

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): April 10, 2020

MOTUS GI HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-38389

(Commission
File Number)

81-4042793

(IRS Employer
Identification No.)

1301 East Broward Boulevard, 3rd Floor
Ft. Lauderdale, FL

(Address of principal executive offices)

33301

(Zip Code)

Registrant's telephone number, including area code: **(954) 541-8000**

Not Applicable

(Former name or former address, if changed since last report.)

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 (see General Instruction A.2. below):

- Written communication 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 communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication 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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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(s)	Name of Each Exchanged on Which Registered
Common Stock, \$0.0001 par value per share	MOTS	The Nasdaq Capital Market

Item 1.01 Entry into Material Definitive Agreement.

Deferral Agreement Amendment to Silicon Valley Bank Loan and Security Agreement

On April 10, 2020, Motus GI Holdings, Inc. (the “**Company**”), Motus GI, Inc. (“**Subsidiary**”), a wholly owned subsidiary of the Company, and Silicon Valley Bank (“**SVB**”) entered into a Deferral Agreement (the “**Deferral Agreement**”), effective April 2, 2020 (the “**Effective Date**”), which amends certain provisions of the Loan and Security Agreement dated December 13, 2019, as amended (the “**Loan Agreement**”), between the Company, Subsidiary and SVB.

Pursuant to and among other changes effected by, the Deferral Agreement, as of the Effective Date the originally scheduled period of monthly interest-only payments under the Loan Agreement, and the originally scheduled maturity date of the Loan Agreement, have each been extended by six months. As a result, pursuant to the Deferral Agreement, the Loan Agreement now provides for monthly interest-only payments through June 30, 2022, followed by monthly payments of principal and interest until June 1, 2024. The description of the material terms of the Deferral Agreement is qualified in its entirety by reference to the complete text of the Deferral Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

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

The information required by this Item 2.03 is set forth under Item 1.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) The following exhibit is furnished with this report:

<u>Exhibit No.</u>	<u>Description</u>
10.1	Deferral Agreement, dated as of April 10, 2020, effective as of April 2, 2020, between Silicon Valley Bank, Motus GI Holdings, Inc. and Motus GI, Inc.

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.

MOTUS GI HOLDINGS, INC.

Dated: April 13, 2020

By: /s/ Timothy P. Moran
Name: Timothy P. Moran
Title: Chief Executive Officer



Silicon Valley Bank

Deferral Agreement

Deferral Agreement Effective Date:	April 2, 20 20
Loan Agreement Date (use restated date if applicable):	December 13, 20 19
Borrower:	Motus GI Holdings, Inc.
Loan Agreement:	<input checked="" type="checkbox"/> If this box is checked, additional Borrowers ("Additional Borrowers") are listed in the Annex attached hereto (Borrower and such Additional Borrowers, collectively, "Borrower"). That certain Loan and Security Agreement, dated as of the Loan Agreement Date, between Borrower, Additional Borrowers, if any, and Silicon Valley Bank ("Bank"), as amended, restated or otherwise modified and in effect from time to time.
Guarantor(s) or Pledgor(s):	<input type="checkbox"/> If this box is checked, the obligations of Borrower are guaranteed or secured by a pledge of assets and the Consent and Ratification attached hereto shall apply and must be completed for each Guarantor and/or Pledgor.

Reference is made to the Loan Agreement and the other terms defined herein. Borrower and Bank hereby agree to the Terms and Conditions attached hereto and any applicable Annex and/or Consent and Ratification attached hereto, each of which is incorporated herein by reference (collectively, the "Deferral Agreement").

BANK:

SILICON VALLEY BANK

By: Michael McMahon
52BBA787EECF43S...

Michael McMahon

Name

Director

Title

BORROWER:

Motus GI Holdings, Inc.

By: Andrew Taylor
2D4B63F83B4D4CF...

Andrew Taylor

Name

Chief Financial Officer and Secretary

Title

By: _____

Name

Title



Silicon Valley Bank

Terms and Conditions Deferral Agreement

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.
2. Interest Payments. Borrower shall at all times continue to make regularly scheduled monthly payments of accrued interest on each applicable payment date under the Loan Agreement.
3. Extension of Principal Payment Dates.
 - a. The payment dates for all monthly payments of principal in respect of any term loans (but not any other facilities) which are due following the Deferral Agreement Effective Date shall each be extended by six (6) months.
 - b. To the extent that the Loan Agreement permits Borrower to extend the period during which Borrower is only required to make payments of accrued interest (and no principal payments) (the "**Interest Only Period**") upon achieving one or more milestones or other thresholds, which milestones or thresholds have not yet been achieved as of the Deferral Agreement Effective Date, by execution of the Deferral Agreement, Borrower agrees that (a) the six (6) month extension of the Interest Only Period provided for by this Deferral Agreement shall supersede and replace any and all extensions of the Interest Only Period set forth in the Loan Agreement, and (b) any and all extensions of the Interest Only Period set forth in the Loan Agreement as of the Deferral Agreement Effective Date are hereby void, and shall be of no further force and effect. Nothing herein shall be construed as a modification or amendment of the existing terms and conditions in the Loan Agreement that provide for Bank to increase availability or to make additional advances or extensions of credit to Borrower, including if such increase or additional advances or extensions of credit require Borrower to achieve the same milestone or threshold that would have previously extended the Interest Only Period prior to Borrower entering into this Deferral Agreement.
 - c. The amount of each monthly payment of principal following the extension shall be the same as the amount of the scheduled monthly payment of principal prior to the Deferral Agreement Effective Date.
- d. All deferred principal payments shall continue to be secured by all Collateral granted or pledged to Bank under the Loan Documents.
4. Extension of Maturity Date. The maturity date(s) for all term loans (but not any other facilities) under the Loan Agreement that occur after the Deferral Agreement Effective Date shall be extended by six (6) months, and the corresponding definitions of such maturity dates in the Loan Agreement shall be deemed to be amended accordingly.
5. Representations and Warranties. Borrower hereby represents and warrants that (a) Borrower has the power and authority to execute and deliver to Bank the Deferral Agreement, (b) the execution and delivery to Bank by Borrower of the Deferral Agreement and the performance of Borrower's obligations under the Loan Agreement, as amended by the Deferral Agreement, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made and (c) the Deferral Agreement has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws and equitable principals relating to or affecting creditors rights.
6. Ratification. Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all Loan Documents and all security or other collateral granted to Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations and all deferred principal payments.
7. Release. For good and valuable consideration, Borrower hereby forever relieves, releases, and discharges Bank and its present or former employees, officers, directors, agents, representatives, attorneys, and each of them, from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses, actions and causes of action, of every type, kind, nature, description or character whatsoever, whether known or unknown, suspected or unsuspected, absolute or contingent, arising out of or in any manner whatsoever connected with or related to, facts,



Silicon Valley Bank

Terms and Conditions Deferral Agreement

circumstances, issues, controversies or claims existing or arising from the beginning of time through and including the date of execution hereof (collectively "**Released Claims**"). Without limiting the foregoing, the Released Claims shall include any and all liabilities or claims arising out of or in any manner whatsoever connected with or related to the Loan Documents, any instruments, agreements or documents executed in connection with any of the foregoing or the origination, negotiation, administration, servicing or enforcement of any of the foregoing. Borrower expressly acknowledges and waives any and all rights under Section 1542 of the California Civil Code, which provides that:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

By entering into this release, Borrower recognizes that no facts or representations are ever absolutely certain and it may hereafter discover facts in addition to or different from those which it presently knows or believes to be true, but that it is the intention of Borrower hereby to fully, finally and forever settle and release all matters, disputes and differences, known or unknown, suspected or unsuspected; accordingly, if Borrower should subsequently discover that any fact that it relied upon in entering into this release was untrue, or that any understanding of the facts was incorrect, Borrower shall not be entitled to set aside this release by reason thereof, regardless of any claim of mistake of fact or law or any other circumstances whatsoever. Borrower acknowledges that it is not relying upon and has not relied upon any representation or statement made by Bank with respect to the facts underlying this release or with regard to any of such party's rights or asserted rights. This release may be pleaded as a full and complete defense and/or as a cross-complaint or counterclaim against any action, suit, or other proceeding that may be instituted, prosecuted or attempted in breach of this release. Borrower acknowledges that the release contained herein constitutes a material inducement to Bank to enter into the Deferral Agreement, and that Bank would not have done so but for Bank's expectation that such release is

valid and enforceable in all events. Borrower hereby represents and warrants to Bank, and Bank is relying thereon, that (a), except as expressly stated herein, neither Bank nor any agent, employee or representative of Bank has made any statement or representation to Borrower regarding any fact relied upon by Borrower in entering into the Deferral Agreement, (b) Borrower has made such investigation of the facts pertaining hereto and all of the matters appertaining thereto, as it deems necessary; (c) the terms hereof are contractual and not a mere recital; (d) the Deferral Agreement has been carefully read by Borrower, the contents hereof are known and understood by Borrower, and the Deferral Agreement is signed freely, and without duress, by Borrower and (e) Borrower represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and every other matter which it releases herein, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm or entity any claims or other matters herein released. Borrower shall indemnify Bank, defend and hold it harmless from and against all claims based upon or arising in connection with prior assignments or purported assignments or transfers of any claims or matters released herein.

8. Full Force and Effect; Limitations of Deferral Agreement. Other than as expressly provided in the Deferral Agreement, the terms of the Loan Agreement remain in full force and effect. Bank's agreement to defer principal payments pursuant to the Deferral Agreement in no way shall constitute a waiver of or forbearance from any existing defaults under any of the Loan Documents, nor shall it obligate Bank to defer any future payments or waive or forbear from any future defaults under any of the Loan Documents. Nothing in the Deferral Agreement shall constitute a satisfaction of the Obligations. It is the intention of Bank and Borrower to retain as liable parties all makers of Loan Documents, unless the party is expressly released by Bank in writing. No maker will be released by virtue of the Deferral Agreement.
9. Miscellaneous.
 - a. The Deferral Agreement may be executed and delivered in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.



Silicon Valley Bank

Terms and Conditions Deferral Agreement

- b. The words "execution," "signed," "signature" and words of like import in any Loan Document, including the Deferral Agreement, shall be deemed to include electronic signatures, including any Electronic Signature as defined in the Electronic Transactions Law (2003 Revision) of the Cayman Islands (the "**Cayman Islands Electronic Signature Law**"), or the keeping of records in electronic form, including any Electronic Record, as defined in Cayman Islands Electronic Signature Law, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Cayman Islands Electronic Signature Law; provided, however that sections 8 and 19(3) of the Cayman Islands Electronic Signature Law shall not apply to this Deferral Agreement or the execution or delivery thereof.
- c. The Deferral Agreement shall be effective as of the Deferral Agreement Effective Date.
- d. The Deferral Agreement is a Loan Document and will be construed, interpreted, and applied in accordance with the laws of the jurisdiction whose laws govern the Loan Agreement (excluding its body of law controlling conflicts of law). Each party to the Deferral Agreement submits to the jurisdiction of the same state and federal courts to which it submitted under the Loan Agreement.
- e. In the event of any action or proceeding to enforce the Deferral Agreement, Bank shall be entitled to recover from Borrower its attorneys' fees and expenses, disbursements and court costs.

[End of Terms and Conditions – Annex and Consent and Ratification Follow]



Silicon Valley Bank

Annex
Deferral Agreement

Additional Borrowers

Deferral Agreement Effective Date: April 2, 20 20

Borrower: Motus GI Holdings, Inc.

This Annex forms a part of the Deferral Agreement dated as of the date indicated above between Silicon Valley Bank and Borrower, as defined above. Capitalized terms used but not defined in this Annex shall have the meanings ascribed to them in the Deferral Agreement.

Each of the undersigned (collectively, the "Additional Borrowers") is a party to the Loan Agreement and hereby agrees to the terms and conditions set forth in the Deferral Agreement. Upon its execution hereof, each Additional Borrower shall be deemed to be a party to the Deferral Agreement.

Motus GI, Inc.

By: Andrew Taylor
2D4B63F83B4D4CF...

Name
Chief Financial Officer and Secretary

Title

By:

Name

Title

By:

Name

Title

By:

Name

Title

By:

Name

Title

By:

Name

Title

By:

Name

Title

By:

Name

Title



Silicon Valley Bank

**Consent and Ratification
Deferral Agreement**

This Consent and Ratification should be signed only to the extent that the Deferral Agreement to which it is attached indicates that it is applicable. Otherwise, this Consent and Ratification is not applicable and void and the following signature blocks should be left blank.

Each of the undersigned, in its capacity as a guarantor or pledgor of the Obligations under the Loan Agreement and the other Loan Documents, acknowledges receipt of the Deferral Agreement. Each of the undersigned further: (i) consents to the Deferral Agreement and the transactions and agreements contemplated thereby; (ii) reaffirms and acknowledges its continuing obligations under the guaranty, pledge agreement or other Loan Document(s) to which it is a party, and that such obligations remain in full force and effect; and (iii) acknowledges that Bank may, but shall be under no obligation to, obtain from the undersigned from time to time further acknowledgment of its continuing obligation under such agreement(s) or with respect to any extension of the time for payment of the Obligations or of any amendment of the terms thereof, waiver of any default, or forbearance in the exercise of any remedy afforded Bank by the terms of such Obligations or by law.

N/A	_____
By: _____	By: _____
_____	_____
Name	Name
_____	_____
Title	Title
By: _____	By: _____
_____	_____
Name	Name
_____	_____
Title	Title
By: _____	By: _____
_____	_____
Name	Name
_____	_____
Title	Title