

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2023

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 001-37347

XBiotech Inc.

(Exact name of registrant as specified in its charter)

British Columbia, Canada
(State or other jurisdiction of
incorporation or organization)

N/A
(I.R.S. Employer
Identification No.)

5217 Winnebago Ln, Austin, TX 78744
(Address of principal executive offices)

(512) 386-2900
(Registrant's telephone number, including area code)

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 per share	XBIT	NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

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.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of June 30, 2023, was approximately \$140,476,818, based upon the closing sales price for the registrant's common stock, as reported on the NASDAQ Global Market. The calculation of the aggregate market value of voting and non-voting common equity excludes 6,787,668 shares of common stock the registrant held by executive officers, directors and shareholders that the registrant concluded were affiliates of the registrant on that date. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of management or policies of the registrant or that such person is controlled by or under common control with the registrant.

As of March 15, 2024, 30,450,881 shares of the registrant's Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Auditor Firm PCAOB ID: 726

Auditor Name: Whitley Pann LLP

Auditor Location: Austin, Texas

XBiotech Inc.
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EXPLANATORY NOTE

This Amendment No. 2 (this “Amendment”) amends the Annual Report on Form 10-K for the year ended December 31, 2023 of XBiotech, Inc. (the “Company”), filed with the Securities and Exchange Commission (the “SEC”) on March 15, 2024 (as amended on April 24, 2024, the “Original Form 10-K”), for the purpose of amending and restating in its entirety Part III, Item 10 of the Original Form 10-K in order to correct certain information on directors provided therein.

Except as described above, no other changes have been made to the Original Form 10-K. The Original Form 10-K continues to speak as of the dates described in the Original Form 10-K, and we have not updated the disclosures contained therein to reflect any events that occurred subsequent to such dates. Accordingly, this Amendment should be read in conjunction with the Company’s filings made with the SEC subsequent to the filing of the Original Form 10-K, as information in such filings may update or supersede certain information contained in this Amendment.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The following table sets forth the name, age and positions held by each of our directors and executive officers for the fiscal year ended December 31, 2023.

<u>Name</u>	<u>Age</u>	<u>Position Held With the Company</u>
John Simard	62	Founder, President, Chief Executive Officer & Chairman
W. Thorpe McKenzie	76	Director
Jan-Paul Waldin, Esq.	75	Lead Director
Donald H. MacAdam	77	Director
Peter Libby, M.D.	77	Director
Dr. Sushma Shivaswamy, Ph.D.	46	Chief Scientific Officer
Angela Hu	41	Director of Finance

John Simard, Chairman of the Board, founded XBiotech Inc. in 2005 and has served as its President and Chief Executive Officer and Chairman of the Board since that time. Prior to XBiotech, he was founder and Chief Executive Officer of CTL ImmunoTherapies Corp., a developer of therapeutic vaccines to treat cancer and chronic infectious disease; he also founded AlleCure Corp., of Valencia, California, a developer of allergy treatments and immune modulating therapies. In 2001, AlleCure and CTL ImmunoTherapies merged to form MannKind Corp., where Mr. Simard served as Corporate Vice President and a board member. Mr. Simard holds a degree in Biochemistry from the University of Saskatchewan and attended graduate studies in Medical Biophysics/Immunology at the University of Toronto. He has over 240 issued and pending patents related to cancer therapy, therapeutic vaccines and therapeutic antibodies, as well as a substantial number of peer-reviewed scientific publications and the textbook “Immune Response Genes.”

Our Board of Directors believes that Mr. Simard’s qualifications to serve as a director include his extensive executive leadership experience, his role as founder of the company, his many years of service on our Board of Directors and as our Chief Executive Officer, and extensive knowledge of our company and industry.

Donald H. MacAdam has served on our Board of Directors since March 2018. Mr. MacAdam is a technology executive with extensive public and private company experience. He was formerly a director of Hammond Power Solutions (TSE:HPS.A), CEO of MBVax Bioscience, director of CTL Immunotherapies, CEO of Tm Bioscience (TSE), president of CRS Robotics (TSE), and CEO of L. A. Varah Ltd. (TSE). He is the inventor under several patents and the author of four books: Startup to IPO, Spontaneous Regression Cancer and the Immune System, The Resonance Model, and The Reinvention of Coley’s Toxins.

Mr. MacAdam was selected to serve on our Board of Directors based on his extensive experience in the pharmaceutical industry and scientific knowledge. Mr. MacAdam brings to the board his core business and leadership skills as well as his public company director experience. Mr. MacAdam was elected to serve as Chairman of the Compensation Committee.

W. Thorpe McKenzie has served on our Board of Directors since February 2009. Mr. McKenzie served as Managing Director of Pointer Management Company, Chattanooga, Tennessee, since its inception in July 1990 until December 31, 2015, and as of January 1, 2016, serves as its Senior Advisor. Mr. McKenzie co-founded Pointer Management Company in July 1990 to invest in hedge funds and similar types of partnerships utilizing a fund of funds approach. From August 1982 until June 1990, he was a private investor in New York City, and a director of several public and private companies. From May 1980 until July 1982, he was founding general partner at TIGER, a global hedge fund. From May 1971 until January 1980, he was a Vice President of Kidder, Peabody & Co., Inc. in New York. Mr. McKenzie is a graduate of the University of North Carolina in Chapel Hill and the Wharton Graduate division of the University of Pennsylvania in Philadelphia.

Mr. McKenzie was selected to serve on our Board of Directors based on his experience with corporate financings and his role as an investor in XBiotech. His extensive financial background qualifies him to serve as Chairman of our Audit Committee and as our “audit committee financial expert.”

Jan-Paul Waldin, Esq. has served on our Board of Directors since February 2018 and was appointed Lead Director in 2019. Mr. Waldin is a lawyer in Ontario, Canada and is a member of the Law Society of Upper Canada. He has been the principal of Waldin Barristers, a boutique civil litigation and advisory firm in Toronto, Canada, since January, 1981. Mr. Waldin practices trial and appellate advocacy principally in the area of complex corporate commercial litigation. He has acted as lead counsel in all levels of court in Ontario and Canada, including the Supreme Court of Canada, the Federal Court of Canada, the Ontario Court of Appeal, the Ontario Superior Court of Justice and before Canadian federal and provincial administrative tribunals. Mr. Waldin’s counsel and strategic advice is regularly sought by both publicly traded and closely held companies based in Canada, the European Union and the United States in connection with regulatory and administrative law matters, structuring shareholder relations and contentious corporate transactions. He has held directorships in private and multinational companies, principally in the manufacturing, aviation and pharmaceutical industries. A graduate of the University of Toronto and Osgoode Hall Law School, Mr. Waldin was called to the Ontario bar in 1976 and served his articles of clerkship under the late Mr. Justice Archie Campbell at the Policy Development Branch of the Ministry of the Attorney General for Ontario. He was Law Clerk to the Honourable Willard Z. Estey, then Chief Justice of the High Court of Justice of Ontario.

Mr. Waldin was selected to serve on our Board of Directors based on his knowledge and experience with publicly traded companies and corporate law, specifically in the pharmaceutical industry. Due to these qualifications, the Board has elected him to serve as Chairman of the Corporate Governance and Nominating Committee.

Peter Libby, M.D., has served on our Board of Directors since July 2019. Dr. Libby has been a cardiovascular medicine specialist at Brigham and Women's Hospital (BWH) Since October 1990. He became a full professor in March 1996 and since December 1998 has been the Mallinckrodt Professor of Medicine at Harvard Medical School (HMS). Dr. Libby received his medical degree from the University of California, San Diego School of Medicine. He completed a residency in internal medicine and a fellowship in cardiovascular disease at Peter Bent Brigham Hospital (now BWH). He also completed a research fellowship in cellular physiology at HMS. Dr. Libby is board certified in internal medicine and cardiovascular disease. The author of over 500 original peer-reviewed publications, over 580 reviews, chapters and other publications, Dr. Libby also serves as an editor of the leading textbook of cardiovascular medicine. Dr. Libby's clinical and research interests include vascular biology, atherosclerosis and preventive cardiology. The research laboratory that Dr. Libby directs studies the messengers created by the body that may produce arterial plaque and blockages, as well as normal and abnormal function of smooth muscle and endothelial cells. Dr. Libby is perennially named a top cardiologist. His research has received funding from the American Heart Association and National Institutes of Health. Dr. Libby has received research recognitions on four continents including the highest research awards from the American Heart Association and American College of Cardiology, the Gold Medal of the European Society of Cardiology, the Anitchkow award from the European Atherosclerosis Society, The Ernst Jung Gold Medal for Medicine, and the Earl Benditt award for vascular biology.

Mr. Libby was selected to serve on our Board based on his extensive knowledge and experience in cardiovascular medicine, a field in which he is regarded as one of the top key opinion leaders. He has also pioneered groundbreaking research, published in 2018, that demonstrates that a crucial mechanism behind heart attacks and stroke may involve inflammation of the type that is targeted by certain of the Company's key drug discovery, development and commercialization activities.

Sushma Shivaswamy, Ph.D. was appointed as the Company's Chief Scientific Officer (CSO) in November 2017. As CSO Dr. Shivaswamy oversees all scientific and technical operations with respect to research and development and Good Manufacturing Practice production of antibody. Dr. Shivaswamy has been with the Company since 2009 also holding positions of Director of Research & Development (2011-2015) and Senior Scientist (2009-2011). Prior to joining XBiotech, Dr. Shivaswamy was a postdoctoral researcher at the Center for Systems and Synthetic Biology at the University of Texas at Austin. She has a Ph.D. degree in Molecular Biology from the Center for Cellular and Molecular Biology, India.

Angela Hu joined XBiotech in April 2015, initially serving as the Financial Controller before transitioning to the position of Director of Finance in February 2023. Ms. Hu holds a Bachelor degree in finance and has previous experience as a senior accountant at National Instruments and Honeywell prior to joining XBiotech.

Board of Directors

Our Board of Directors currently consists of five directors. The Company invites and encourages all directors and nominees for director to attend the annual meeting of shareholders.

Board Leadership Structure

Our Board of Directors is currently chaired by John Simard, our Chief Executive Officer. Jan-Paul Waldin has been appointed as the Company's independent lead director. Our Board of Directors believes that, given the perspective, experience, and expertise that Mr. Simard brings as the founder of the Company, he is the most equipped individual to serve as both CEO and Chairman of the Board and his service in these capacities is appropriate and in the best interests of our Board of Directors, our company and our shareholders. Jan-Paul Waldin serves on our Board of Directors as lead director, is chairman of the corporate governance and nominating committee and a member of the audit committee and compensation committee. W. Thorpe McKenzie serves on our Board of Directors, is chairman of the audit committee and a member of the compensation committee and nominating and corporate governance committee. Donald MacAdam serves on our Board of Directors, is chairman of the compensation committee and a member of the audit committee and corporate governance and nominating committee.

Role of the Board in Risk Oversight

One of the key functions of our Board of Directors is informed oversight of our risk management process. The Board of Directors does not have a standing risk management committee, but rather administers this oversight function directly through the Board of Directors as a whole, as well as through various standing committees of our Board of Directors that address risks inherent in their respective areas of oversight. In particular, our Board of Directors is responsible for monitoring and assessing strategic risk exposure, and our Audit Committee has the responsibility to consider and discuss our major financial risk exposures and the steps our management has taken to monitor and control these exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. The Audit Committee also monitors compliance with legal and regulatory requirements. Our Nominating and Corporate Governance Committee monitors the effectiveness of our corporate governance practices, including whether they are successful in preventing illegal or improper liability-creating conduct. Our Compensation Committee assesses and monitors whether any of our compensation policies and programs has the potential to encourage excessive risk-taking.

Information Regarding Committees of the Board of Directors

The Board has three standing committees: an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. The following table provides membership and meeting information in 2023 for each of the Board committees:

<u>Name</u>	<u>Audit</u>	<u>Compensation</u>	<u>Nominating and Corporate Governance</u>
Jan-Paul Waldin	X	X	X*
W. Thorpe McKenzie	X*	X	X
Donald H. MacAdam	X	X*	X
Peter Libby			
Total meetings in 2023	4	1	1

* Committee Chairperson

Below is a description of each committee of the Board of Directors. Each of the committees has authority to engage legal counsel or other experts or consultants, as it deems appropriate to carry out its responsibilities.

Audit Committee

The Audit Committee of our Board of Directors was established by our Board of Directors in February 2015 in accordance with Section 3(a)(58) (A) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to oversee the Company’s corporate accounting and financial reporting processes and audits of its financial statements. For this purpose, our Audit Committee performs several functions. Our Audit Committee evaluates the performance of and assesses the qualifications of the independent auditors; determines and approves the engagement of the independent auditors; determines whether to retain or terminate the existing independent auditors or to appoint and engage new independent auditors; reviews and approves the retention of the independent auditors to perform any proposed permissible non-audit services; monitors the rotation of partners of the independent auditors on the Company’s audit engagement team as required by law; reviews and approves or rejects transactions between the Company and any related persons; confers with management and the independent auditors regarding the effectiveness of internal controls over financial reporting; establishes procedures, as required under applicable law, for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters and the confidential and anonymous submission by employees of concerns regarding questionable accounting or auditing matters; and meets to review the Company’s annual audited financial statements and quarterly financial statements with management and the independent auditor.

Our Audit Committee is currently composed of three directors: Mr. W. Thorpe McKenzie (Chair), Mr. Jan-Paul Waldin and Mr. Donald H. MacAdam. Our Board of Directors has adopted a written charter of the Audit Committee that is available to shareholders on the Company’s website at www.xbiotech.com. Our Board of Directors reviews the NASDAQ listing standards definition of independence for Audit Committee members on an annual basis and has determined that all members of our Audit Committee are independent as defined under NASDAQ listing standards, including the heightened standards applicable to audit committee members.

Our Board of Directors has determined that W. Thorpe McKenzie qualifies as an “audit committee financial expert,” as defined in applicable SEC rules. Our Board of Directors has made a qualitative assessment of Mr. McKenzie’s level of knowledge and experience based on a number of factors, including being a graduate of the Wharton Graduate division of the University of Pennsylvania, followed by a career in the finance industry spanning several decades, including extensive executive experience overseeing the preparation of financial statements and related matters. The Board also has determined that each Audit Committee member is sufficiently proficient in reading and understanding the company’s financial statements to serve on the Audit Committee.

The Audit Committee has reviewed and discussed with management of the Company and the independent auditor the audited financial statements for the fiscal year ended December 31, 2023. The Audit Committee has reviewed and discussed with the independent registered public accounting firm the matters required to be discussed and all communications required to be discussed by the applicable requirements of the Public Company Accounting Oversight Board (“PCAOB”) and the SEC. The Audit Committee has also received the written disclosures and the letter from the independent registered public accounting firm required by applicable requirements of the PCAOB regarding the independent accountants’ communications with the Audit Committee concerning independence, and has discussed with the independent registered public accounting firm the accounting firm’s independence. Based on the foregoing, the Audit Committee has recommended to the Board of Directors, and the Board subsequently approved the recommended, that the audited financial statements be included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2023, for filing with the SEC.

THE AUDIT COMMITTEE
Mr. W. Thorpe McKenzie (Chair)
Mr. Jan-Paul Waldin
Mr. Donald MacAdam

Compensation Committee

The Compensation Committee was established by our Board of Directors in February 2015 and is currently composed of three directors: Mr. Donald MacAdam (Chair), Mr. W. Thorpe McKenzie and Mr. Jan-Paul Waldin. The Board of Directors reviews the NASDAQ listing standards definition of independence for Compensation Committee members on an annual basis and has determined that all members of the Company’s Compensation Committee are independent as defined under NASDAQ listing standards, including the heightened standards applicable to compensation committee members, and are “outside directors” for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended. The Compensation Committee has adopted a written charter that is available to shareholders on the Company’s website at www.xbiotech.com.

Compensation Committee Processes and Procedures

The Compensation Committee meets annually and with greater frequency if necessary. Our Compensation Committee is responsible for the executive compensation programs for our executive officers and reports to our Board of Directors on its discussions, decisions and other actions. Our Compensation Committee reviews and approves corporate goals and objectives relating to the compensation of our Chief Executive Officer, evaluates the performance of our Chief Executive Officer in light of those goals and objectives, and determines and approves the compensation of our Chief Executive Officer based on such evaluation. Our Compensation Committee has the sole authority to determine our Chief Executive Officer’s compensation. In addition, our Compensation Committee, in consultation with our Chief Executive Officer, reviews and approves all compensation for other officers.

The charter of the Compensation Committee grants the Compensation Committee sole authority and right, at the expense of the Company, to retain or obtain the advice of legal counsel, compensation and other consultants, accountants, experts and advisers of its choice to assist the Committee in connection with its functions, including any studies or investigations, but only after conducting an independence assessment and taking into consideration all factors relevant to any adviser's independence from management, including those specified in Rule 6505(d)(3) of the Nasdaq Rules and those set forth in SEC rules. In particular, the Compensation Committee has the sole authority to retain compensation consultants to assist in its evaluation of executive and director compensation, including the authority to approve the consultant's reasonable fees and other retention terms. During the past fiscal year, the Compensation Committee determined not to utilize a third party compensation consultant. Due to the Company's current status as a smaller reporting company, it does not feel that the application of a compensation consultant is an efficient use of funds at the present time.

Under its charter, the Compensation Committee may form, and delegate authority to, subcommittees as appropriate. In 2017, the Board determined that for the sake of administrative convenience, it was desirable to delegate John Simard, the President, CEO and Chairman of the Board (the "Executive"), the authority to grant certain options pursuant to the terms of the Company's 2015 Equity Incentive Plan, as amended (the "2015 Plan"), subject to certain limitations including (i) without the prior written approval of the Board, Executive shall not in any one calendar year grant options to acquire more than 1,000,000 Shares in the aggregate or more than 100,000 options to any one individual, provided that options granted pursuant to any such written approval shall not be counted toward the foregoing thresholds; (ii) without the prior written approval of the Board, Executive shall not grant options to himself or to certain other executive officers; (iii) the exercise price for options granted by Executive shall be the closing price of the Shares on the date of grant and term of any such options shall not be greater than 10 years; and (iv) Executive shall make any and all option grants pursuant to the authority delegated by the Board and specify the material terms of such options and provide that such options will be subject to the terms and conditions of a stock option agreement to be prepared by the Company promptly following the date of grant. The purpose of this delegation of authority is to enhance the flexibility of option administration within the Company and to facilitate the timely grant of options to non-management employees, particularly new employees, within specified limits approved by the Compensation Committee.

The Compensation Committee will make adjustments, if any, to annual compensation, bonus and equity awards and establish new performance guidelines at one or more meetings during 2024. Generally, the Compensation Committee's process comprises two related elements: the determination of compensation levels and the establishment of performance objectives for the current year. For executives other than the Chief Executive Officer, the Compensation Committee solicits and considers evaluations and recommendations submitted to the Committee by the Chief Executive Officer. In the case of the Chief Executive Officer, the evaluation of his performance is conducted by the Compensation Committee, which determines any adjustments to his compensation as well as awards to be granted.

Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee is currently composed of three directors: Mr. Jan-Paul Waldin (Chair), Mr. W. Thorpe McKenzie and Mr. Donald MacAdam. All members of the Nominating and Corporate Governance Committee are independent as defined under NASDAQ listing standards. The Nominating and Corporate Governance Committee has adopted a written charter that is available to shareholders on the Company's website at www.xbiotech.com.

The Nominating and Corporate Governance Committee was established by the Board of Directors in February 2015 and is responsible for identifying, reviewing and evaluating candidates to serve as directors of the Company (consistent with criteria approved by the Board), reviewing and evaluating incumbent directors, recommending to the Board for selection candidates for election to the Board of Directors, making recommendations to the Board regarding the membership of the committees of the Board, assessing the performance of the Board, and monitoring the Company's adherence to its Code of Business Conduct and Ethics.

The Nominating and Corporate Governance Committee believes that candidates for director, both individually and collectively, should provide the integrity, experience, judgment, commitment (including having sufficient time to devote to the Company and level of participation), skills, diversity and expertise appropriate for the Company. In assessing the directors, both individually and collectively, the Nominating and Corporate Governance Committee may consider the current needs of the Board and the Company to maintain a balance of knowledge, experience and capability in various areas. However, the Nominating and Corporate Governance Committee retains the right to modify these qualifications from time to time. Candidates for director nominees are reviewed in the context of the current composition of the Board, the operating requirements of the Company and the long-term interests of shareholders. In conducting this assessment, the Nominating and Corporate Governance Committee typically considers diversity, age, skills and such other factors as it deems appropriate, given the current needs of the Board and the Company, to maintain a balance of knowledge, experience and capability on the Board. In the case of incumbent directors whose terms of office are set to expire, the Nominating and Corporate Governance Committee reviews these directors' overall service to the Company during their terms, including the number of meetings attended, level of participation, quality of performance and any other relationships and transactions that might impair the directors' independence. In the case of new director candidates, the Nominating and Corporate Governance Committee also determines whether the nominee is independent for NASDAQ purposes, which determination is based upon applicable NASDAQ listing standards, applicable SEC rules and regulations and the advice of counsel, if necessary. The Nominating and Corporate Governance Committee then uses its network of contacts to compile a list of potential candidates, but may also engage, if it deems appropriate, a professional search firm. The Nominating and Corporate Governance Committee will also consider candidates recommended by shareholders. In order to recommend a candidate for consideration, shareholders must follow the procedures described below under the heading "Advance Notice Provisions."

The Nominating and Corporate Governance Committee conducts any appropriate and necessary inquiries into the backgrounds and qualifications of possible candidates after considering the function and needs of the Board. The Nominating and Corporate Governance Committee meets to discuss and consider the candidates' qualifications and then selects a nominee for recommendation to the Board by majority vote.

Advance Notice Provisions

Our Articles contain provisions known as "Advance Notice Provisions", which provide that advance notice to the Company must be made and the procedures set out in the Articles must be followed for persons to be eligible for election to the Board of Directors. Nomination of persons for election to the Board of Directors may only be made at an annual meeting of shareholders or at a special meeting of shareholders called for any purpose, which includes the election of directors.

Among other things, the Advance Notice Provisions fix a deadline by which holders of record of common shares must submit director nominations to us prior to any annual or special meetings of shareholders and set forth the specific information that a shareholder must include in the written notice to the Company for an effective nomination to occur. No person will be eligible for election as a director of the Company unless nominated in accordance with the provisions of the Advance Notice Provisions.

In the case of an annual meeting of shareholders, notice to us must be made not less than 30 or more than 65 days prior to the date of the annual meeting; provided, however, that if the annual meeting is to be held on a date that is less than 50 days after the date on which the first public announcement of the date of the annual meeting was made, notice may be made not later than the close of business on the 10th day following such public announcement. In the case of a special meeting of shareholders (which is not also an annual meeting), notice to us must be made not later than the close of business on the 15th day following the day on which the first public announcement of the date of the special meeting was made.

The Board of Directors may, in its sole discretion, waive any requirement of the Advance Notice Provisions.

Meetings of the Board of Directors

The Board of Directors met four times during 2023, the Company's last fiscal year. All directors who served in 2023 attended all of the meetings of the Board and of the committees on which they served.

Communications With the Board of Directors

The Company's Board has adopted a formal process by which shareholders and other interested parties may communicate with the Board or any of its directors. Shareholders and other interested parties who wish to communicate with the Board may do so by sending written communications addressed to the Secretary of XBiotech Inc. at 5217 Winnebago Lane 100 Austin, TX 78744. Each communication must set forth the name and address of the interested party or the Company shareholder on whose behalf the communication is sent and the number of Company shares that are owned beneficially by such shareholder as of the date of the communication. Each communication will be reviewed by the Company's Secretary to determine whether it is appropriate for presentation to the Board or relevant directors. Communications determined by the Company's Secretary to be appropriate for presentation to the Board or any relevant directors are submitted to the Board or relevant directors on a periodic basis.

Code of Ethics

The Company has adopted a Code of Business Conduct and Ethics that applies to all directors, officers and employees. The Code of Business Conduct and Ethics is available on the Company's website at www.xbiotech.com under the Corporate Governance section of our Investor Relations page. If the Company makes any substantive amendments to the Code of Business Conduct and Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer, controller or persons performing similar functions, or grants any waiver from a provision of the Code of Business Conduct and Ethics to any of these specified individuals that is required to be disclosed pursuant to SEC rules and regulations, the Company will promptly disclose the nature of the amendment or waiver on its website.

Employee, Officer and Director Hedging and Pledging

The Company has adopted an Insider Trading Policy that applies to all directors, officers and employees. The Insider Trading Policy provides that the Company's directors, executive officers and their respective family members and others in their households (1) may not enter into hedging or monetization transactions or similar arrangements with respect to Company securities and (2) may not hold Company securities in a margin account or pledge Company securities as collateral for a loan. The Company does not have any practices or policies regarding the ability of employees other than officers to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds), or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of the Company's common stock.

Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires the Company's directors and executive officers, and persons who own more than ten percent of a registered class of the Company's equity securities, to file with the SEC initial reports of ownership and reports of changes in ownership of common stock and other equity securities of the Company. Officers, directors and greater than ten percent shareholders are required by SEC regulation to furnish the Company with copies of all Section 16(a) forms they file.

To the Company's knowledge, based solely on a review of the reports filed electronically with the SEC and written representations that no other reports were required, during the fiscal year ended December 31, 2023, all Section 16(a) filing requirements applicable to its officers, directors and greater than ten percent beneficial owners were complied with.

PART IV**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES****Financial Statements and Schedules**

(a)(3) Exhibits.

The exhibits listed in the Original Form 10-K and the exhibits listed below in this Amendment are filed with, or incorporated by reference in, this report.

Exhibit Number	Description
2.1†	<u>Asset Purchase Agreement, dated as of December 7, 2019, between XBiotech Inc. and Janssen Biotech, Inc. (incorporated by reference to Exhibit 2.1 to the Company’s Current Report on Form 8-K filed on December 30, 2019)</u>
3.1	<u>Certificate of Continuation dated September 23, 2005, issued by the Registrar of Companies, Province of British Columbia, Canada (incorporated by reference to Exhibit 3.1 to the Company’s Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>
3.2	<u>Notice of Articles, dated December 8, 2005, issued by the Registrar of Companies, Province of British Columbia, Canada (incorporated by reference to Exhibit 3.2 to the Company’s Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>
3.3	<u>Articles of XBiotech Inc. (incorporated by reference to Exhibit 3.3 to the Company’s Registration Statement on Form S-1/A filed with the SEC on March 27, 2015)</u>
4.1	<u>Description of Registrant’s securities registered pursuant to Section 12 of the Securities Exchange Act of 1934(incorporated by reference to Exhibit 4.1 to the Annual Report on Form 10-K filed with the SEC on March 15, 2022)</u>
10.1+	<u>Executive Employment Agreement dated as of March 22, 2005 between XBiotech and John Simard (incorporated by reference to Exhibit 10.1 to the Company’s Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>
10.2+	<u>Change in Control Agreement dated as of March 22, 2005 between XBiotech and John Simard (incorporated by reference to Exhibit 10.2 to the Company’s Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>
10.3	<u>Confidentiality and Assignment of Inventions Agreement dated as of March 22, 2005 between XBiotech and John Simard (incorporated by reference to Exhibit 10.3 to the Company’s Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>
10.4+	<u>XBiotech 2005 Incentive Stock Option Plan (Restated) (incorporated by reference to Exhibit 4.4 to the Company’s Registration Statement on Form S-8 filed with the SEC on October 19, 2015)</u>
10.5+	<u>Form of indemnification agreement between XBiotech and each director of XBiotech (incorporated by reference to Exhibit 10.5 to the Company’s Registration Statement on Form S-1 filed with the SEC on February 2, 2015)</u>
10.6	<u>Licensing Agreement dated January 16, 2015 between XBiotech USA, Inc. and Lonza Sales AG (portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 406 of the Securities Act, incorporated by reference to Exhibit 10.9 to the Company’s Registration Statement on Form S-1/A filed with the SEC on March 10, 2015)</u>
10.7	<u>Research and Collaboration Agreement dated December 15, 2014 by and between XBiotech USA, Inc. and the South Texas Blood & Tissue Center (portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 406 of the Securities Act of 1933, incorporated by reference to Exhibit 10.10 to the Company’s Registration Statement on Form S-1/A filed with the SEC on March 10, 2015)</u>

- 10.8+ [XBioTech Inc. 2015 Equity Incentive Plan \(incorporated by reference to Exhibit 10.11 to the Company's Registration Statement on Form S-1/A filed with the SEC on March 10, 2015\)](#)
- 10.9+ [Form of Incentive Share Option Agreement under the 2015 Equity Incentive Plan \(incorporated by reference to Exhibit 10.9 to the Annual Report on Form 10-K filed with the SEC on March 15, 2023\)](#)
- 10.10+ [Form of Nonqualified Share Option Agreement under the 2015 Equity Incentive Plan \(incorporated by reference to Exhibit 10.10 to the Annual Report on Form 10-K filed with the SEC on March 15, 2023\)](#)
- 10.11+ [Second Amendment to the XBioTech Inc. 2015 Equity Incentive Plan \(incorporated by reference to Annex A to the Registrant's Definitive Proxy Statement on Schedule 14A filed on April 29, 2020\)](#)
- 10.12+ [Third Amendment to the XBioTech Inc. 2015 Equity Incentive Plan \(incorporated by reference to Annex B to the Registrant's Definitive Proxy Statement on Schedule 14A filed on April 29, 2020\)](#)
- 10.13+ [Board Member Agreement, dated as of February 27, 2018, by and between XBioTech Inc. and Jan-Paul Waldin \(incorporated by reference to Exhibit 10.13 to the Annual Report on Form 10-K filed with the SEC on March 15, 2024\)](#)
- 10.14+ [Board Member Agreement, dated as of March 20, 2018, by and between XBioTech Inc. and Donald H. MacAdam \(incorporated by reference to Exhibit 10.14 to the Annual Report on Form 10-K filed with the SEC on March 15, 2024\)](#)
- 10.15+ [Board Member Agreement, dated as of July 10, 2019, by and between XBioTech Inc. and Peter Libby \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on July 16, 2019\)](#)
- 10.16† [IP Non-Assertion and License Agreement, dated as of December 30, 2019, between XBioTech Inc. and Janssen Biotech, Inc. \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on December 30, 2019\)](#)
- 10.17† [Clinical Manufacturing Agreement, dated as of December 30, 2019, between XBioTech Inc. and Janssen Biotech, Inc. \(incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on July 16, 2019\)](#)
- 10.18† [Transition Services Agreement, dated as of December 30, 2019, between XBioTech Inc. and Janssen Biotech, Inc. \(incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on July 16, 2019\)](#)
- 21.1 [List of subsidiaries \(incorporated by reference to Exhibit 21.1 to the Annual Report on Form 10-K filed with the SEC on March 15, 2024\)](#)
- 23.1 [Consent of Independent Registered Public Accounting Firm, Whitley Penn LLP \(incorporated by reference to Exhibit 23.1 to the Annual Report on Form 10-K filed with the SEC on March 15, 2024\)](#)
- 31.1* [Certification of the Principal Executive Officer Required Under Rules 13a-14\(a\) and 15d-14\(a\) of the Securities Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2* [Certification of the Principal Financial Officer Required Under Rules 13a-14\(a\) and 15d-14\(a\) of the Securities Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)

- 32.1** Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 32.2** Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 97 XBiotech Inc. Clawback Policy
- 101 The following financial statements from the XBiotech Inc. Annual Report on Form 10-K for the year ended December 31, 2023 are incorporated by reference to Exhibit 101 to the Annual Report on Form 10-K filed with the SEC on March 15, 2024, formatted in Inline Extensive Business Reporting Language (XBRL): (i) consolidated balance sheets, (ii) consolidated statements of operations, (iii) consolidated statements of comprehensive loss, (iv) consolidated statements of shareholders' equity; (v) consolidated statements of cash flows and (vi) notes to consolidated financial statements (detail tagged).
- 104* Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).
- † Certain identified information has been excluded from this exhibit because the Company does not believe it is material and is the type that the Company customarily treats as private and confidential. Redacted information is indicated by [*****]. The Company hereby agrees to furnish a copy of any omitted schedule or attachment to the Securities and Exchange Commission upon request.
- + Indicates management contract or compensatory plan
- * Filed herewith
- ** Exhibits 32.1 and 32.2 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that Section. Such exhibits shall not be deemed incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

Dated: May 1, 2024

XBIOTECH INC.

By: /s/ John Simard

John Simard

President and Chief Executive Officer

(Principal Executive Officer)

CERTIFICATIONS

I, John Simard, certify that:

1. I have reviewed this Amendment No. 2 to the Annual Report on Form 10-K/A of XBiotech Inc.; and
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

Date: May 1, 2024

/s/ John Simard

John Simard
Chief Executive Officer and President
(Principal Executive Officer)

CERTIFICATIONS

I, Angela Hu, certify that:

1. I have reviewed this Amendment No. 2 to the Annual Report on Form 10-K/A of XBiotech Inc.; and
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

Date: May 1, 2024

/s/ Angela Hu

Angela Hu
Director of Finance
(Principal Financial Officer)