

GENEREX BIOTECHNOLOGY CORP

Form 8-K

November 05, 2018

**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): November 1, 2018**

**GENEREX BIOTECHNOLOGY CORPORATION**

**(Exact name of registrant as specified in its charter)**

<b>Delaware</b>	<b>000-29169</b>	<b>98-0178636</b>
<b>(State or other jurisdiction of</b>	<b>(Commission File Number)</b>	<b>(I.R.S Employer Identification No.)</b>
<b>incorporation)</b>		

<b>10102 USA Today Way, Miramar, Florida</b>	<b>33025</b>
<b>(Address of principal executive offices)</b>	<b>(Zip Code)</b>

**Registrant's telephone number, including area code: (416) 364-2551**

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))

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**Item 1.01 Entry into a Material Definitive Agreement.**

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

A subsidiary of Generex Biotechnology Corporation ("Generex") has completed the acquisition of certain operating assets of Veneto Holdings, L.L.C. and its affiliates ("Veneto") contemplated by the Asset Purchase Agreement described in our Current Reports on Form 8-K dated October 3, 2018 and October 9, 2018.

As previously reported, on October 3, 2018, NuGenerex Distribution Solutions, LLC, a wholly-owned subsidiary of Generex entered into an Asset Purchase Agreement (the "Agreement") with Veneto. The Agreement was subsequently assigned to another wholly owned subsidiary, NuGenerex Distribution Solutions 2, LLC ("NuGenerex"). The Agreement provided for NuGenerex to purchase certain assets of Veneto and its subsidiaries (the "Assets") at two separate closings. The first closing took place on October 3, 2018 (the "First Closing Date"). ON the First Closing Date, NuGenerex purchased the operating assets of (a) seven dispensing pharmacies, (b) a wholesale pharmacy purchasing company, and (c) an in-network laboratory (the "First Closing Assets"). In consideration of the sale, transfer, and assignment of the First Closing Assets on the First Closing Date, NuGenerex executed and delivered to Veneto a secured promissory note in the principal amount of \$15,000,000 (the "First Closing Note") guaranteed by Generex and Generex's Chief Executive Officer, Joseph Moscato.

On November 1, 2018 (the "Second Closing Date"), NuGenerex consummated the acquisition of the balance of the Assets contemplated by the Agreement, consisting primarily of Veneto's management services organization (MSO) business and two additional ancillary service companies (the "Second Closing Assets") (the "Second Closing"). The aggregate price for the First Closing Assets and the Second Closing Assets was \$30,000,000. ,NuGenerex issued its promissory note in the principal amount of \$35,000,000 (the "New Note") consisting of the \$30,000,000 purchase price and a \$5,000,000 original issue discount, as the sole consideration payable on the Second Closing Date. In addition, NuGenerex has assumed approximately \$3.8 million in outstanding institutional debt of Veneto subsidiaries; NuGenerex will have use of the Veneto cash which would otherwise have been applied to paying down the debt. The parties entered into an amendment to Asset Purchase Agreement (the "Amendment") reflecting these changes and the application of the New Note proceeds described below. The New Note retires and replaces the First Closing Note.

Generex expects to raise funds through a combination of debt and equity to fund the required payment of the New Note. As of the date of this report, Generex is in discussions with several potential funding sources, but has no definitive arrangements for such funding.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

On November 1, 2018, in connection with the consummation of the Second Closing, NuGenerex issued to Veneto the New Note in the principal amount of \$35,000,000. The New Note calls for payment in full on or before January 15, 2019 with interest at an annual rate of 12% on the \$30,000,000 portion of the New Note representing the purchase price of the Assets. The New Note is guaranteed by Generex and Joseph Moscato, and secured by a first priority security interest in all of Generex's assets. Mr. Moscato's guaranty is limited to the principal amount of \$15,000,000.

Upon payment, the proceeds will be distributed as follows (i) \$9,000,000 will be paid by NuGenerex into a trust or other fiduciary account acceptable to Veneto to be used exclusively for satisfaction of certain contingent liabilities of Veneto and subsidiaries not being assumed by NuGenerex (for a period of time to be agreed upon), (ii) \$3,000,000 will be paid by NuGenerex into an escrow account to secure potential obligations of Veneto in respect of the Second Closing Date working capital and under the indemnification provisions of the Agreement, and (iii) the balance will be payable directly to Veneto in cash.

The New Note has standard events of default for non-payment of principal or interest, certain events of insolvency and bankruptcy of the maker and other uncured, non-monetary defaults.

In addition, pursuant to the Amendment, NuGenerex has assumed approximately \$3.8 million in outstanding institutional debt of Veneto subsidiaries. This debt includes \$1,560,000 under a term loan and \$1,852,000 under a revolving line of credit.

This Current Report contains summaries of the material terms of the Amendment and the New Note. The summaries of these documents are subject to, and are qualified in their entirety by, reference to these agreements, which are filed as exhibits hereto and incorporated herein by reference.

#### **Item 7.01 Regulation FD Disclosure.**

On November 2, 2018 the Company issued a press release regarding the acquisition. A copy of the press release is attached as Exhibit 99.1 hereto and incorporated herein by reference.

The foregoing information in Item 7.01 of this Current Report on Form 8-K is being furnished pursuant to this Item 7.01 and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, and it shall not be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or under the Exchange Act, whether made before or after the date hereof, except as expressly set forth by specific reference in such filing to Item 7.01 of this Current Report on Form 8-K.

By filing this Current Report on Form 8-K and furnishing this information, Generex makes no admission as to the materiality of Item 7.01 in this report. Generex undertakes no duty or obligation to publicly update or revise the information contained in this report, although it may do so from time to time as its management believes is appropriate. Any such updating may be made through the filing of other reports or documents with the SEC, through press releases or through other public disclosure.

#### **Forward-Looking Statements**

Statements in this report may contain certain forward-looking statements. All statements included concerning activities, events or developments that the Generex expects, believes or anticipates will or may occur in the future are forward-looking statements. Actual results could differ materially from the results discussed in the forward-looking statements. Forward-looking statements are based on current expectations and projections about future events and involve known and unknown risks, uncertainties and other factors that may cause actual results and performance to be materially different from any future results or performance expressed or implied by forward-looking statements. Known risks and uncertainties also include those identified from time to time in the reports filed by Generex with the Securities and Exchange Commission, which should be considered together with any forward-looking statement. No forward-looking statement is a guarantee of future results or events, and one should avoid placing undue reliance on such statements. Generex undertakes no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. Generex cannot be sure when or if it will be permitted by

regulatory agencies to undertake additional clinical trials or to commence any particular phase of clinical trials. Because of this, statements regarding the expected timing of clinical trials or ultimate regulatory approval cannot be regarded as actual predictions of when Generex will obtain regulatory approval for any “phase” of clinical trials or when it will obtain ultimate regulatory approval by a particular regulatory agency. Generex claims the protection of the safe harbor for forward-looking statements that is contained in the Private Securities Litigation Reform Act. Additional information on these and other risks, uncertainties and factors is included in the Company’s Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other documents filed with the SEC.

**Item 9.01 Financial Statements and Exhibits.**

(a) Financial Statements of a Business Acquired.

In accordance with Item 9.01(a), the Consolidated Financial Statements of Veneto Holdings, L.L.C. as of and for the years ended December 31, 2016 and 2017, and as of and for the nine months ended June 30, 2018 and 2017, will be filed by amendment to this Current Report within 71 days after the date of this Current Report.

(c) Pro forma financial information.

Pro Forma financial information required by Item 9.01(c) will be filed by amendment to this Current Report within 71 days after the date of Generex’s initial Current Report with respect to the Agreement.

(d) Exhibits.

The list of exhibits called included in this Current Report is incorporated by reference to the Exhibit Index filed with this report.

**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.

**GENEREX BIOTECHNOLOGY CORPORATION.**

Date: November 5, 2018 /s/ Mark A. Fletcher  
Mark A. Fletcher  
Executive Vice President and General Counsel

**Exhibit Index**

<b>Exhibit No.</b>	<b>Description</b>
10.1	Amendment to Asset Purchase Agreement by and between Veneto Holdings, L.L.C. and NuGenerex Distribution Solutions 2, LLC effective November 1, 2018
10.2	. Promissory Note in the amount of \$35,000,000 from NuGenerex Distribution Solutions 2, LLC to Veneto Holdings, L.L.C.
99.3	Press Release dated November 2, 2018



