

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

FORM 8-K/A
(Amendment No. 2)

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

Date of Report (Date of earliest event reported): May 13, 2022

22nd Century Group, Inc.
(Exact Name of Registrant as Specified in Charter)

Nevada
(State or Other Jurisdiction of
Incorporation)

001-36338
(Commission File Number)

98-0468420
(I.R.S. Employer
Identification No.)

500 Seneca Street, Suite 507, Buffalo, New York
(Address of Principal Executive Office)

14204
(Zip Code)

Registrant's telephone number, including area code: (716) 270-1523

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))

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.

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

Title of each class	Trading symbol	Name of each exchange on which registered
Common Stock, \$0.00001 par value	XXII	NASDAQ Capital Market

EXPLANATORY NOTE

On May 18, 2022, 22nd Century Group, Inc. (the "Company"), filed with the U.S. Securities and Exchange Commission a Current Report on Form 8-K (the "Original Form 8-K") regarding the completion of the Company's acquisition, on May 13, 2022, of substantially all of the assets of GVB Biopharma's ("GVB") business dedicated to hemp-based cannabinoid extraction, refinement, contract manufacturing and product development (the "Transaction").

On July 20, 2022, the Company filed Amendment No. 1 to the Original Form 8-K to include an updated Item 9.01(a) Financial Statements of Business Acquired and Item 9.01(b) Pro Forma Financial information.

The Company is filing this Amendment No. 2 to the Original Form 8-K to file the following updated pro forma information reflecting the Transaction:

- The unaudited pro forma statement of comprehensive income for the six months ended June 30, 2022 and the related notes thereto after giving effect to the Transaction.

Item 9.01(d): Financial Statements and Exhibits.

Exhibits.

[Exhibit 99.1](#) [The unaudited pro forma statement of comprehensive income for the six-month period ended June 30, 2022 and the related notes thereto after giving effect to the Transaction \(filed herewith\).](#)

Exhibit 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 hereunto duly authorized.

22nd Century Group, Inc.

Date: September 2, 2022

/s/ R. Hugh Kinsman
R. Hugh Kinsman
Chief Financial Officer

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

Description of the Transaction

On May 13, 2022, 22nd Century Group, Inc. (the “Company”) entered into a Reorganization and Acquisition Agreement (the “Reorganization Agreement”) with GVB Biopharma (“GVB”). Under the terms of the Reorganization Agreement, the Company acquired substantially all of the assets of GVB’s business dedicated to hemp-based cannabinoid extraction, refinement, contract manufacturing and product development (the “Transaction”).

The aggregate consideration for the Transaction consisted of (i) the assumption of approximately \$4.6 million of debt, (ii) the direct payment of certain third party transaction costs incurred by GVB in connection with the Transaction totaling approximately \$1.7 million and (iii) the issuance to GVB of approximately 32,900,000 unregistered shares of common stock of the Company (the “Shares”), for total consideration of \$53.4 million. The Shares are subject to a lock-up and restrictions on transfer for at least six months following closing and thereafter, one-third of the Shares will be released from the lock-up after six months, one-third will be released from the lock-up after nine months and the remainder will be released after one year.

The Transaction was accounted for by applying the guidance under Accounting Standards Codification 805, *Business Combinations* (ASC 805). In accordance with ASC 805, the acquired assets and liabilities were recorded by the Company at estimated fair values as of May 13, 2022, the date the acquisition was completed. The following unaudited pro forma combined financial information and notes present the pro forma impact of the GVB acquisition on the Company’s historical results of operations for the six month period ended June 30, 2022. The unaudited pro forma combined financial information has been prepared in accordance with Article 11 of Regulation S-X. The pro forma adjustments are based on the best available information and certain estimates and assumptions. The acquisition method of accounting is dependent upon certain valuations and other procedures that have not been completed; therefore, there is not sufficient information to determine the final measurement.

The unaudited pro forma condensed combined financial information is presented for informational purposes only and should not be considered indicative of actual results of operations that would have been achieved had the acquisition of GVB been consummated on the dates indicated, and do not purport to be indicative of the financial condition or results of operations as of any future date or for any future period. Our actual financial condition and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors.

Management believes that the assumptions provide a reasonable basis for presenting the significant effects of the transaction accounting adjustments, as contemplated, and the pro forma adjustments give appropriate effect to those assumptions. The pro forma adjustments are preliminary and have been made solely for the purpose of providing unaudited pro forma combined financial data. Differences between these preliminary estimates and the final purchase accounting will occur during 2022 and these differences could have a material impact on the accompanying unaudited pro forma condensed combined financial statements and the combined Company’s future results of operations and financial position.

22nd CENTURY GROUP, INC. AND SUBSIDIARIES
Unaudited Pro Forma Condensed Combined Statement of Operations and Comprehensive Loss
For the six month period ended June 30, 2022
(currency and share amounts in thousands, except per share amounts)

	<u>Historical</u>		<u>Pro forma adjustments</u>	<u>Pro forma combined (unaudited)</u>
	<u>Six-month period ended</u>			
	<u>22nd Century (unaudited)</u>	<u>GVB Biopharma (unaudited)</u>		
	(A)	(B)		
Revenue	\$ 23,521	\$ 10,640	\$ -	\$ 34,161
Cost of goods sold	\$ (22,321)	\$ (9,317)	\$ (4)(C)	\$ (31,642)
Gross profit	\$ 1,200	\$ 1,323	\$ (4)	\$ 2,519
Research and development	\$ (3,036)	\$ (64)	\$ -	\$ (3,100)
Sales, general and administrative	\$ (16,785)	\$ (3,856)	\$ (11)(C)	\$ (20,652)
Other income (expense):				
Unrealized loss on investments	\$ (1,702)	\$ -	\$ -	\$ (1,702)
Realized gain (loss) on short-term investment securities	\$ (108)	\$ -	\$ -	\$ (108)
Interest income, net	\$ 98	\$ -	\$ -	\$ 98
Interest expense	\$ (82)	\$ (178)	\$ -	\$ (260)
Loss before income taxes	\$ (20,415)	\$ (2,775)	\$ (15)	\$ (23,097)
Income taxes	\$ -	\$ 429	\$ -	\$ 429
Net loss	\$ (20,415)	\$ (2,346)	\$ (15)	\$ (22,668)
Other comprehensive loss:				
Unrealized loss on short-term investment securities	\$ (469)	\$ -	\$ -	\$ (469)
Reclassification of (gain) loss to net loss	\$ 108	\$ -	\$ -	\$ 108
Comprehensive loss	\$ (20,776)	\$ (2,346)	\$ (15)	\$ (23,137)
Net loss per common share - basic and diluted	\$ (0.12)	\$ -	\$ -	\$ (0.13)
Weighted average common shares outstanding - basic and diluted (in thousands)	172,632	172,632	172,632	172,632

The accompanying notes are an integral part of the Unaudited Pro Forma Condensed Combined Financial Statements.

Notes to Pro Forma Condensed Combined Financial Statements
(in thousands, except price per share amounts)

Basis of Pro Forma Presentation

We derived the unaudited pro forma condensed combined financial information by applying pro forma adjustments to the consolidated financial statements for the Company and GVB for the six-month period ended June 30, 2022. The unaudited pro forma condensed combined financial statements do not reflect any revenue enhancements or any cost savings from operating efficiencies, synergies or other restructurings that could result from the acquisition. The unaudited pro forma condensed combined statement of operations and comprehensive loss for the six-month period ended June 30, 2022 gives pro forma effect to the GVB acquisition, as if the acquisition had been completed on January 1, 2021.

The unaudited pro forma condensed combined financial information is presented for informational purposes only and should not be considered indicative of actual results of operations that would have been achieved had the acquisition of GVB been consummated on the dates indicated, and do not purport to be indicative of the financial condition or results of operations as of any future date or for any future period. Our actual financial condition and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors.

There were no material transactions between the Company and GVB during the periods presented in the unaudited pro forma condensed combined financial statements that would need to be eliminated. The unaudited pro forma condensed combined financial statements should be read in conjunction with the accompanying footnotes. In addition, the unaudited pro forma condensed combined financial information was based on and should be read in conjunction with the following historical consolidated financial statements and accompanying notes to the consolidated financial statements of the Company and GVB for the applicable periods:

- historical unaudited consolidated financial statements of the Company as of June 30, 2022 and for the six-month period ended June 30, 2022 and the related notes to the consolidated financial statements included in the Company's Quarterly Report on Form 10-Q that was filed with the SEC on August 9, 2022; and

- the unaudited condensed combined consolidated statements of income, cash flows of income, cash flows and changes in equity of GVB for the three month periods ended March 31, 2021 and 2022, and the notes related thereto, filed as Exhibit 99.2 to the Company's Current Report on Form 8-K/A filed with the SEC on July 20, 2022.

Conforming Accounting Policies

The Company has completed its analysis of GVB's accounting policies. The Company is not aware of any differences in accounting policies and no conforming adjustment has been made to the unaudited pro forma condensed combined financial statements.

Pro Forma Adjustments

- (A) Represents the Company's historical condensed combined statement of operations and comprehensive loss for the six-month period ended June 30, 2022, which includes GVB for the period from May 13, 2022 through June 30, 2022.
 - (B) Represents the historical condensed combined statement of operations and comprehensive loss of GVB for the period from January 1, 2022 through May 13, 2022, the closing date of the Transaction. The results of GVB were included in the Company's consolidated operating results beginning May 13, 2022 through June 30, 2022 as outlined in (A).
 - (C) Represents certain operations which were excluded from the Transaction. Cost of goods sold of \$4 and Sales, general and administrative of \$11 were excluded from the condensed combined statement of operations and comprehensive loss for the six-month period ended June 30, 2022.
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