bank, N.A., as administrative agent. The 2015 Credit Agreement provides for a $250 million senior secured term loan (the “Term Loan”) and a $550 million senior secured revolving facility (the “Revolving Facility”), each with a five year term (collectively the “Senior Secured Credit Facility”). These amounts represent increases in total borrowing limits of $25 million and $125 million, respectively, compared with our existing Credit Agreement. The Term Loan is repayable in quarterly installments, which commenced on December 31, 2015 and end on September 30, 2020. A total of up to $50 million of the Revolving Facility is available for the issuance of letters of credit, up to $10 million of the Revolving Facility is available for swingline loans, and up to $100 million of the Revolving Facility could be borrowed under certain foreign currencies.

Proceeds from the borrowings under the 2015 Credit Agreement were used for the refinancing of the term loan and revolving facility under our existing Credit Agreement. The proceeds of the Revolving Facility can be used to finance our working capital needs and for general corporate purposes, including financing of permitted acquisitions, share repurchases, and other investments. We may also request to add one or more incremental revolving and/or term loan facilities in an aggregate amount of up to $300 million, subject to certain conditions.

Borrowings under the Senior Secured Credit Facility bear interest, at our option, at a rate per annum equal to either (1) the rate (adjusted for statutory reserve requirements for eurocurrency liabilities and mandatory costs, if any) for deposits in the applicable currency for a period equal to one, two, three or six months or, with respect to loans under the Revolving Facility denominated in United States dollars, subject to availability to all affected lenders, 7 days (as selected by us), appearing on pages LIBOR01, LIBOR02, EURIBOR01, as applicable, or other page displaying such rate for such currency of the Reuters Screen (the “Eurocurrency Rate”) plus the applicable margin or (2) the highest of (a) the rate of interest publicly announced by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City, (b) the federal funds effective rate from time to time plus 0.5%, and (c) the Eurocurrency Rate for United States dollars for a one month interest period plus 1.0% (the “Base Rate”), plus, in each case, the applicable margin. The initial applicable interest rate margin for Base Rate borrowings was 1.25%, and for Eurocurrency Rate borrowings was 2.25%. Future applicable interest rate margins will be determined from a pricing table and will depend upon our total leverage ratio. The applicable interest rate margins under the 2015 Credit Agreement for Base Rate borrowings range from 0.00% to 1.25% and for Eurocurrency Rate loans range from 1.00% to 2.25%. These ranges are 50 basis points lower at each level of the leverage-based pricing grid compared with our existing Credit Agreement.

Subject to certain agreed upon exceptions, all obligations under the Senior Secured Credit Facility remain guaranteed by each of our existing and future direct and indirect material domestic subsidiaries other than Coniston Exchange

LLC and certain domestic subsidiaries owned by our foreign subsidiaries (the "Guarantors") pursuant to a related Guarantee and Collateral Agreement, dated as of June 28, 2013, among Allscripts Healthcare Solutions, Inc., Allscripts Healthcare, LLC, certain of our other subsidiaries, and JPMorgan Chase Bank, N.A., as administrative agent. Our obligations under the Senior Secured Credit Facility, any swap agreements and any cash management arrangements provided by any lender, remain secured, subject to permitted liens and other agreed upon exceptions, by a perfected first priority security interest in all of the tangible and intangible assets (including, without limitation, intellectual property, material owned real property and all of the capital stock of each Guarantor and, in the case of foreign subsidiaries, up to 65% of the capital stock of first tier material foreign subsidiaries) of Allscripts Healthcare Solutions, Inc. and certain of our subsidiary guarantors.

The Senior Secured Credit Facility requires us to maintain a minimum interest coverage ratio of 4.0 to 1.0, a maximum total leverage ratio of 4.0 to 1.0 and a maximum senior secured leverage ratio of 3.0 to 1.0. The minimum interest coverage ratio is calculated by dividing earnings before interest expense, income tax expense, depreciation and amortization expense by cash interest expense, subject to various agreed upon adjustments. The total leverage ratio is calculated by dividing total indebtedness by earnings before interest expense, income tax expense, depreciation and amortization expense, subject to various agreed upon adjustments. The senior secured leverage ratio is calculated by dividing senior secured indebtedness by earnings before interest expense, income tax expense, depreciation and amortization expense, subject to various agreed upon adjustments. The 2015 Credit Agreement also provides that during the four-quarter period following permitted acquisitions that are financed in whole or in part with indebtedness and the consideration paid by us is $100 million or more, we are required to maintain a maximum total leverage ratio of 4.5 to 1.0 and a maximum senior secured leverage ratio of 3.25 to 1.0. In addition, the 2015 Credit Agreement requires mandatory prepayments of the debt outstanding under the Senior Secured Credit Facility in certain specific circumstances, and contains a number of covenants which, among other things, restrict our ability to incur additional indebtedness, engage in mergers, or declare dividends or other payments in respect of our capital stock.

The Senior Secured Credit Facility also contains certain customary events of default, including relating to non-payment, breach of covenants, cross-default, bankruptcy and change of control.

In connection with our entry into the 2015 Credit Agreement, during the year ended December 31, 2015, we incurred fees and other costs totaling $3.0 million, of which $2.7 million were capitalized and included in the net carrying amounts outstanding under the Senior Secured Credit Facility as of December 31, 2015. In addition, $3.3 million of deferred costs associated with our existing Credit Facility carried over to the 2015 Credit Agreement. Also, in connection with our entry into the 2015 Credit Agreement, $1.1 million of deferred costs associated with our existing Credit Agreement and $0.3 million of fees and other costs associated with the 2015 Credit Agreement were written off to interest expense and are included in other losses, net in the accompanying consolidated statement of cash flows for the year ended December 31, 2015.

As of December 31, 2017, $218.8 million under the Term Loan, $410.0 million under the Revolving Facility, and $0.8 million in letters of credit were outstanding under the 2015 Credit Agreement.

As of December 31, 2017, the interest rate on the Senior Secured Credit Facility was LIBOR plus 2.25%, which totaled 3.82%. We were in compliance with all financial covenants under the 2015 Credit Agreement as of December 31, 2017.

As of December 31, 2017, we had $139.2 million available borrowing capacity, net of outstanding letters of credit, under the Revolving Facility. There can be no assurance that we will be able to draw on the full available balance of the Revolving Facility if the financial institutions that have extended such credit commitments become unwilling or unable to fund such borrowings.

Subsequent to December 31, 2017, we amended and restated our Senior Secured Credit Facility on February 15, 2018. The Second Amended and Restated Credit Agreement provides for a $400 million senior secured term loan and a $900 million senior secured revolving facility, which represent increases from the $250 million term loan and $550 million revolving facility provided under our existing 2015 Credit Agreement, respectively, each with a five-year term. Refer to Note 19, “Subsequent Events,” for further information regarding the Second Amended and Restated Credit Agreement.

Netsmart Non-Recourse Debt

On April 19, 2016, Netsmart entered into a First and Second Lien Credit Agreement (the “Netsmart First Lien Credit Agreement” and the “Netsmart Second Lien Credit Agreement”, respectively), with a syndicate of financial institutions and UBS AG, Stamford Branch, as administrative agent. The Netsmart First Lien Credit Agreement provides for a $395 million senior secured 7 year term loan credit facility (the “Netsmart First Lien Term Loan”) and a $50 million senior secured 5-year revolving loan credit facility (the “Netsmart Revolving Facility”). The Netsmart Second Lien Credit Agreement provides for a $167 million senior secured 7.5-year term loan credit facility (the “Netsmart Second Lien Term Loan,” and, together with the Netsmart First Lien Credit Agreement, the “Netsmart Credit Agreements”). Each of Netsmart’s obligations under the Netsmart Credit Agreements are guaranteed by Netsmart’s wholly-owned subsidiaries, under an unconditional guaranty. Netsmart’s debt under the Netsmart Credit Agreements is non-recourse to Allscripts and its wholly-owned subsidiaries. In connection with the Netsmart Credit Agreements, during the second quarter of 2016, Netsmart incurred fees and other costs totaling $27.9 million, which were capitalized and included in the net borrowings outstanding under Netsmart’s Credit Agreements as of December 31, 2016.

On October 27, 2016, Netsmart signed a definitive agreement to acquire HealthMEDX, LLC. The acquisition agreement resulted in Netsmart issuing additional first lien debt under the new facility of $40 million. In connection with this additional first lien debt, Netsmart incurred debt issuance costs of $0.6 million.

On November 10, 2016, Netsmart amended its First Lien Credit Agreement to reduce the effective interest rate by 25 basis points. No other terms or conditions were impacted by this amendment. The Netsmart Revolving Facility and the Netsmart Second

Lien Term Loan were not impacted by the amendment. There were no debt issuance costs associated with the amendment. Debt issuance costs of $5.2 million were written off to interest expense in connection with this amendment due to the changes in members of the lending bank syndicate.

On July 17, 2017, Netsmart signed a definitive agreement to acquire DeVero. The acquisition agreement resulted in Netsmart issuing additional first lien debt under the new facility of $51 million. In connection with this additional first lien debt, Netsmart incurred debt issuance costs of $1.3 million.

The Netsmart Revolving Facility will terminate on April 19, 2021 and the Netsmart First Lien Term Loan matures on April 19, 2023. The Netsmart Second Lien Term Loan matures on October 19, 2023. All unpaid principal of, and interest accrued on, such loans must be repaid on their respective maturity dates. The outstanding principal amount of the Netsmart First Lien Term Loan bears interest at a rate equal to (a) with respect to LIBO Rate Loans, Adjusted LIBO Rate plus 4.50% and (b) with respect to ABR Loans, 3.50%. The outstanding principal amount of the Netsmart Revolving Facility bears interest at a rate equal to (a) with respect to LIBO Rate Loans, Adjusted LIBO Rate plus 4.75% and (b) with respect to ABR Loans, 3.75% (provided, however, such rate may step-down to 4.25% and 3.25%, respectively, depending on the then-applicable leverage ratio). The outstanding principal amount of the Netsmart Second Lien Term Loan bears interest at a rate equal to (a) with respect to LIBO Rate Loans, Adjusted LIBO Rate plus 9.50% and (b) with respect to ABR Loans, 8.50%. The proceeds from the funding of the Netsmart Credit Agreements were used to, among other things, finance a portion of the Netsmart aggregate consideration and to pay fees and expenses in connection therewith.

The Netsmart Credit Agreements contain a financial covenant that Intermediate and its subsidiaries maintain a maximum ratio of total debt to Consolidated Adjusted EBITDA. The entire principal amount of the Netsmart Credit Agreements and any accrued but unpaid interest may be declared immediately due and payable if an event of default occurs. Events of default under the Netsmart Credit Agreements include (but are not limited to) failure to make payments when due, a default in the performance of any covenants in the Netsmart Credit Agreements or related documents or certain changes of control of Intermediate and/or of Netsmart.

The Netsmart First Lien Credit Agreement requires Netsmart to maintain a total net leverage ratio of not more than 7.50 to 1.00 at December 31, 2017, with gradual step downs to 6.75 to 1.00 for the quarter ending March 31, 2019 and each three-month period ending thereafter. The Netsmart Second Lien Credit Agreement requires Netsmart to maintain a total net leverage ratio of not more than 8.50 to 1.00 at December 31, 2017, with gradual step downs to 7.75 to 1.00 for the quarter ending March 31, 2019 and each three-month period ending thereafter. Netsmart was in compliance with all covenants under its Credit Agreements as of December 31, 2017.

As of December 31, 2017, $479.3 million under the Netsmart First Lien Term Loan and $167.0 million under the Netsmart Second Lien Term Loan were outstanding.

As of December 31, 2017 and 2016, the interest rate on the borrowings under the Netsmart First Lien Term Loan was Adjusted LIBO plus 4.50%, which totaled 6.19% and 5.50%, respectively. The interest rate applicable to the Netsmart Revolving Facility was Adjusted LIBO plus 4.75%, which totaled 6.44% as of December 31, 2017, however, there have been no borrowings under the Netsmart Revolving Facility since its inception. As of December 31, 2017 and 2016, the interest rate on the borrowings under the Netsmart Second Lien Term Loan was Adjusted LIBO plus 9.5%, which totaled 10.98% and 10.5%, respectively.

As of December 31, 2017, Netsmart had $50.0 million available borrowing capacity, net of outstanding letters of credit, under the Netsmart Revolving Facility. Additional amounts of up to $200.2 million as of December 31, 2017 are available under Netsmart's Credit Agreements based upon Netsmart's net leverage ratio at the time of the request. There can be no assurance that Netsmart will be able to draw on the full available balance of the Netsmart Revolving

Facility if the financial institutions that have extended such credit commitments become unwilling or unable to fund such borrowings.

The following table summarizes future debt payments as of December 31, 2017:

(In thousands)	Total	2018	2019	2020	2021	2022	Thereafter
1.25% Cash Convertible Senior Notes [1]	$345,000	$ 0	$ 0	$345,000	$ 0	$ 0	$ 0
Term Loan							