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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 8, 2024

BENITEC BIOPHARMA INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-39267
(Commission
File Number)

84-4620206
(IRS Employer
Identification No.)

3940 Trust Way, Hayward, California
(Address of Principal Executive Offices)

94545
(Zip Code)

Registrant's Telephone Number, Including Area Code: (510) 780-0819

(Former Name or Former Address, if Changed Since Last Report): Not Applicable

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001	BNTC	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter)

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events.

As previously disclosed, on August 29, 2024, the stockholders of Benitec Biopharma Inc. (the “Company”) approved the potential issuance of shares of the Company’s common stock, par value \$0.0001 per share, issuable upon the exercise of certain of the Company’s outstanding warrants pursuant to Nasdaq Listing Rule 5635(b). Following stockholder approval, holders of the warrants are eligible to waive the 19.99% beneficial ownership limitations contained in the warrants. Following the stockholder approval, Suvretta Capital Management, LLC (“Suvretta Capital”) waived the 19.99% beneficial ownership limitation contained in the warrants held by funds managed by Suvretta Capital (the “Suvretta Funds”), and agreed with the Company that Suvretta Capital will not be permitted to complete an exercise of the warrants held by the Suvretta Funds to the extent the beneficial ownership by Suvretta Capital of the Company’s common stock would exceed 49.9% following such exercise. A copy of the letter agreement with Suvretta Capital is attached hereto as Exhibit 99.1.

In connection with the waiver of its 19.99% beneficial ownership limitation and the establishment of its new 49.9% beneficial ownership limitation, the Suvretta Funds exercised (i) 588,236 of the Company’s Series 2 warrants issued September 15, 2022 at an exercise price of \$1.9299 per share, (ii) 5,181,347 of the Company’s warrants issued August 11, 2023 at an exercise price of \$3.86 per share, and (iii) 1,368,180 pre-funded warrants with an exercise price of \$0.0001 per share. Pursuant to these exercises, on October 4, 2024, the Company issued the Suvretta Funds an aggregate of 7,137,763 shares of common stock, for aggregate proceeds of approximately \$21,135,373.

Following the completion of the above warrant exercises by the Suvretta Funds and warrant exercises by other holders, as of October 8, 2024, the Company has 17,893,765 outstanding shares of common stock.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
99.1	Letter Agreement, dated as of September 26, 2024, by and between the Company and Suvretta Capital Management, LLC
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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, thereunto duly authorized.

BENITEC BIOPHARMA INC.

Date: October 8, 2024

By: /s/ Jerel A. Banks

Name: Jerel A. Banks

Title: Chief Executive Officer

BENITEC BIOPHARMA INC.

September 26, 2024

Suvretta Capital Management, LLC
540 Madison Ave., 7th Floor
New York, NY 10022
Attention: Andrew Nathanson, General Counsel &
Chief Compliance Officer

Ladies and Gentlemen:

Reference is made to that certain confirmatory letter, dated May 23, 2024 (the "Confirmatory Letter"), between Benitec Biopharma Inc., a Delaware corporation (the "Company") and Suvretta Capital Management, LLC (including its affiliated funds holding the warrants referenced below, "Suvretta Capital"). Reference is further made to the following:

- (i) the pre-funded warrants issued to Averill Master Fund, Ltd. (the "Averill Fund") on September 15, 2022, with respect to an aggregate of **588,235** underlying shares of the Company's common stock ("Common Stock") (the "2022 Pre-funded Warrant") and Series 2 warrants issued to the Averill Fund on September 15, 2022, with respect to an aggregate of **588,236** underlying shares of Common Stock (the "2022 Coverage Warrant" and together with the 2022 Pre-funded Warrant, the "2022 Warrants") and the Warrant Agency Agreement (as defined in the 2022 Coverage Warrant);
- (ii) the pre-funded warrants (the "2023 Pre-Funded Warrant") issued to the Averill Fund and the Averill Madison Master Fund, Ltd. (the "Averill Madison Fund" and, together with the Averill Fund, the "Funds") on August 11, 2023, with respect to an aggregate of **5,181,347** underlying shares of the Company's Common Stock and common warrants issued to the Averill Fund and the Averill Madison Fund on August 11, 2023, with respect to an aggregate of **5,181,347** underlying shares of Common Stock (the "2023 Common Warrant" and together with the 2023 Pre-Funded Warrant, the "2023 Warrants") and the Warrant Agency Agreement (as defined in the 2023 Warrants); and
- (iii) the pre-funded warrants issued to the Funds on April 22, 2024, with respect to an aggregate of **2,002,556** underlying shares of Common Stock (the "2024 Warrants" and together with the 2023 Warrants and the 2022 Warrants, the "Warrants").

The purpose of this letter agreement is to memorialize the Company's and Suvretta Capital's understanding with respect to the Beneficial Ownership Limitation set forth in each Warrant (as such term is defined in each Warrant) following stockholder approval on August 29, 2024 of a proposal to remove the 19.99% beneficial ownership limitation in the Warrants for purposes of complying with Nasdaq Listing Rule 5635(b). To the extent the terms of this agreement conflict with the terms of the Confirmatory Letter, the parties agree that the terms of this letter agreement shall control. The Company and Suvretta Capital hereby agree as follows:

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1. Suvretta Capital hereby waives the 19.99% beneficial ownership limitation as such right to waive is contemplated under the Warrants and the Company hereby agrees to waive any time period that would not make such waiver by Suvretta Capital effective as of the date of this letter agreement.
 2. Suvretta Capital and the Company agree that Suvretta Capital shall not be permitted to complete an exercise of shares underlying any of the Warrants to the extent the beneficial ownership of Suvretta Capital (calculated as provided in the applicable Warrants) following such exercise would exceed 49.9% as of the date of such exercise.
 3. Promptly following the date hereof, Suvretta Capital shall deliver a notice of exercise with respect to the Warrants (or a portion thereof), such that immediately following such exercise and the receipt of the applicable shares of Common Stock underlying such Warrants so exercised, together with the Common Stock held by Suvretta Capital, Suvretta Capital will beneficially own 49.9% of the outstanding shares of Common Stock, based on the Company's representation that as of the date hereof, there are 10,555,728 shares of Common Stock outstanding.
 4. Prior to the exercise of the Warrants as contemplated herein, the Board of Directors of the Company (the "Board") shall take all such actions as are reasonably necessary to approve any acquisition of any direct or indirect pecuniary interest of Common Stock (or any securities exercisable or exchangeable for Common Stock) in connection with any purchase from the Company of the shares underlying the Warrants by Suvretta Capital (or its affiliates) to the extent deemed a director for purposes of Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as a so-called "director by deputization", for the purpose of exempting, to the extent available under applicable law, any such acquisitions from Section 16(b) of the Exchange Act as permitted by Rule 16b-3(d)(1) promulgated under the Exchange Act.
 5. Consistent with the underlying transaction documents in connection with the original issuance of the Warrants, the Board shall take all such actions as are reasonably necessary to approve any acquisition from the Company of the shares underlying the Warrants by Suvretta Capital (or its affiliates) for purposes of Section 203 of the Delaware General Corporate Law and any other restrictive provision of any "business combination," "fair price," "moratorium," "control share acquisition," "takeover," "interested shareholder" or other similar anti-takeover statute or regulation that might apply to the exercise of the Warrants.

Please confirm your agreement with the foregoing by signing and returning one copy of this letter agreement to the undersigned, whereupon this letter agreement shall become a binding agreement among the Parties.

[Signature Page Follows]

Benitec Biopharma Inc.

By: /s/ Megan Boston

Name: Megan Boston

Title: Executive Director

Accepted and agreed as of the date first written above, by:

**Suvretta Capital Management, LLC, on behalf of itself
and Averill Master Fund, Ltd. and Averill Madison
Master Fund, Ltd.**

By: /s/ Andrew Nathanson

Name: Andrew Nathanson

Title: GC/CCO