

VERSICOR INC /CA
Form 8-K
March 03, 2003

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): **February 21, 2003**

Versicor Inc.

(Exact Name of Registrant As Specified in Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

000-31145
(Commission

File Number)

04-3278032
(I.R.S. Employer

Identification Number)

455 South Gulph Road, King of Prussia, PA 19406

(Address of Principal Executive Offices) (Zip Code)

(610) 491-2200

(Registrant's telephone number, including area code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report.)

Item 2. Acquisition or Disposition of Assets

Effective February 28, 2003, pursuant to the Agreement and Plan of Merger entered into as of July 30, 2002 (as amended, the Merger Agreement) between Versicor Inc. and Biosearch Italia S.p.A. Biosearch was merged with and into Versicor, with Versicor continuing as the surviving corporation (the Merger). Pursuant to the Merger Agreement and as a result of the Merger, each Biosearch ordinary share outstanding at the effective time of the Merger was converted into the right to receive 1.77 shares of Versicor common stock.

The issuance of shares of Versicor common stock under the Merger Agreement as described above was registered under the Securities Act of 1933, as amended, pursuant to Versicor s registration statement on Form S-4 (File No. 333-98935) filed with the Securities and Exchange Commission, or SEC, on August 29, 2002 and amended on October 9, 2002, October 31, 2002 and November 5, 2002 and declared effective on November 5, 2002 (as amended, the Registration Statement). The Registration Statement included Versicor s proxy statement/prospectus, which contains additional information about this transaction.

The foregoing description of the Merger and the Merger Agreement is qualified in its entirety by reference to the Merger Agreement. Copies of the following documents were filed by Versicor with the SEC on the dates set forth below and are incorporated herein by reference:

the Agreement and Plan of Merger entered into on July 30, 2002, between Versicor Inc. and Biosearch Italia S.p.A. is attached as Exhibit 2.1 to Versicor s Current Report on Form 8-K filed with the SEC on July 31, 2002;

the First Amendment to Agreement and Plan of Merger entered into on August 14, 2002, between Versicor Inc. and Biosearch Italia S.p.A. is attached as Exhibit 2.2 to Versicor s registration statement on Form S-4 (File no. 333-98935) filed with the SEC on August 29, 2002; and

the Second Amendment to Agreement and Plan of Merger entered into on October 29, 2002, between Versicor Inc. and Biosearch Italia S.p.A. is attached as Exhibit 2.3 to Versicor s registration statement on Form S-4/A filed with the SEC on November 5, 2002.

In addition, the press release that Versicor issued on March 3, 2003, relating to the consummation of the Merger with Biosearch is attached to this report as Exhibit 99.1 and is incorporated herein by reference.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits

(a) *Financial Statements of Businesses Acquired.*

In reliance on general instruction B.3. of Form 8-K, this information has not been included.

The consolidated financial statements of Biosearch including Biosearch's consolidated balance sheet at December 31, 2001 and 2000, the consolidated statements of operations and stockholders' equity for each of the years ended December 31, 2001 and 2000 were previously filed with the SEC in Versicor's Registration Statement.

The unaudited consolidated financial statements of Biosearch including Biosearch's unaudited consolidated balance sheet at June 30, 2002 and the unaudited consolidated statements of operations for the six months ended June 30, 2002 and 2001 were previously filed with the SEC in Versicor's Registration Statement.

(b) *Pro Forma Financial Information.*

In reliance on general instruction B.3. of Form 8-K, this information has not been included.

The unaudited pro forma condensed consolidated financial information (based on the historical U.S. GAAP financial statements of Versicor and Biosearch) as of and for the six months ended June 30, 2002 and the year ended December 31, 2001, were previously filed by the registrant with the SEC in Versicor's Registration Statement. The unaudited pro forma condensed consolidated balance sheet is as of June 30, 2002 and is presented as if the merger occurred as of that date. The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 2001 and the for the six months ended June 30, 2002 assume that the merger occurred as of January 1, 2001.

(c) *Exhibits.*

The following exhibits are part of this current report on Form 8-K and are numbered in accordance with Item 601 of Regulation S-K.

Exhibit No.	Description
2.1	Agreement and Plan of Merger dated as of July 30, 2002, between Versicor Inc. and Biosearch Italia S.p.A. (previously filed as Exhibit 2.1 to Versicor's Current Report on Form 8-K filed with the SEC on July 31, 2002, and incorporated herein by reference).
2.2	First Amendment to Agreement and Plan of Merger entered into on August 14, 2002, between Versicor Inc. and Biosearch Italia S.p.A. (previously filed as Exhibit 2.2 to Versicor's registration statement on Form S-4 (File no. 333-98935) filed with the SEC on August 29, 2002, and incorporated herein by reference).

- 2.3 Second Amendment to Agreement and Plan of Merger entered into on October 29, 2002, between Versicor Inc. and Biosearch Italia S.p.A. (previously filed as Exhibit 2.3 to Versicor's registration statement on Form S-4/A (File no. 333-98935) filed with the SEC on November 5, 2002, and incorporated herein by reference).
- 99.1 Press release of Versicor Inc. dated March 3, 2003, reporting the consummation of the merger of Biosearch Italia S.p.A. with and into Versicor Inc.

Item 9. Regulation FD Disclosure

On February 21, 2003, Borsa Italiana S.p.A. (*Borsa Italiana*) approved Versicor's common stock for listing on the *Nuovo Mercato* in Italy, subject to Versicor filing with the *Commissione Nazionale per le Società e la Borsa* (*CONSOB*) a listing prospectus, CONSOB delivering an opinion as to the ability of Versicor to comply with certain disclosure requirements and an opinion as to certain financial reporting requirements, and Versicor registering the *Atto di Fusione*, or the plan of merger, in the Companies' Register of Milan. On February 28, 2003, Versicor filed with CONSOB its listing prospectus and, on or before February 28, 2003, CONSOB delivered its opinions. *Borsa Italiana* has determined that Versicor's common stock will commence trading on Italy's *Nuovo Mercato* on March 3, 2003.

Versicor's Italian listing prospectus included, among other information, the unaudited pro forma condensed consolidated financial statements (based on the historical U.S. GAAP financial statements of Versicor and Biosearch) as of and for the nine months ended September 30, 2002 and the year ended December 31, 2001. The unaudited pro forma condensed consolidated balance sheets as of December 31, 2001 and September 30, 2002 are presented as if the Merger occurred as of December 31, 2001 and September 30, 2002, respectively. The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 2001 and for the nine months ended September 30, 2002 assume that the Merger occurred as of January 1, 2001.

An English translation of the unaudited pro forma financial statements is furnished below, except that the paragraph immediately preceding the financial statements has been modified to reflect that, in lieu of the audited financial statements and related notes of Versicor and Biosearch being available to the public the registered offices of Versicor, Biosearch and *Borsa Italiana*, instead, (1) such audited financial statements and related notes are available to the public through the SEC's Internet website at www.sec.gov, which contains reports, proxy and information statements, and other information regarding our company that we file electronically with the SEC and (2) the audited financial statements and related notes of Versicor and Biosearch can be read and copied at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. We also added disclosure providing that information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330. Such unaudited pro forma financial statements have not been prepared in accordance with the Securities Act and the rules and regulations promulgated thereunder, but are furnished below for Regulation FD purposes.

**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED
FINANCIAL INFORMATION**

The following pro forma condensed consolidated financial information is based on the historical U.S. GAAP financial statements of Versicor Inc. (Versicor) and Biosearch Italia S.p.A. (Biosearch) and has been prepared to illustrate the effect of the merger of Biosearch with and into Versicor (the Merger).

The unaudited pro forma condensed consolidated balance sheets as of December 31, 2001 and September 30, 2002 are presented as if the Merger occurred as of December 31, 2001 and September 30, 2002, respectively. The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 2001 and for the nine months ended September 30, 2002 assume that the Merger occurred as of January 1, 2001.

The Merger will be accounted for under the purchase method of accounting. Under the purchase method of accounting, assets acquired and liabilities assumed are recorded at their estimated fair values. Goodwill is recorded to the extent that the merger consideration, including certain acquisition and closing costs, exceeds the fair value of the net assets acquired. The goodwill arising from the Merger will be recorded on Versicor 's balance sheet and will not be amortized; however it will be subject to future impairment tests. The value assigned to identifiable intangible assets will be amortized over their estimated useful lives of between five and ten years. Amounts allocated to in-process research and development will be expensed immediately. The final determination of the purchase price allocation will be based on the fair values of the assets, including the fair value of in-process research and development and other intangibles, and the fair value of liabilities assumed at the date of the closing of the Merger. The purchase price allocation will remain preliminary until Versicor is able to complete a third party valuation of significant intangible assets acquired, including in-process research and development, and evaluate the fair value of other assets and liabilities acquired. The final determination of the purchase price allocation is expected to be completed as soon as practicable after the date of the closing of the Merger. The final amounts allocated to assets and liabilities acquired could differ significantly from the amounts presented in the accompanying unaudited pro forma condensed consolidated financial information.

The pro forma adjustments are based upon generally available information and assumptions that Versicor 's management believes are reasonable. The unaudited condensed consolidated statements of operations are not necessarily indicative of our future results of operations or the results of operations which might have occurred had the proposed Merger occurred on January 1, 2001. The pro forma adjustments are described in the following footnotes.

The unaudited pro forma condensed consolidated financial information should be read in conjunction with the audited financial statements and related notes of Versicor and Biosearch, which are available to the public through the SEC 's Internet website at www.sec.gov, which contains reports, proxy and information statements, and other information regarding our company that we file electronically with the SEC. In addition, the audited financial statements and related notes of Versicor and Biosearch can be read and copied at the SEC 's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330.

Unaudited Pro Forma Condensed Consolidated

Statement of Operations of Versicor

For The Year Ended December 31, 2001

	Historical		Pro Forma		Pro Forma
	Historical	Biosearch	Adjustments		
	Versicor	(Note 2)			
	(in thousands, except per share amounts)				
Revenues:					
Collaborative research and development and contract services	\$ 6,145	\$ 3,360	\$ (509)	(a)	\$ 8,996
License fees and milestones	283	3,122	(1,649)	(a)	1,756
Total revenues	6,428	6,482	(2,158)		10,752
Operating expenses:					
Research and development	32,612	15,017	(2,159)	(a)	45,623
			153	(c)	
General and administrative	9,600	3,810			13,410
Gain on trading securities		(1,624)			(1,624)
Amortization of intangible assets			2,863	(b)	2,863
Amortization of negative goodwill		(1,136)			(1,136)
Total operating expenses	42,212	16,067	857		59,136
Loss from operations	(35,784)	(9,585)	(3,015)		(48,384)
Interest income (expense), net	2,997	(146)			2,851
Other	(60)				(60)
Net loss	\$ (32,847)	\$ (9,731)	\$ (3,015)		\$ (45,593)
Net loss per share, basic and diluted	\$ (1.42)	\$ (0.80)			\$ (1.02) (e)
Shares used in computing net loss per share, basic and diluted	23,090	12,154			44,614

Unaudited Pro Forma Condensed Consolidated

Statement of Operations of Versicor

For The Nine Months Ended September 30, 2002

	Historical		Pro Forma		
	Historical	Biosearch	Pro Forma	Adjustments	Pro Forma
	Versicor	(Note 2)			
	(in thousands, except per share amounts)				
Revenues:					
Collaborative research and development and contract services	\$ 4,563	\$ 3,136	\$ (544)	(a)	\$ 7,15
License fees and milestones	258				