

EXACT SCIENCES CORP
Form 10-K/A
February 12, 2004

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K/A
AMENDMENT NO. 1**

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

for the fiscal year ended: December 31, 2003

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

Commission File Number: 000-32179

EXACT SCIENCES CORPORATION

(Exact Name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

02-0478229

(IRS Employer
Identification No.)

100 Campus Drive, Marlborough, Massachusetts
(Address of principal executive offices)

01752
(zip code)

Registrant's telephone number, including area code: (508) 683-1200

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

None

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

Common Stock, \$.01 Par Value

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 report(s), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by checkmark whether or the registrant is an accelerated filer (as defined in the Exchange Act Rule 12B-2). Yes No

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The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, as of the last business day of the Registrant's most recently completed second fiscal quarter was approximately \$166,862,000 (based on the closing price of the Registrant's Common Stock on June 30, 2003 of \$10.95 per share).

The number of shares outstanding of the Registrant's \$.01 par value Common Stock as of January 28, 2003 was 19,249,252.

DOCUMENT INCORPORATED BY REFERENCE

The registrant intends to file a definitive proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2003. Portions of such proxy statement are incorporated by reference into Part III of the Form 10-K.

EXPLANATORY NOTE

This Amendment No. 1 to the Annual Report on Form 10-K (the "Form 10-K") of EXACT Sciences Corporation (the "Company") for the fiscal year ended December 31, 2003 is being filed solely for the purpose of correcting certain errors contained in Exhibits 31.1 and 31.2 to the original filing of the Form 10-K, filed on February 2, 2004. In accordance with Rule 12b-15 under the Securities Exchange Act of 1934, as amended, the complete text of Exhibits 31.1 and 31.2 as amended is set forth herein. In addition, in connection with the filing of this Amendment No. 1 and pursuant to Rule 12b-15, the Company has updated the dates of the certifications contained therein. The remainder of the Form 10-K is unchanged and is not reproduced in this Amendment No. 1. This Amendment No. 1 speaks as of the original filing date of the Form 10-K and does not reflect events occurring after the filing date of the original Form 10-K, or modify or update the disclosures therein in any way other than as required to reflect the amendment set forth below.

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PART IV

Item 15. Exhibits, Financial Statement Schedule and Reports on Form 8-K.

(a)(3) Exhibits

The following exhibits are filed as part of and incorporated by reference into this Form 10-K/A:

| Exhibit Number | Description |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 | Sixth Amended and Restated Certificate of Incorporation of the Registrant (previously filed as Exhibit 3.3 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 3.2 | Amended and Restated By-Laws of the Registrant (previously filed as Exhibit 3.4 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 4.1 | Specimen certificate representing the Registrant's Common Stock (previously filed as Exhibit 4.1 to our Registration Statement on Form S-1 (File No. 333- 48812), which is incorporated herein by reference) |
| 4.5 | Warrant between the Registrant and Laboratory Corporation of America Holdings, Inc. dated June 26, 2002 (previously filed as Exhibit 4.1 to our Quarterly Report on Form 10-Q for the quarterly period (File No. 000-32179) which is incorporated herein by reference) |
| 10.1* | 1995 Stock Option Plan (previously filed as Exhibit 10.1 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.2* | 2000 Stock Option and Incentive Plan (previously filed as Exhibit 10.2 to our Registration Statement on Form S-1 (File |

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| | No. 333-48812), which is incorporated herein by reference) |
| 10.3* | 2000 Employee Stock Purchase Plan (previously filed as Exhibit 10.3 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.4* | Sixth Amended and Restated Registration Rights Agreement between the Registrant and the parties named therein dated as of April 7, 2000 (previously filed as Exhibit 10.4 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.5* | Restricted Stock Purchase Agreement between the Registrant and Stanley N. Lapidus dated February 11, 1998 (previously filed as Exhibit 10.5 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.6* | Restricted Stock Purchase Agreement between the Registrant and Stanley N. Lapidus dated as of March 31, 2000 (previously filed as Exhibit 10.6 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.7* | Restricted Stock Purchase Agreement between the Registrant and Don M. Hardison dated as of June 23, 2000, as amended (previously filed as Exhibit 10.7 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.8* | Secured Promissory Note between the Registrant and Don M. Hardison dated as of June 23, 2000 (previously filed as Exhibit 10.10 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
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| 10.9 | Lease Agreement, dated December 10, 1996, between C.B. Realty Limited Partnership and the Registrant, as amended (previously filed as Exhibit 10.11 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.10 | Fourth Amendment to Lease Agreement, dated February 7, 2001, between C.B. Realty Limited Partnership and the Registrant |
| 10.11 | License Agreement between the Registrant and Genzyme Corporation dated as of March 25, 1999 (previously filed as Exhibit 10.12 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) (certain portions of this agreement have been accorded confidential treatment until March 25, 2003) |
| 10.12 | PCR Diagnostic Services Agreement between the Registrant and Roche Molecular Systems, Inc. (previously filed as Exhibit 10.13 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) (certain portions of this agreement have been accorded confidential treatment until July 2004) |
| 10.13 | Mayo Foundation for Medical Education and Research (the "Foundation") Technology License Contract between the Registrant and the Foundation dated as of July 7, 1998, as amended (previously filed as Exhibit 10.14 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.14 | Letter Agreement by and between The Mayo Foundation for Medical Education and Research and the Registrant dated February 4, 1998 (previously filed as Exhibit 10.15 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.15 | Form of Consulting Agreement by and between the Registrant and certain members of the scientific advisory board (previously filed as Exhibit 10.16 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |
| 10.16* | Restricted Stock Purchase Agreement between the Registrant and John A. McCarthy, Jr. dated as of November 28, 2000 (previously filed as Exhibit 10.17 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference) |

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- 10.17* Full Recourse Promissory Note between the Registrant and John A. McCarthy, Jr. dated as of November 28, 2000 (previously filed as Exhibit 10.18 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
- 10.18* Pledge Agreement between the Registrant and John A. McCarthy, Jr. dated as of November 30, 2000 (previously filed as Exhibit 10.19 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
- 10.19* Severance Agreement between the Registrant and Stanley N. Lapidus dated January 4, 2001 (previously filed as Exhibit 10.20 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
- 10.20* Severance Agreement between the Registrant and Don M. Hardison dated January 4, 2001 (previously filed as Exhibit 10.21 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
- 10.21* Severance Agreement between the Registrant and John A. McCarthy, Jr. dated January 4, 2001 (previously filed as Exhibit 10.22 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)

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- 10.22* Severance Agreement between the Registrant and Anthony P. Shuber dated January 4, 2001 (previously filed as Exhibit 10.23 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
 - 10.23 Warrant Agreement between the Registrant and The Mayo Foundation for Medical Research dated December 28, 2000 (previously filed as Exhibit 10.26 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
 - 10.24* Amendment No 1. to Full Recourse Promissory Note between the Registrant and Stanley N. Lapidus dated as of November 30, 2001 (previously filed as Exhibit 10.26 to our Annual Report on Form 10-K for the period ended December 31, 2002 (File No. 000-32179) which is incorporated herein by reference)
 - 10.25* Amendment No 1. to Full Recourse Promissory Note between the Registrant Don M. Hardison dated as of November 30, 2001 (previously filed as Exhibit 10.27 to our Annual Report on Form 10-K for the period ended December 31, 2002 (File No. 000-32179) which is incorporated herein by reference)
 - 10.26* Amendment No 1. To Full Recourse Promissory Note between the Registrant and John A. McCarthy, Jr. dated as of November 30, 2001 (previously filed as Exhibit 10.28 to our Annual Report on Form 10-K for the period ended December 31, 2002 (File No. 000-32179) which is incorporated herein by reference)
 - 10.27* Executive Cash Incentive Plan dated October 15, 2001 (previously filed as Exhibit 10.29 to our Annual Report on Form 10-K for the period ended December 31, 2002 (File No. 000-32179) which is incorporated herein by reference)
 - 10.28** Agreement between the Registrant and Laboratory Corporation of America Holdings, Inc. dated June 26, 2002 (previously filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 000-32179) which is incorporated herein by reference)
 - 10.29 Lease Agreement, dated January 23, 2003, between Marlborough Campus Limited Partnership and the Registrant
 - 10.30** Exclusive License Agreement between Matrix Technologies Corporation, d/b/a Apogent Discoveries, and the Registrant dated as of November 26, 2002
 - 10.31** Services, Manufacturing and Supply Agreement dated as of April 7, 2003, by and between the Company and Discovery Labware, Inc.
 - 10.32**+ First Amendment to License Agreement by and between the Company and Laboratory Corporation of America Holdings, Inc. dated January 19, 2004
 - 10.33**+ Sublicense Agreement between the Company and Beckman Coulter dated July 28, 2003
 - 12.1+ Ratio of Earnings to Fixed Charges and Earnings to Combined Fixed Charges and Preferred Stock Dividends.
 - 21.1 Subsidiaries of the Registrant (previously filed as Exhibit 21.1 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)

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- 23.1+ Consent of Ernst & Young LLP
- 23.1(A)+ Information regarding Arthur Andersen LLP
- 24.1+ Power of Attorney (included on signature page)

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- 31.1*** Certification Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
 - 31.2*** Certification Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
 - 32.1+ Certification Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
 - 32.2+ Certification Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
-

*
Indicates a management contract or any compensatory plan, contract or arrangement.

**
Confidential Treatment requested for certain portions of this Agreement.

+
Filed with the original filing of the Report on Form 10-K.

Filed herewith.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

EXACT SCIENCES CORPORATION

By: /s/ JOHN A. MCCARTHY, JR.

John A. McCarthy, Jr.
Executive Vice President,
Chief Financial Officer and Treasurer

Date: February 11, 2004

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Annual Report on Form 10-K/A has been signed by the following persons in the capacities set forth below on the 11th day of February, 2004.

Signature

Title

Date

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| Signature | Title | Date |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <u>/s/ STANLEY N. LAPIDUS*</u> Stanley N. Lapidus | Chairman of the Board and Director | February 11, 2004 |
| <u>/s/ DON M. HARDISON*</u> Don M. Hardison | President, Chief Executive Officer and Director (Principal Executive Officer) | February 11, 2004 |
| <u>/s/ JOHN A. MCCARTHY, JR.</u> John A. McCarthy, Jr. | Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer) | February 11, 2004 |
| <u>/s/ RICHARD W. BARKER*</u> Richard W. Barker | Director | February 11, 2004 |
| <u>/s/ SALLY W. CRAWFORD*</u> Sally W. Crawford | Director | February 11, 2004 |

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| | | |
|--------------------------------------------------------|----------|-------------------|
| <u>/s/ EDWIN M. KANIA, JR.*</u> Edwin M. Kania, Jr. | Director | February 11, 2004 |
| <u>/s/ CONNIE MACK, III*</u> Connie Mack, III | Director | February 11, 2004 |
| <u>/s/ LANCE WILLSEY*</u> Lance Willsey | Director | February 11, 2004 |
| <u>/s/ PATRICK J. ZENNER*</u> Patrick J. Zenner | Director | February 11, 2004 |

*By: /s/ JOHN A. MCCARTHY, JR.

John A. McCarthy, Jr.
Pursuant to the
Power of Attorney
dated January 29, 2004

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**Exhibit Index to Amendment No. 1 to Annual Report on Form 10-K
for Fiscal Year Ended December 31, 2002**

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QuickLinks

[EXPLANATORY NOTE](#)

[PART IV](#)

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SIGNATURES

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