

S&W Seed Co
Form S-1
October 04, 2017

As filed with the Securities and Exchange Commission on October 4, 2017

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT

*UNDER
THE SECURITIES ACT OF 1933*

S&W SEED COMPANY

(Exact name of registrant as specified in its charter)

Nevada

0100

27-1275784

(State or other jurisdiction of
incorporation or organization)

(Primary Standard Industrial
Classification Code Number)

(I.R.S. Employer
Identification No.)

Edgar Filing: S&W Seed Co - Form S-1

802 N. Douty Street
Hanford, California 93230
(559) 884-2535

(Address, including zip code and telephone number, including area code, of registrant's principal place of business)

Mark W. Wong
802 N. Douty Street
Hanford, California 93230
(559) 884-2535

(Name, address, including zip code and telephone number, including area code, of agent for service)

Copy to:

Steven M. Przesmicki,
Esq.
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
(858) 550-6000

Approximate date of commencement of proposed sale to the public

: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective Registration Statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act Registration Statement number of the earlier effective Registration Statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act Registration Statement number of the earlier effective Registration Statement for the same offering:

o

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	<input type="radio"/>	Accelerated filer	<input type="radio"/>
Non-accelerated filer	<input type="radio"/>	Smaller reporting company	<input checked="" type="radio"/>
	(Do not check if a smaller reporting company)	Emerging growth company	<input type="radio"/>

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 to Section 7(a)(2)(B) of the Securities Act.

o

CALCULATION OF REGISTRATION FEE

<u>Title of Each Class of Securities to Be Registered</u>	<u>Amount to be Registered⁽¹⁾</u>	<u>Proposed Maximum Offering Price per Security</u>	<u>Proposed Maximum Aggregate Offering Price</u>	<u>Amount of Registration Fee</u>
Subscription Rights to Purchase Common Stock	(2)	N/A	N/A	(3)
Common stock ⁽³⁾	3,500,000	\$3.50	\$12,250,000 ⁽⁴⁾	\$1,526

- (1) This registration statement relates to (a) non-transferable subscription rights to purchase common stock of the Registrant to be distributed to holders of the Registrant's common stock and warrants to purchase the Registrant's common stock as of _____, 2017; and (b) the shares of common stock deliverable upon the exercise of the subscription rights pursuant to the rights offering. In accordance with Rule 416 promulgated under the Securities Act of 1933, as amended, this registration statement also covers any additional shares of common stock of the Registrant that may become issuable due to adjustments for changes resulting from stock dividends, stock splits, recapitalizations, mergers, reorganizations, combinations or exchanges or other similar events.
- (2) Evidencing the subscription rights to subscribe for up to 3,500,000 shares of common stock, par value \$0.001 per share.
- (3) The subscription rights are being distributed without consideration. Pursuant to Rule 457(g), no separate registration fee is payable with respect to the subscription rights being offered hereby since the subscription rights are being registered in the same registration statement as the securities to be offered pursuant thereto.
- (4) Represents the gross proceeds from the assumed exercise of all subscription rights to be distributed.

Edgar Filing: S&W Seed Co - Form S-1

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant files a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and we are not soliciting an offer to purchase these securities in any jurisdiction where the offer or sale is not permitted.

Preliminary Prospectus

SUBJECT TO COMPLETION, DATED OCTOBER 4, 2017

3,500,000 Shares of Common Stock

We are conducting a rights offering pursuant to which we are distributing to holders of our common stock and warrants to purchase our common stock, at no charge, non-transferable subscription rights to purchase shares of our common stock. You will receive subscription rights for each share of common stock held of record (or shares that are deemed to be owned, assuming the exercise of warrants) as of 5:00 p.m., New York time on , 2017. We are distributing subscription rights exercisable for up to 3,500,000 shares of our common stock.

The total number of subscription rights issued to each stockholder will be rounded down to the nearest whole number. Each whole subscription right will entitle you to purchase one share of our common stock at a subscription price equal to \$3.50 per share, which we refer to as the basic subscription privilege. Stockholders as of the record date will also have oversubscription rights as described herein.

The subscription rights may be exercised at any time during the subscription period, which will commence , 2017. The subscription rights will expire if they are not exercised by 5:00 p.m., New York time, on , 2017, unless we extend the rights offering period. We reserve the right to extend the rights offering period at our sole discretion, subject to certain limitations described herein. You should carefully consider whether to exercise your subscription rights before the expiration of the rights offering period. All exercises of subscription rights are irrevocable. Our board of directors is making no recommendation regarding your exercise of the subscription rights. The subscription rights may not be sold, transferred or assigned to anyone else and will not be listed for trading on any stock exchange or market.

The shares of common stock are being offered directly by us without the services of an underwriter or selling agent.

We have entered into an Investment Agreement with one our major stockholders, MFP Partners, L.P. ("MFP"), pursuant to which MFP has agreed to purchase from us, subject to certain conditions, the shares of common stock not subscribed for in the rights offering, at a price per share equal to the subscription price in the rights offering (the "Backstop Commitment"). The unsubscribed shares sold to MFP, if any, will be issued in a private placement and would not be registered pursuant to the registration statement of which this prospectus forms a part. In addition to the investment under the Investment Agreement, as a stockholder as of the record date, MFP will have the right to subscribe for and purchase shares of our common stock under its basic subscription privilege and its oversubscription privilege. One of our directors, Alexander C. Matina, is Vice President of Investments of the general partner of MFP.

Subject to the terms of the Investment Agreement with MFP, we reserve the right to cancel the rights offering at any time for any reason. If we cancel this rights offering, all subscription payments received by the subscription agent, who is our transfer agent, will be returned, without interest or penalty, as soon as practicable.

Edgar Filing: S&W Seed Co - Form S-1

Our common stock is traded on the Nasdaq Capital Market under the symbol "SANW." On October 2, 2017, the last reported sales price of our common stock on the Nasdaq Capital Market was \$3.05 per share.

The exercise of your subscription rights for shares of our common stock involves risks. You should carefully consider all of the information set forth in this prospectus, including the risk factors beginning on page 12 of this prospectus as well as the risk factors and other information in any documents we incorporate by reference into this prospectus before exercising your subscription rights. See "Where You Can Find More Information and Incorporation by Reference."

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2017

TABLE OF CONTENTS

QUESTIONS AND ANSWERS RELATING TO THE RIGHTS OFFERING	1
PROSPECTUS SUMMARY	7
RISK FACTORS	12
CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS	15
USE OF PROCEEDS	16
MARKET PRICE OF OUR COMMON STOCK	17
DIVIDEND POLICY	18
DILUTION	19
DESCRIPTION OF CAPITAL STOCK	20
DESCRIPTION OF THE RIGHTS OFFERING	22
DESCRIPTION OF THE BACKSTOP COMMITMENT	30
MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO U.S. HOLDERS	31
PLAN OF DISTRIBUTION	35
LEGAL MATTERS	36
EXPERTS	36
WHERE YOU CAN FIND MORE INFORMATION AND INCORPORATION BY REFERENCE	37

We have not authorized anyone to provide any information or to make any representations other than those contained in or incorporated by reference in this prospectus or in any free writing prospectuses prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus relates only to the subscription rights and underlying shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to make such an offer. The information contained in or incorporated by reference in this prospectus is accurate only as of its date regardless of the time of delivery of this prospectus or of any distribution of subscription rights or sale of common stock.

To the extent there is a conflict between the information contained in this prospectus, on the one hand, and the information contained in any document incorporated by reference filed with the Securities and Exchange Commission (the "SEC") before the date of this prospectus, on the other hand, you should rely on the information in this prospectus. If any statement in a document incorporated by reference is inconsistent with a statement in another document incorporated by reference having a later date, the statement in the document having the later date modifies or supersedes the earlier statement.

We have not done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons who come into possession of this prospectus and any free writing prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus and

any free writing prospectus applicable to that jurisdiction.

This prospectus and the documents incorporated by reference in this prospectus contain market data and industry statistics and forecasts that are based on independent industry publications and other publicly available information. Although we believe that these sources are reliable, we do not guarantee the accuracy or completeness of this information and we have not independently verified this information. Although we are not aware of any misstatements regarding the market and industry data presented or incorporated by reference in this prospectus, these estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed under the heading "Risk Factors" and any related free writing prospectus. Accordingly, investors should not place undue reliance on this information.

Edgar Filing: S&W Seed Co - Form S-1

Unless the context requires otherwise or unless otherwise noted, all references to "S&W Seed" or "S&W" are to S&W Seed Company, a Nevada corporation, and all references to "we," "us" or "our" are to S&W Seed Company and our subsidiaries on a consolidated basis.

Trademarks, service marks or trade names of any other companies appearing in this prospectus are the property of their respective owners. Use or display by us of trademarks, service marks or trade names owned by others is not intended to and does not imply a relationship between us, and/or endorsement or sponsorship by, the owners of the trademarks, service marks or trade names.

Our functional and reporting currency is the U.S. Dollar. Foreign currency denominated revenues and expenses are translated using average rates of exchange during the reporting period. Foreign currency denominated monetary assets and liabilities are translated at the rate of exchange in effect at the balance sheet date.

QUESTIONS AND ANSWERS RELATING TO THE RIGHTS OFFERING

What is being offered in this rights offering?

We are distributing at no charge to holders of our common stock and warrants to purchase our common stock non-transferable subscription rights to purchase shares of our common stock. We are including the holders of warrants in the rights offering on an as-exercised basis, along with the holders of our common stock, pursuant to the terms of the warrants as issued in December 2014. You will receive subscription rights for each share of common stock you owned (or are deemed to own, assuming exercise by the holders of the warrants) as of 5:00 p.m., New York time on , 2017, the record date. The subscription rights per share ratio has been calculated based on the number of shares outstanding plus the shares issuable upon exercise of the warrants as of the record date, which totals an aggregate of shares. The subscription rights entitle the holders (including holders of our common stock and warrants) to purchase up to an aggregate of 3,500,000 shares. The subscription rights will be evidenced by subscription rights certificates.

The total number of subscription rights issued to each stockholder will be rounded down to the nearest whole number. Each whole subscription right will entitle you to purchase one share of our common stock at a subscription price equal to \$3.50 per share. Because the total number of subscription rights issued to each stockholder will be rounded down to the nearest whole number, we may not issue the full number of shares authorized for issuance in connection with this rights offering. Any excess subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable.

What is the subscription privilege?

For each whole right that you own, you will have a subscription privilege to buy from us one share of our common stock at the subscription price. You may exercise your subscription privilege for some or all of your subscription rights, or you may choose not to exercise any subscription rights.

For example, if you owned 10,000 shares of our common stock as of 5:00 p.m., New York time, on the record date, you would receive subscription rights representing the right to purchase shares of common stock for \$3.50 per share.

If you exercise your subscription rights in full, at the same time, you may also exercise your oversubscription privilege, as described below. See "What is the oversubscription privilege?"

What is the oversubscription privilege?

If any of our stockholders and warrant holders do not exercise all of the subscription rights issued to them in this rights offering, then each holder who has exercised subscription rights in full will have the opportunity to purchase additional shares of our common stock at the subscription price of \$3.50 per share under the oversubscription right, up to the amount of unexercised subscription rights. By extending oversubscription rights to our stockholders and warrant holders, we are providing those holders who have exercised all of their subscription rights with an opportunity to purchase shares that are not purchased by other stockholders and warrant holders in this rights offering pursuant to their subscription privilege. The exact number of shares that will be available for the oversubscription pool will be determined by subtracting from 3,500,000 the number of shares subscribed for pursuant to the subscription privilege. All subscription funds, including any funds for oversubscription shares, will be held in escrow pending final determination of the oversubscription allocation.

If sufficient shares of common stock are available, we will seek to honor your oversubscription request in full. If, however, there are not enough shares available to fully satisfy all oversubscription right requests, we will allocate the available shares of common stock *pro rata* among those stockholders exercising their oversubscription privilege in

proportion to the product (rounded down so that the subscription price multiplied by the aggregate number of shares does not exceed the aggregate offering amount) obtained by multiplying the number of shares such stockholder subscribed for under the oversubscription privilege by a fraction the numerator of which is the number of unsubscribed shares and the denominator of which is the total number of shares sought to be subscribed for under the oversubscription privilege by all holders participating in such oversubscription. The subscription agent will return any excess payments by mail without interest or deduction as soon as reasonably practical after the expiration date.

Why are we conducting the rights offering?

We are conducting the rights offering in order to raise additional capital and to improve and strengthen our financial position. We intend to use the net proceeds from the rights offering to fund our acquisition of GMO alfalfa assets from DuPont Pioneer, a wholly-owned subsidiary of E.I. du Pont de Nemours and Company ("Dupont Pioneer"), in connection with our December 2014 acquisition of certain alfalfa assets from DuPont Pioneer, and for general corporate purposes, including working capital and capital expenditures. In addition, we may use a portion of the net proceeds for the repayment of debt, including our credit facility with KeyBank and our outstanding promissory note issued to DuPont Pioneer, or refinancing of indebtedness or the acquisition of land, facilities, property or complementary products or companies. See "Use of Proceeds."

In authorizing the rights offering, our board of directors considered and evaluated a number of factors, including:

- our current capital resources and our future need for additional liquidity and capital;
- the size and timing of the rights offering;
- the potential dilution to our current stockholders if they choose not to participate in the offering;
- alternatives available for raising capital, including debt and other forms of equity raises;
- the potential impact of the rights offering on the public float for our common stock;
- MFP's willingness to backstop the rights offering;
- that applicable NASDAQ marketplace rules do not require stockholder approval of the rights offering or the Backstop Commitment; and
- the fact that existing stockholders would have the opportunity to participate on a *pro rata* basis to purchase additional shares of common stock.

How was the subscription price for the rights offering determined?

Our board of directors considered a number of factors in determining the price for the rights offering, including:

- the price per share at which MFP is willing to backstop the rights offering;
- the price per share at which a new investor and two of our major stockholders, MFP and Wynnefield Capital, Inc., purchased shares in a private placement in July 2017;
- "pass through" savings as a result of conducting the rights offering with no investment banking support;
- the price at which our stockholders might be willing to participate in the rights offering;
- historical and current trading prices for our common stock, including on a volume weighted average share price basis over certain periods; and
- the desire to provide an opportunity to our stockholders to participate in the rights offering on a *pro rata* basis.

What is the role of MFP in this offering?

We have entered into an Investment Agreement with MFP, pursuant to which MFP has agreed to purchase from us, subject to certain conditions, the shares of common stock not subscribed for in the rights offering at a price per share equal to the subscription price in the rights offering. The unsubscribed shares sold to MFP, if any, will be issued in a private placement. Accordingly, such shares would not be registered pursuant to the registration statement of which this prospectus forms a part, although we have agreed to register such shares in a separate registration statement. MFP will not receive a fee in connection with the Backstop Commitment; however, we have agreed to pay up to \$50,000 of MFP's expenses in connection with the Investment Agreement. MFP purchased shares of common stock from us in a private placement in July 2017 at a price of \$4.00 per share.

In addition to the investment pursuant to the Backstop Commitment, as a stockholder as of the record date, MFP will have the right to subscribe for and purchase shares of our common stock under its basic subscription privilege and its oversubscription privilege. See "Description of the Backstop Commitment" for more information regarding the terms of the Investment Agreement and the role of MFP.

Am I required to exercise the rights I receive in the rights offering?

No. You may exercise any number of your subscription rights, or you may choose not to exercise any subscription rights. However, if you choose not to fully exercise your subscription privilege and other stockholders fully exercise their subscription privilege and/or MFP acquires shares of common stock pursuant to the Backstop Commitment, the percentage of our common stock owned by other stockholders will increase, the relative percentage of our common stock that you own will decrease, and your voting and other rights will be diluted.

Has our board of directors made a recommendation to our stockholders regarding the rights offering?

Our board of directors is making no recommendations regarding your exercise of the subscription rights. Stockholders who exercise subscription rights risk investment loss on new money invested. We cannot assure you that the trading price for our common stock will be above the subscription price at the time of exercise or at the expiration of the rights offering period or that anyone purchasing shares at the subscription price will be able to sell those shares in the future at the same price or a higher price. You are urged to make your own decision whether or not to exercise your subscription rights based on your own assessment of our business and the rights offering. See "Risk Factors" in this prospectus and in the documents incorporated by reference into this prospectus.

Who may participate in the rights offering?

All stockholders of record on _____, 2017, the record date approved by our board of directors for this rights offering, are entitled to receive rights and purchase shares in this rights offering. In addition, the holders of outstanding warrants to purchase our common stock are eligible to participate *pro rata* with our stockholders, assuming the deemed exercise of such warrants on the day preceding the record date. As used in this prospectus in connection with the rights offering, unless the context otherwise provides, the terms "stockholders," "you" and "your" include the holders of the warrants.

Will our directors, executive officers or significant stockholders participate in the rights offering?

Our directors and executive officers who own shares of common stock and/or warrants, as well as other significant stockholders, are permitted, but not required, to participate in the rights offering on the same terms and conditions applicable to all stockholders. Certain of our directors, executive officers and significant stockholders may participate in the rights offering. In fact, subject to the terms and conditions of the rights offering, (i) certain members of our board of directors and our management have expressed their intention to purchase their respective *pro rata* share of the subscription rights, and (ii) MFP has expressed its intention to purchase its *pro rata* share of the subscription rights and has also committed to purchase shares of our common stock not subscribed for in the rights offering pursuant to the Backstop Commitment. Despite the indication of interest by our directors and management, and by MFP, there is no assurance that any of such parties will purchase shares in the rights offering, other than, with respect to MFP, shares (if any) purchased by MFP under the Backstop Commitment.

How soon must I act to exercise my subscription rights?

The subscription rights may be exercised at any time during the subscription period, which commences on _____, 2017, through the expiration date for the rights offering, which is 5:00 p.m., New York time, on _____, 2017. If you elect to exercise any subscription rights, the subscription agent must actually receive all required documents and payments from you at or prior to the expiration date. Although we have the option of extending the expiration date of the subscription period at our sole discretion, we currently do not intend to do so. Any extension of the subscription period for more than 30 days will require MFP's prior written consent.

May I transfer my subscription rights?

No, the rights are exercisable only by stockholders and warrant holders of record as of the record date, and you may not sell, transfer or assign your subscription rights to anyone else.

Are there any limits on the number of shares of common stock I may own as a result of the exercise of subscription rights under the rights offering?

Yes. Subject to your ability to exercise the oversubscription privilege, you may only purchase the number of whole shares of common stock purchasable upon exercise of the basic subscription privilege included in the subscription

rights distributed to you in the rights offering. Accordingly, the number of shares of common stock that you may purchase in the rights offering is limited by the number of our shares of common stock you held (including any shares of common stock issuable upon the exercise of warrants) on the record date. Although stockholders that fully and properly exercise their basic subscription privilege have the right to exercise the oversubscription privilege, there can be no assurances of the number of shares, if any, that a holder will be able to acquire through the exercise of the oversubscription privilege. We reserve the right to reject any or all subscriptions not properly submitted or the acceptance of which would, in the opinion of our counsel, be unlawful.

Are we requiring a minimum subscription to complete the rights offering?

No. Any shares not subscribed for in the rights offering will be purchased by MFP pursuant to the Backstop Commitment.

Are there any other conditions to the completion of the rights offering?

Yes. The completion of the rights offering is subject to the conditions described under "Description of the Rights Offering - Amendment, Withdrawal and Termination."

Can the rights offering be canceled?

Yes. We reserve the right to cancel the rights offering at any time for any reason, subject to the terms of the Investment Agreement with MFP as described in this prospectus. If the rights offering is canceled, all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable to those persons who subscribed for shares in the rights offering.

How do I exercise my subscription rights if I am a record holder of shares of common stock?

If you wish to participate in the rights offering, you must properly complete the subscription rights certificate distributed by the subscription agent and deliver it, along with the full subscription price, to the subscription agent before 5:00 p.m., New York time, on _____, 2017. If you use the mail, we recommend that you use insured, registered mail, return receipt requested.

If you send a payment that is insufficient to purchase the number of shares you requested, or if the number of shares you requested is not specified in the forms, the payment received will be applied to exercise your subscription rights to the fullest extent possible based on the amount of the payment received. If the payment exceeds the subscription price for the full exercise of your subscription rights, then the excess will be returned to you as soon as practicable. You will not receive interest on any payments refunded to you under the rights offering.

What should I do if I want to participate in the rights offering, but my shares are held in the name of my broker, dealer, custodian bank or other nominee?

If you hold your shares of common stock in "street name" through a broker, dealer, custodian bank or other nominee, you will not receive an actual subscription rights certificate. Instead, as described in this prospectus, you must instruct your broker, dealer, custodian bank or other nominee whether or not to exercise rights on your behalf. We will ask your broker, dealer, custodian bank or other nominee to notify you of the rights offering.

If you wish to participate in the rights offering, you should complete and return to your nominee the form entitled "Beneficial Owner Election Form." You should receive this form from your nominee with the other rights offering materials. If your shares are held in the name of a broker, dealer or other nominee, then you should send your subscription payment to that nominee as well pursuant to their instructions. You must act timely to ensure that your broker, dealer, custodian bank or other nominee acts for you and that all required forms and payments are actually received by the subscription agent prior to the expiration of the rights offering period.

If the rights offering is not completed, will my subscription payment be refunded to me?

Yes. The subscription agent will hold all funds it receives in a segregated bank account until completion of the rights offering. If the rights offering is not completed, the subscription agent will return, without interest or penalty, as soon as practicable, all subscription payments. If you own shares in "street name," it may take longer for you to receive payment because the payments will be returned through your nominee.

Must I pay the subscription price in cash?

Yes. You must timely pay the full subscription price for the full number of shares of common stock you wish to acquire under the subscription privilege by wire, bank draft drawn on a U.S. bank, U.S. postal money order or personal check that clears before the expiration date of the rights offering.

Will the shares of common stock I acquire in the rights offering be subject to any stockholder agreement restricting my ability to sell or transfer my new shares of common stock?

No. You will not be subject to any stockholder agreement that restricts your ability to sell or transfer any new shares of common stock acquired by you in the rights offering. However, under federal securities laws, our affiliates will be subject to restrictions on their ability to transfer shares of our common stock by virtue of their status as "affiliates" of us. An "affiliate" is generally defined as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, us.

After I exercise my subscription rights, may I change my mind?

No. All exercises of subscription rights are irrevocable by the stockholders, even if you later learn information about us that you consider unfavorable or our stock price declines. You should not exercise your subscription rights unless you are certain that you wish to purchase the shares of common stock offered pursuant to this rights offering. However, we may cancel, extend or otherwise amend the rights offering at any time prior to the expiration date.

Does exercising my subscription rights involve risk?

Yes. The exercise of your subscription rights involves risks. Exercising your subscription rights involves the purchase of additional shares of our common stock and should be considered as carefully as you would consider other equity investments. Among other things, you should carefully consider the risks described under the heading "Risk Factors" in this prospectus and the documents incorporated by reference into this prospectus.

What fees or charges apply if I exercise my subscription rights?

We are not charging any fees or sales commissions to issue subscription rights to you or to issue shares to you if you exercise your subscription rights. If you exercise your subscription rights through a broker or other record holder of your shares, you are responsible for paying any fees that person or entity may charge.

How do I exercise my subscription rights if I am a record holder of shares of common stock, and I live outside of the United States or have an army post office or foreign post office address?

The subscription agent will not mail and instead will hold subscription rights certificates for stockholders having addresses outside the United States or who have an army post office or foreign post office address. In order to exercise subscription rights, our foreign stockholders and stockholders with an army post office or foreign post office address must notify the subscription agent and timely follow other procedures described in the section of this prospectus entitled "Description of the Rights Offering - Foreign and Other Stockholders."

When will I receive my new shares of common stock?

All shares that you purchase in the rights offering will be issued in book-entry, or uncertificated, form. When issued, the shares will be registered in the name of the subscription rights holder of record. As soon as practicable after the expiration of the rights offering, the subscription agent will arrange for the issuance of the shares of common stock purchased pursuant to the subscription privilege. Subject to state securities laws and regulations, we have the discretion to delay distribution of any shares you may have elected to purchase by exercise of your subscription rights in order to comply with state securities laws.

What are the material U.S. federal income tax consequences of the receipt and exercise of my subscription rights?

For U.S. federal income tax purposes, we do not believe you should recognize income or loss in connection with the receipt or exercise of subscription rights in the rights offering,

Edgar Filing: S&W Seed Co - Form S-1

but the treatment of the receipt and exercise of subscription rights is unclear in certain respects. You are urged to consult your own tax advisor as to your particular tax consequences resulting from the receipt and exercise of subscription rights and the receipt, ownership and disposition of our common stock. For further information, please see "Material U.S. Federal Income Tax Consequences to U.S. Holders."

What happens if I choose not to exercise my subscription rights?

You are not required to exercise your subscription rights or otherwise take any action in response to this rights offering. If you do not exercise your subscription privilege, and the rights offering is completed, the number of shares of our common stock you own will not change but, due to the fact that shares will be purchased by other stockholders in the rights offering and/or MFP pursuant to the Backstop Commitment, your percentage ownership of our total outstanding common stock will decrease, and your voting and other rights will be diluted.

How many shares of common stock will be outstanding after the rights offering?

As of the record date, there were _____ shares of our common stock outstanding. We will issue up to a maximum of 3,500,000 shares of common stock in the rights offering and/or pursuant to the Backstop Commitment. Based on the number of shares issued and outstanding as of the record date, if we issue all 3,500,000 shares of common stock available in this rights offering, we would have _____ shares of common stock issued and outstanding following the completion of the rights offering. Assuming no change in the number of shares issued and outstanding as of the record date, the dilution from the rights offering would be _____ %.

How much money will we receive from the rights offering and related financing?

If we issue all 3,500,000 shares of common stock available in this rights offering and/or pursuant to the Backstop Commitment, we will receive gross proceeds of \$12,250,000. The net proceeds to us, after deducting estimated offering expenses, will be approximately \$ _____. We estimate that the expenses of the rights offering will be approximately \$ _____. We are conducting the rights offering in order to raise additional capital and to improve and strengthen our financial position.

We intend to use the net proceeds from the rights offering to fund our acquisition of GMO alfalfa assets from DuPont Pioneer (in connection with our December 2014 acquisition of certain alfalfa assets from DuPont Pioneer) and for general corporate purposes, including working capital and capital expenditures. In addition, we may use a portion of the net proceeds for the repayment of debt, including our credit facility with KeyBank and our outstanding promissory note issued to DuPont Pioneer, or refinancing of indebtedness or the acquisition of land, facilities, property or complementary products or companies. See "Use of Proceeds."

Who should I contact if I have more questions?

If you have more questions about the rights offering process or need additional copies of the rights offering documents, please contact our information agent, Transfer Online, Inc., at (503) 227-2950.

PROSPECTUS SUMMARY

This summary highlights the information contained elsewhere in or incorporated by reference into this prospectus. This summary does not contain all of the information that you should consider before deciding whether to exercise your subscription rights. You should carefully read this entire prospectus, including the information under the heading "Risk Factors," and the documents incorporated by reference into this prospectus, which are described under the heading "Where You Can Find More Information and Incorporation by Reference."

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information different from the information contained in this prospectus. The subscription rights and common stock are not being offered in any jurisdiction where offers and sales are not permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of when this prospectus is delivered or when any sale of our securities occurs.

Our Company and Corporate History

Company Overview

Founded in 1980 and headquartered in the Central Valley of California, we are a global agricultural company. Grounded in our historical expertise and what we believe is our present leading position in the breeding, production and sale of alfalfa seed, we continue to build towards our goal of being recognized as the world's preferred proprietary forage, grain and specialty crop seed company. In addition to our primary activities in alfalfa seed, we have recently expanded our product portfolio by adding hybrid sorghum and sunflower seed, which complement our alfalfa seed offerings by allowing us to leverage our infrastructure, research and development expertise and our distribution channels, as we begin to diversify into what we believe are higher margin opportunities. We also continue to conduct our stevia breeding program, having filed two additional patent applications in fiscal 2016.

Following our initial public offering in fiscal year 2010, we expanded certain pre-existing business initiatives and added new ones, including:

- diversifying our production geographically by expanding from solely producing seed in the San Joaquin Valley of California to initially adding production capability in the Imperial Valley of California, then expanding into Australia (primarily South Australia) and, most recently, adding production in other western states and Canada;
- expanding from solely offering non-dormant varieties to now having a full range of both dormant and non-dormant varieties;
- expanding the depth and breadth of our research and development capabilities in order to develop new varieties of both dormant and non-dormant alfalfa seed with traits sought after by our existing and future customers;
- diversifying into complementary proprietary crops by acquiring the assets of a Queensland, Australia company specializing in breeding and licensing of hybrid sorghum and sunflower seed;
- expanding our distribution channels and customer base, initially through the acquisition of the customer list of a key international customer in the Middle East in July 2011, and thereafter, through certain strategic acquisitions;
- expanding our sales geographically both through the expansion of our product offerings to make available product needed in regions we historically did not cover and through an expansion of our sales and marketing

efforts generally; and

- implementing a stevia breeding program to develop new stevia varieties that incorporate the most desirable characteristics of this all-natural, zero calorie sweetener.

We have accomplished these expansion initiatives through a combination of organic growth and strategic acquisitions, foremost among them:

- the acquisition in July 2011 of certain intangible assets, including the customer information, related to the field seed and small grain business of Genetics International, Inc., which had previously operated in the Middle East and North Africa ("MENA"), and which began our transition into selling directly to MENA distributors;
- the acquisition of Imperial Valley Seeds, Inc. in October 2012, which enabled us to expand production of non-GMO seed into California's Imperial Valley, thereby ensuring a non-GMO source of seed due to the prohibition on GMO crops in the Imperial Valley, as well as enabling us to diversify our production areas and distribution channels;
- the acquisition of a portfolio of dormant alfalfa seed germplasm in August 2012 to launch our entry into the dormant market;
- the acquisition of the leading local producer of non-dormant alfalfa seed in South Australia, Seed Genetics International Pty Ltd ("SGI"), in April 2013, which greatly expanded our production capabilities and geographic diversity;
- the acquisition of the alfalfa production and research facility assets and conventional (non-GMO) alfalfa germplasm from DuPont Pioneer, a wholly-owned subsidiary of E.I. du Pont de Nemours and Company ("DuPont Pioneer"), in December 2014, thereby substantially expanding upon our initial entrance into the dormant alfalfa seed market that began in 2012 and enabling us to greatly expand our production and research and product development capabilities; and

- the acquisition, in May 2016, of the assets and business of SV Genetics Pty Ltd ("SV Genetics"), a private Australian company specializing in the breeding and licensing of proprietary hybrid sorghum and sunflower seed germplasm, which represents our initial effort to diversify our product portfolio beyond alfalfa seed breeding and production and stevia R&D.

We believe our 2013 combination with SGI created the world's largest non-dormant alfalfa seed company and gave us the competitive advantages of year-round production in that market. With the completion of the acquisition of dormant alfalfa seed assets from DuPont Pioneer in December 2014, we believe we have become the largest alfalfa seed company worldwide (by volume), with industry-leading research and development, as well as production and distribution capabilities in both hemispheres and the ability to supply proprietary dormant and non-dormant alfalfa seed. Our operations span the world's alfalfa seed production regions, with operations in the San Joaquin and Imperial Valleys of California, five additional Western states, Australia and three provinces in Canada.

Our May 2016 acquisition of the hybrid sorghum and sunflower germplasm business and assets of SV Genetics signals management's commitment to our strategy of identifying opportunities to diversify our product lines and improve our gross margins.

Additional Company Information

From 1980 until 2009, our business was operated as a general partnership. We bought out the former partners beginning in June 2008, incorporated in October 2009 in Delaware, and completed the buyout of the general partners in May 2010. We reincorporated in Nevada in December 2011. SGI, our wholly owned subsidiary, was incorporated as a limited proprietary corporation in South Australia in 1993, as Harkness Group, changed its name to Seed Genetics Australia Pty Ltd in 2002, and in 2011, changed its name to Seed Genetics International Pty Ltd.

Our principal business office is located at 802 N. Douty Street, Hanford, California 93230, and our telephone is number (559) 884-2535. SGI's principal office space is located in Unley, South Australia. Our website address is www.swseedco.com. The information contained in or accessible through our website does not constitute part of this prospectus.

Private Placement

On July 19, 2017, we entered into a Securities Purchase Agreement with certain purchasers named therein, pursuant to which we sold and issued an aggregate of 2,685,000 shares of our common stock, at a purchase price of \$4.00 per share, for aggregate gross proceeds of \$10.74 million.

Edgar Filing: S&W Seed Co - Form S-1

The Rights Offering

Securities Offered	<p>We are distributing at no charge non-transferable subscription rights for each share of our common stock that you owned or are deemed to own based on an assumed exercise of warrants to purchase our common stock, as applicable, as of 5:00 p.m., New York time, on the record date, which is , 2017, either as a holder of record or, in the case of shares held through brokers, dealers, custodian banks or other nominees on your behalf, as beneficial owner of the shares. The total number of subscription rights issued to each holder will be rounded down to the nearest whole number. As a result, we may not issue the full number of shares authorized for issuance in connection with this rights offering.</p>
Subscription Privilege	<p>We will distribute subscription rights to each holder of record of our common stock and warrants to our purchase common stock (on an as exercised basis) for each share of common stock held (or deemed to be held) by such holder. As used in this prospectus, the term "stockholder" shall include the holders of warrants, unless the context indicates otherwise. The total number of subscription rights issued to you will be rounded down to the nearest whole number. Each whole subscription right will entitle you to purchase one share of common stock at the subscription price. You may exercise your subscription privilege for some or all of your subscription rights, or you may choose not to exercise your subscription rights.</p>
Oversubscription Privilege	<p>If you exercise your basic subscription privilege in full, you may also subscribe to purchase a portion of the oversubscription amount, which will be determined by subtracting from 3,500,000 the number of shares subscribed for pursuant to the basic subscription privilege. We refer to the shares available for oversubscription as the "oversubscription pool." All subscription funds, including any funds for oversubscription shares, will be held in escrow pending final determination of the oversubscription allocation.</p> <p>If sufficient shares of common stock are available, we will seek to honor your oversubscription request in full. If, however, there are not enough shares available to fully satisfy all oversubscription right requests, we will allocate the available shares of common stock <i>pro rata</i> among those stockholders exercising their oversubscription privilege in proportion to the product (rounded down so that the subscription price multiplied by the aggregate number of shares does not exceed the aggregate offering amount) obtained by multiplying the number of shares such stockholder subscribed for under the oversubscription privilege by a fraction, the numerator of which is the number of unsubscribed shares, and the denominator of which is the total number of shares sought to be subscribed for under the oversubscription privilege by all holders participating in such oversubscription. The subscription agent will return any excess payments by mail without interest or deduction as soon as reasonably practical after the expiration date.</p> <p>On the date of expiration of the rights offering, the subscription agent will determine the "oversubscription amount," which is the difference between 3,500,000 shares and the number of shares subscribed for pursuant to the basic subscription privilege. The subscription agent will have the amount of oversubscription that each stockholder has indicated it would like to "purchase."</p>

Edgar Filing: S&W Seed Co - Form S-1

The subscription agent will allocate the oversubscription amount accordingly (*i.e.*, if the total number of oversubscription requests is less than the oversubscription amount, the oversubscription requests will be allocated in full; however, if the number of oversubscription requests exceeds the oversubscription amount, the subscription agent will allocate the pool *pro rata*).

Subscription Price

The subscription price per share of common stock is \$3.50. To be effective, any payment related to the exercise of a subscription right must be received and must clear prior to the expiration of the rights offering period.

Record Date

, 2017.

9

Edgar Filing: S&W Seed Co - Form S-1

Use of Proceeds	To fund our acquisition of GMO alfalfa assets from DuPont Pioneer (in connection with our December 2014 acquisition of certain alfalfa assets from DuPont Pioneer) and for general corporate purposes, including working capital and capital expenditures. In addition, we may use a portion of the net proceeds for the repayment of debt, including our credit facility with KeyBank and our outstanding promissory note issued to DuPont Pioneer, or refinancing of indebtedness or the acquisition of land, facilities, property or complementary products or companies.
Procedure for Exercising Subscription Rights	The subscription rights may be exercised at any time during the subscription period, which commences on _____, 2017. To exercise your subscription rights, you must properly complete the subscription rights certificate distributed by the subscription agent and deliver it, along with the full subscription price (including any amounts in respect of your oversubscription privilege), to the subscription agent, Transfer Online, Inc. before 5:00 p.m., New York time, on _____, 2017, unless the expiration date is extended.
Payment Adjustments	If you send a payment that is insufficient to purchase the number of shares requested, or if the number of shares requested is not specified in the rights certificate, the payment received will be applied to exercise your subscription rights to the extent of the payment. If the payment exceeds the amount necessary for the full exercise of your subscription rights, including any oversubscription rights exercised and permitted, the excess will be returned to you as soon as practicable. You will not receive interest or a deduction on any payments refunded to you under the rights offering.
Shares of Common Stock Issued and Outstanding Before the Rights Offering, Eligible to Participate in the Rights Offering and Outstanding After Completion of the Rights Offering	As of the record date, there were _____ shares of our common stock outstanding and outstanding warrants to purchase 2,699,999 million shares of our common stock. Accordingly, as of the record date, a total of _____ shares were eligible to participate <i>pro rata</i> in the rights offering. We will issue up to a maximum of 3,500,000 shares of common stock in the rights offering and/or pursuant to the Backstop Commitment. Based on the number of shares outstanding as of the record date, if we issue all 3,500,000 shares of common stock available in this rights offering and/or pursuant to the Backstop Commitment, we would have _____ shares of common stock issued and outstanding following the completion of the rights offering.
Subscription Ratio	Based on an aggregate of _____ shares outstanding as of the record date or deemed to be outstanding (assuming exercise of all outstanding warrants) and eligible to participate in the rights offering, we will issue _____ subscription rights for each share of common stock held of record (or deemed to be held) as of the record date.
Non-transferability of Subscription Rights	The subscription rights may not be sold, transferred or assigned to anyone else.
Backstop Commitment	We have entered into an Investment Agreement with MFP, pursuant to which MFP has agreed to purchase from us, subject to certain conditions, the shares of common stock not subscribed for in the rights offering, at a price per share equal to the subscription price in the rights offering. All of our shares of common stock issued to MFP pursuant to the Backstop Commitment will be restricted shares and will bear a restrictive legend. Accordingly, such shares would not be registered pursuant to the registration statement of which this prospectus forms a part, although we have agreed to register such shares in a separate registration

statement. MFP will not receive a fee in connection with the Backstop Commitment; however, we have agreed to pay up to \$50,000 of MFP's expenses in connection with the Investment Agreement. One of our directors, Alexander C. Matina, is Vice President of Investments of the general partner of MFP.

Edgar Filing: S&W Seed Co - Form S-1

Prior Private Placement with MFP, Wynnefield Capital, Inc. and a New Investor	In July 2017, we sold 2,685,000 shares of our common stock to a new investor and two of our stockholders, MFP and Wynnefield Capital, Inc., at a purchase price of \$4.00 per share for total gross proceeds of \$10,740,000 in a private placement exempt from registration by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 of Regulation D promulgated thereunder. That private placement is a distinct transaction from the rights offering. Subject to the terms and conditions of the rights offering, (i) certain members of our board of directors and our management have expressed their intention to purchase their respective <i>pro rata</i> share of the subscription rights, and (ii) MFP has expressed its intention to purchase its <i>pro rata</i> share of the subscription rights and has also committed to purchase shares of our common stock not subscribed for in the rights offering pursuant to the Backstop Commitment. One of our directors, Alexander C. Matina, is Vice President of Investments of the general partner of MFP.
No Revocation of Exercise by Stockholders	All exercises of subscription rights are irrevocable, even if you later learn information about us that you consider unfavorable or our stock price declines. You should not exercise your subscription rights unless you are certain that you wish to purchase the shares of common stock offered pursuant to this rights offering.
Conditions to the Rights Offering	The completion of the rights offering is subject to the conditions described under "Description of the Rights Offering - Amendment, Withdrawal and Termination."
Amendment; Cancellation	Subject to the terms of the Investment Agreement with MFP, we may amend the terms of the rights offering or extend the rights offering period and we reserve the right to cancel the rights offering at any time prior to the expiration date for any reason. If the rights offering is cancelled, all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable, to those persons who subscribed for shares in the rights offering. We will notify you of any amendments or modifications to the terms of the rights offering, or if the rights offering is cancelled, by issuing a press release.
No Board Recommendation	Our board of directors is making no recommendations regarding your exercise of the subscription rights. You are urged to make your own decision whether or not to exercise your subscription rights based on your own assessment of our business and the rights offering. See "Risk Factors."
Issuance of Common Stock	All shares of common stock that you purchase in the rights offering will be issued in book-entry, or uncertificated, form. When issued, the shares will be registered in the name of the subscription rights holder of record. As soon as practicable after the expiration of the rights offering, the subscription agent will arrange for the issuance of the shares of common stock purchased pursuant to the subscription privilege. Subject to state securities laws and regulations, we have the discretion to delay distribution of any shares you may have elected to purchase by exercise of your subscription rights in order to comply with state securities laws.
Certain Material U.S. Federal Tax Consequences to U.S. Holders	For U.S. federal income tax purposes, we do not believe you should recognize income or loss in connection with the receipt or exercise of subscription rights in the rights offering.

However the rules applicable to the receipt and exercise of subscription rights are complicated and unclear in certain respects, and it is possible that the Internal Revenue Service ("IRS") could

Edgar Filing: S&W Seed Co - Form S-1

challenge our position. You are urged to consult your own tax advisor as to your particular tax consequences resulting from the receipt and exercise of subscription rights and the receipt, ownership and disposition of our common stock. For further information, please see "Material U.S. Federal Income Tax Consequences to U.S. Holders."

Subscription Agent,
Information Agent and
Escrow Agent

Transfer Online, Inc.

Risk Factors

Stockholders considering making an investment by exercising subscription rights in the rights offering should carefully read and consider the information set forth in "Risk Factors" beginning on page 12 of this prospectus, together with the other information contained in or incorporated by reference into this prospectus, before making a decision to invest in our common stock.

Nasdaq Capital Market
Symbol

SANW

RISK FACTORS

An investment in our common stock involves a high degree of risk. You should carefully read and consider the risks described below, together with the other information contained in or incorporated by reference into this prospectus, including under the heading "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended June 30, 2017, before making a decision to invest in our common stock. The risks described below are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially and adversely affect our business operations. If any of the following risks actually occurs, our business, results of operations and financial condition could suffer. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment.

Risks Related to the Rights Offering

The price of our common stock is volatile and may decline after you exercise your subscription rights.

The market price of our common stock is subject to wide fluctuations in response to numerous factors, including factors that have little or nothing to do with us or our performance, and these fluctuations could materially reduce our stock price. These factors include, among other things, the fact that our stock is relatively thinly traded, and as a result trades of small numbers of our shares can have a significant impact on the trading price of our stock, business conditions in our markets and the general state of the securities markets and the market for other agricultural stocks, changes in capital markets that affect the perceived availability of capital to companies in our industry, governmental legislation or regulation and general economic and market conditions, such as recessions and downturns in the United States or global economy. In addition, the stock market historically has experienced significant price and volume fluctuations. These fluctuations are often unrelated to the operating performance of particular companies. These broad market fluctuations may cause declines in the market price of our common stock, which may make it difficult for you to resell shares of our common stock owned by you at times or at prices that you find attractive.

If you do not fully exercise your subscription privilege, your interest in us may be significantly diluted, and to the extent you do exercise your subscription rights and the subscription price is less than the fair value of our common stock, you would experience an immediate dilution of the aggregate fair value of your subscription shares, which could be substantial.

Up to a maximum of 3,500,000 shares are issuable in the rights offering and/or pursuant to the Backstop Commitment. Accordingly, if you do not exercise your subscription privilege in full, your interest in us will be significantly diluted upon completion of the rights offering. In addition, if you do exercise your subscription rights and the subscription price is less than the fair value of our common stock, you would experience immediate dilution of the value of your subscription shares relative to what your value would have been had our common stock been issued at fair value. This dilution could be substantial.

The subscription price determined for the rights offering is not an indication of the fair value of our common stock.

Our board of directors considered a number of factors in determining the price for the rights offering, including:

- the price per share at which a new investor and two of our major stockholders, MFP and Wynnefield Capital, Inc., purchased shares in a private placement in July 2017;
- "pass through" savings as a result of conducting the rights offering with no investment banking support;
- the price at which our stockholders might be willing to participate in the rights offering;
- the price per share at which MFP is willing to backstop the rights offering;
- historical and current trading prices for our common stock, including on a volume weighted average share price basis over certain periods; and
- the desire to provide an opportunity to our stockholders to participate in the rights offering on a *pro rata* basis.

The subscription price is not necessarily related to our book value, results of operations, cash flows, financial condition or net worth or any other established criteria of value and may or may not be considered the fair value of our common stock at the time the rights offering was approved by our board of directors or during the rights offering period. We cannot assure you that the trading price of our common stock will not decline after you exercise your subscription rights. We also cannot assure you that you will be able to sell shares purchased in this rights offering at a price equal to or greater than the subscription price. We do not intend to change the subscription price in response to changes in the trading price of our common stock prior to the closing of the rights offering.

Our board of directors is not making any recommendations regarding your exercise of the subscription rights, and we did not receive a fairness opinion from a financial advisor in determining the subscription price or the terms of the offering.

Our board of directors is not making any recommendations regarding your exercise of the subscription rights. In addition, we did not receive a fairness opinion from a financial advisor in determining the subscription price or the terms of the offering. Stockholders who exercise subscription rights risk investment loss on new money invested. We cannot assure you that the trading price for our common stock will be above the subscription price at the time of exercise or at the expiration of the rights offering period or that anyone purchasing shares at the subscription price will be able to sell those shares in the future at the same price or a higher price. You are urged to make your own decision whether or not to exercise your subscription rights based on your own assessment of our business and the rights offering.

The rights offering may cause the price of our common stock to decline.

The announcement of the rights offering and its terms, including the subscription price, together with the number of shares of common stock we could issue if this rights offering is completed, may result in an immediate decrease in the trading price of our common stock. This decrease may continue after the completion of the rights offering. If that occurs, your purchase of shares of our common stock in the rights offering may be at a price greater than the prevailing trading price. Further, if the holders of the shares received upon exercise of the subscription rights choose to sell some or all of their shares, the resulting sales could also depress the trading price of our common stock.

Because you may not revoke or change your exercise of the subscription rights, you could be committed to buying shares above the prevailing trading price at the time the rights offering is completed.

Once you exercise your subscription rights, you may not revoke or change the exercise. The trading price of our common stock may decline after you exercise your subscription right. If you exercise your subscription rights, and, afterwards, the trading price of our common stock decreases below the per share subscription price, you will have committed to buying shares of our common stock at a price above the prevailing trading price and could have an immediate unrealized loss. There can be no assurances that the trading price of our common stock will equal or exceed the subscription price at the time of exercise or at the expiration of the subscription rights offering period.

You may not be able to resell any shares of our common stock that you purchase pursuant to the exercise of subscription rights immediately upon expiration of the subscription rights offering period.

If you exercise subscription rights, you may not be able to resell the common stock purchased by exercising your subscription rights until you, or your broker, custodian bank or other nominee, if applicable, have received those shares. Moreover, you will have no rights as a stockholder of the shares you purchased in the rights offering until we issue the shares to you. Although we will endeavor to issue the shares as soon as practicable after completion of the rights offering, including after all necessary calculations have been completed, there may be a delay between the expiration date of the rights offering and the time that the shares are issued.

Because we will have broad discretion over the use of the net proceeds from the rights offering, you may not agree with how we use the proceeds.

We are conducting the rights offering in order to raise additional capital and to improve and strengthen our financial position. We intend to use the net proceeds from the rights offering to fund our acquisition of GMO alfalfa assets from DuPont Pioneer (in connection with our December 2014 acquisition of certain alfalfa assets from DuPont Pioneer) and for general corporate purposes, including working capital and capital expenditures. In addition, we may use a portion of the net proceeds for the repayment of debt, including our credit facility with KeyBank and our outstanding promissory note issued to DuPont Pioneer, or refinancing of indebtedness or the acquisition of land, facilities,

property or complementary products or companies. However, we may allocate the proceeds among these purposes as we determine is appropriate. Moreover, economic, business and financial market conditions may require us to allocate portions of the net proceeds for other purposes. Accordingly, you will be relying on the judgment of our management with regard to the use of proceeds from the rights offering, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used in a manner that you consider appropriate.

If you do not act timely and follow the subscription instructions, your exercise of subscription rights will be rejected.

Stockholders that desire to purchase shares in the rights offering must act promptly to ensure that all required forms and payments are actually received by the subscription agent prior to the expiration date of the rights offering. If you are a beneficial owner of shares, you must act timely to ensure that your broker, dealer, custodian bank or other nominee acts for you and that all required forms and payments are actually received by the subscription agent prior to the expiration of the rights offering period. We are not responsible if your broker, dealer, custodian bank or nominee fails to ensure that all required forms and payments are actually received by the subscription agent prior to the expiration of the rights offering period. If you fail to complete and sign the required subscription forms, send an incorrect payment amount or otherwise fail to follow the subscription procedures that apply to your exercise in the rights offering prior to the expiration of the rights offering period, the subscription agent may, depending on the circumstances, reject your subscription or accept it only to the extent of the payment received. Neither we nor the subscription agent undertakes to contact you concerning, or attempt to correct, an incomplete or incorrect subscription form. We have the sole discretion to determine whether the exercise of your subscription rights properly and timely follows the subscription procedures.

If you make payment of the subscription price by uncertified personal check, your check may not clear in sufficient time to enable you to purchase shares in the rights offering.

Any uncertified personal check used to pay the subscription price in the rights offering must clear prior to the expiration date of the rights offering, and the clearing process may require five or more business days. As a result, if you choose to use an uncertified personal check to pay the subscription price, it may not clear prior to the expiration date, in which event you would not be eligible to exercise your subscription rights. You may eliminate this risk by paying the subscription price by wire or bank draft drawn on a U.S. bank or a U.S. postal money order.

Because the subscription rights are non-transferable, there is no market for the subscription rights.

You may not sell, transfer or assign your subscription rights to anyone else. Because the subscription rights are non-transferable, there is no market or other means for you to directly realize any value associated with the subscription rights. You must exercise the subscription rights and acquire additional shares of our common stock to realize any value that may be embedded in the subscription rights.

The receipt of subscription rights may be treated as a taxable distribution to you.

We believe the distribution of the subscription rights in this rights offering should be a non-taxable distribution to holders of shares of common stock and warrants under Section 305(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Please see the discussion of "Material U.S. Federal Income Tax Consequences to U.S. Holders" below. This position is not binding on the IRS, or the courts, however. If this rights offering is deemed to be part of a "disproportionate distribution" under Section 305 of the Code, your receipt of subscription rights in this offering may be treated as the receipt of a taxable distribution to you equal to the fair market value of the subscription rights. Any such distribution would be treated as dividend income to the extent of our current and accumulated earnings and profits, if any, with any excess being treated as a tax-free return of capital to the extent thereof and then as capital gain. Each holder of shares of common stock and each holder of warrants is urged to consult his, her or its own tax advisor with respect to the particular tax consequences of this rights offering.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and any applicable prospectus supplement or free writing prospectus, including the documents that we incorporate by reference herein and therein, contain "forward- looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements can generally be identified as such because the context of the statement will include words such as "may," "will," "intend," "plan," "believe," "anticipate," "expect," "estimate," "predict," "potential," "continue," "likely," or "opportunity," the negative of these words or words of similar import. Similarly, statements that describe our future plans, strategies, intentions, expectations, objectives, goals or prospects are also forward-looking statements. Discussions containing these forward-looking statements may be found, among other places, in the "Business" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" sections incorporated by reference from our most recent Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q for the quarterly periods ended subsequent to our filing of such Annual Report on Form 10-K, as well as any amendments thereto reflected in subsequent filings with the SEC.

These forward-looking statements are based largely on our expectations and projections about future events and future trends affecting our business, and are subject to risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. The risks and uncertainties include, among others, those noted in "Risk Factors" above and in any applicable prospectus supplement or free writing prospectus, and those included in the documents that we incorporate by reference herein and therein.

In addition, past financial and/or operating performance is not necessarily a reliable indicator of future performance, and you should not use our historical performance to anticipate results or future period trends. We can give no assurances that any of the events anticipated by the forward-looking statements will occur or, if any of them do, what impact they will have on our results of operations and financial condition. Except as required by law, we undertake no obligation to publicly revise our forward-looking statements to reflect events or circumstances that arise after the filing of this prospectus or any applicable prospectus supplement or free writing prospectus, or documents incorporated by reference herein and therein, that include forward-looking statements.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of our common stock offered in the rights offering and/or pursuant to the Backstop Commitment after deducting estimated offering expenses, will be approximately \$. We estimate that the expenses of the rights offering will be approximately \$.

We are conducting the rights offering in order to raise additional capital and to improve and strengthen our financial position. We intend to use the net proceeds from the rights offering to fund our acquisition of GMO alfalfa assets from DuPont Pioneer (in connection with our December 2014 acquisition of certain alfalfa assets from DuPont Pioneer) and for general corporate purposes, including working capital and capital expenditures.

In connection with our December 2014 acquisition of certain alfalfa assets from Dupont Pioneer (the "Dupont Pioneer Acquisition"), we agreed to the terms of a second asset purchase agreement related to the purchase of DuPont Pioneer's GMO alfalfa assets, subject to certain circumstances, for an aggregate purchase price of \$7,000,000. As indicated above, we intend to use a portion of the net proceeds from the rights offering to fund all or part of this acquisition.

In addition, we may use a portion of the net proceeds for the repayment of debt, including our credit facility with KeyBank and our outstanding promissory note issued to DuPont Pioneer, or refinancing of indebtedness or the acquisition of land, facilities, property or complementary products or companies.

On September 22, 2015, we entered into a \$20.0 million principal amount revolving credit facility with KeyBank National Association ("KeyBank"), which principal amount was increased to \$35.0 million pursuant to a Fourth Amendment Agreement on September 13, 2017 (as amended, the "KeyBank Credit Facility"). The KeyBank Credit Facility has a maturity date of September 12, 2019 and loans may be based on a Base Rate or Eurodollar Rate (which is increased by an applicable margin of 2.2% per annum), each as defined in the September 22, 2015 Credit and Security Agreement between us and KeyBank. We may use a material portion of the net proceeds from the rights offering to pay down our principal balance of the KeyBank Credit Facility.

On December 31, 2014, in connection with the DuPont Pioneer Acquisition, we issued a secured promissory note (the "Pioneer Note") payable by us to DuPont Pioneer in the initial principal amount of \$10,000,000 (issued at closing), and a potential earn-out payment (payable as an increase in the principal amount of the Pioneer Note) of up to \$5,000,000 based on our sales under the distribution and production agreements entered into in connection with the DuPont Pioneer Acquisition, as well as other sales of products we consummate containing the acquired germplasm in the three-year period following the closing. The Pioneer Note accrues interest at a rate of 3% per annum, and interest is payable in three annual installments, in arrears, commencing on December 31, 2015. The Pioneer Note matures on December 31, 2017.

Pending these uses, we intend to invest our net proceeds from this offering primarily in cash or short-term equivalents. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds we will have upon completion of the offering. Accordingly, we will retain broad discretion over the use of these proceeds.

MARKET PRICE OF OUR COMMON STOCK

Market Information

The following table sets forth the range of high and low sales prices per share of our common stock as reported on the NASDAQ Capital Market for the periods indicated.

	High	Low
Year Ended June 30, 2016		
First Quarter	\$5.42	\$4.05
Second Quarter	4.80	4.05
Third Quarter	4.78	3.90
Fourth Quarter	4.80	4.10
Year Ended June 30, 2017		
First Quarter	\$5.14	\$4.24
Second Quarter	5.35	4.25
Third Quarter	5.00	4.15
Fourth Quarter	5.20	3.08
Year Ending June 30, 2018		
First Quarter	\$4.20	\$2.90
Second Quarter (through October 2, 2017)	3.20	3.05

On October 2, 2017, the closing price as reported on the NASDAQ Capital Market of our common stock was \$3.05 per share.

Holders

As of October 2, 2017, there were 34 stockholders of record holding shares of our common stock.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our common stock. For the foreseeable future, we intend to retain any earnings to finance the development and expansion of our business, and we do not anticipate paying any cash dividends on our common stock. Any future determination to pay dividends will be at the discretion of our board of directors and will be dependent upon then existing conditions, including our financial condition and results of operations, capital requirements, contractual restrictions, business prospects and other factors that our board of directors considers relevant. In addition, our credit facility with KeyBank contains restrictions on our ability to pay dividends.

DILUTION

If you purchase shares of our common stock in this offering, you will experience dilution to the extent of the difference between the price per share you pay in this offering and the net tangible book value per share of our common stock immediately after this offering. The net tangible book value of our common stock on June 30, 2017 was \$16.0 million, or \$0.89 per share (based upon 17,979,681 shares of our common stock outstanding). Net tangible book value per share is equal to the amount of our total tangible assets, less total liabilities, divided by the aggregate number of shares of our common stock outstanding.

After giving effect to the assumed sale in this rights offering by us of 3,500,000 shares of common stock at a subscription price of \$3.50 per share and after deducting estimated offering expenses payable by us, our as adjusted net tangible book value as of June 30, 2017 would have been \$ million, or \$ per share of common stock. This represents an immediate increase in net tangible book value of \$ per share to existing stockholders and immediate dilution in net tangible book value of \$ per share to investors purchasing shares of our common stock in this offering. The following table illustrates this per share dilution:

Subscription price per share of common stock	\$ 3.50
Net tangible book value per share as of June 30, 2017	\$ 0.89
Increase per share attributable to investors in this offering	

As adjusted net tangible book value per share as of June 30, 2017 after giving effect to this offering

Dilution per share to investors participating in this offering	\$
--	----

The discussion and table above do not take into account further dilution to investors in this offering that could occur upon the exercise of outstanding options and warrants having a per share exercise price less than the subscription price per share in this offering.

The number of shares of our outstanding common stock reflected in the discussion and table above is based on 17,979,681 shares of common stock outstanding as of June 30, 2017 and excludes, as of that date:

- 990,528 shares of our common stock issuable upon exercise of outstanding options at a weighted average exercise price of \$5.12 per share;
- 120,971 shares of our common stock issuable upon the settlement of outstanding restricted stock units;
- 2,699,999 shares of our common stock issuable upon exercise of outstanding warrants at an exercise price of \$4.53 per share (as may be adjusted pursuant to their terms); and
- 561,278 shares of our common stock to be reserved for potential future issuance pursuant to Amended and Restated 2009 Equity Incentive Plan.

DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock consists of 50,000,000 shares of common stock and 5,000,000 shares of preferred stock, all with a par value of \$0.001 per share. As of October 2, 2017, we had 20,704,688 shares of common stock and no shares of preferred stock outstanding.

Common Stock

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. Subject to the preference in dividend rights of any series of preferred stock that we may issue in the future, the holders of common stock are entitled to receive such cash dividends, if any, as may be declared by our board of directors out of legally available funds. Upon liquidation, dissolution or winding up, after payment of all debts and liabilities and after payment of the liquidation preferences of any shares of preferred stock then outstanding, the holders of the common stock will be entitled to participate pro rata in all assets that are legally available for distribution.

Other than the rights described above, the holders of common stock have no preemptive subscription, redemption, sinking fund or conversion rights and are not subject to further calls or assessments. The rights and preferences of holders of common stock will be subject to the rights of any series of preferred stock that we may issue in the future.

Preferred Stock

We have never had, and immediately following this offering we will not have, any shares of preferred stock outstanding. Our board of directors, without any further vote or action by our stockholders, has the authority to issue up to an aggregate of 5,000,000 shares of preferred stock from time to time, in one or more classes or series of shares, on terms that it may determine, including among other things:

- its dividend rate;
- its liquidation preference;
- whether or not the shares will be convertible into, or exchangeable for, any other securities; and
- whether or not the shares will have voting rights, and, if so, determine the extent of the voting powers and the conditions under which the shares will vote as a separate class.

We believe that our board of directors' ability to issue preferred stock on such a wide variety of terms will enable the preferred stock to be used for important corporate purposes, such as financing acquisitions or raising additional capital. However, were it inclined to do so, our board of directors could issue all or part of the preferred stock with, among other things, substantial voting power or advantageous conversion rights. This stock could be issued to persons deemed by our board of directors likely to support our current management in a context for control of us, either as a precautionary measure or in response to a specific takeover threat. We have no current plans to issue preferred stock for any purpose.

The issuance of preferred stock may delay, deter or prevent a change in control.

Anti-Takeover Effects of Certain Provisions of Nevada Law and Our Articles of Incorporation and Bylaws

Anti-Takeover Effects of Certain Provisions of Nevada Law and Our Articles of Incorporation and Bylaws and the Effect of Nevada Anti-takeover Statute.

We are subject to Section 78.438 of the Nevada Revised Statutes, an anti-takeover law. In general, Section 78.438 prohibits a Nevada corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless prior to that date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder. Section 78.439 provides that business combinations after the three year period following the date that the stockholder becomes an interested stockholder may also be prohibited unless approved by the corporation's directors or other stockholders or unless the price and terms of the transaction meet the criteria set forth in the statute.

Section 78.416 defines "business combination" to include the following:

- any merger or consolidation involving the corporation and the interested stockholder or any other corporation which is an affiliate or associate of the interested stockholder;
- any sale, transfer, pledge or other disposition of the assets of the corporation involving the interested stockholder or any affiliate or associate of the interested stockholder if the assets transferred have a market value equal to 5% or more of all of the assets of the corporation or 5% or more of the value of the outstanding shares of the corporation or represent 10% or more of the earning power of the corporation;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation with a market value of 5% or more of the value of the outstanding shares of the corporation;
- the adoption of a plan of liquidation proposed by or under any arrangement with the interested stockholder or any affiliate or associate of the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder or any affiliate or associate of the interested stockholder; or
- the receipt by the interested stockholder or any affiliate or associate of the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 78.423 defines an interested stockholder as any entity or person beneficially owning, directly or indirectly, 10% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

Control Share Acquisitions

The Nevada Business Corporation Law contains a provision governing "Acquisition of Controlling Interest." This law provides generally that any person or entity that acquires 20% or more of the outstanding voting shares of a publicly-held Nevada corporation in the secondary public or private market may be denied voting rights with respect to the acquired shares, unless a majority of the disinterested stockholders of the corporation elects to restore such voting rights in whole or in part. The control share acquisition act provides that a person or entity acquires "control shares" whenever it acquires shares that, but for the operation of the control share acquisition act, would bring its voting power within any of the following three ranges: (1) 20 to 33 1/3%, (2) 33 1/3 to 50%, or (3) more than 50%. A "control share acquisition" is generally defined as the direct or indirect acquisition of either ownership or voting power associated with issued and outstanding control shares. The stockholders or board of directors of a corporation may elect to exempt the stock of the corporation from the provisions of the control share acquisition act through adoption of a provision to that effect in the Articles of Incorporation or Bylaws of the corporation. The control share acquisition act is applicable only to shares of "Issuing Corporations" as defined by the act. An Issuing Corporation is a Nevada corporation, which; (1) has 200 or more stockholders of record, with at least 100 of such stockholders being both stockholders of record and residents of Nevada; and (2) does business in Nevada directly or through an affiliated corporation.

At this time, we do not have 200 stockholders of record or 100 stockholders of record resident of Nevada. Notwithstanding, our Bylaws exempt our common stock from the control share acquisition act. Therefore, the provisions of the control share acquisition act do not apply to acquisitions of our shares.

Our Transfer Agent, Registrar, Subscription Agent and Information Agent

Our transfer agent and registrar for our common stock is Transfer Online, Inc., Portland, Oregon. Transfer Online is also serving as the subscription agent and the information agent for the rights offering.

DESCRIPTION OF THE RIGHTS OFFERING

Before deciding whether to exercise your subscription rights, you should carefully read this prospectus, including the information set forth under the heading "Risk Factors" and the information that is incorporated by reference into this prospectus, including our Annual Report on Form 10-K for the fiscal year ended June 30, 2017.

The Subscription Rights Generally

We are distributing to the holders of our common stock and warrants to purchase our common stock (on an assumed as-exercised basis) as of 5:00 p.m., New York time, on _____, 2017, which is the record date for this rights offering, at no charge, non-transferable subscription rights to purchase shares of our common stock. You will receive _____ subscription rights for each share of common stock you owned or are deemed to own, assuming exercise of the warrants, as applicable, as of 5:00 p.m., New York time, on the record date. The total number of subscription rights issued to each holder will be rounded down to the nearest whole number.

The subscription rights will be evidenced by subscription rights certificates. Each subscription right includes a basic subscription privilege and an oversubscription privilege which are described in greater detail below. Subscription rights may be exercised at any time during the subscription period, which commences on _____, 2017, through the expiration date for the rights offering, which is 5:00 p.m., New York time, on _____, 2017. You are not required to exercise any of your subscription rights.

Subscription Privilege

We will distribute _____ subscription rights to each holder of record of our common stock and warrants to purchase our common stock (on an as-exercised basis) for each share of common stock held (or deemed to be held) by such holder, together with the holders of the warrants, collectively, for purposes of the rights offering, "stockholders." The total number of subscription rights issued to each holder will be rounded down to the nearest whole number. Each whole subscription right will entitle you to purchase one share of common stock at a subscription price of \$3.50 per share. You may exercise any number of your subscription rights, or you may choose not to exercise any subscription rights. The subscription privilege will allocate the rights to purchase up to 3,500,000 shares of common stock (the "offered pool"), allocated *pro rata* among the stockholders entitled to participate as of the record date. We will place into escrow the subscribed for shares in the "offered pool," pending completion of the oversubscription portion of the rights offering. See "- Oversubscription Privilege."

Oversubscription Privilege

If any of our stockholders do not exercise all of the subscription rights issued to them in this rights offering, then each holder who has exercised subscription rights in full will have the opportunity to purchase additional shares of our common stock at the subscription price of \$3.50 per share under the oversubscription right. By extending oversubscription rights to our stockholders, we are providing those holders who have exercised all of their subscription rights with an opportunity to purchase shares that are not purchased by other stockholders in this rights offering.

If sufficient shares of common stock are available, we will seek to honor your oversubscription request in full. If, however, there are not enough shares available to fully satisfy all oversubscription right requests, we will allocate the available shares of common stock *pro rata* among those stockholders exercising their oversubscription privilege in proportion to the product (rounded down so that the subscription price multiplied by the aggregate number of shares does not exceed the aggregate offering amount) obtained by multiplying the number of shares such stockholder subscribed for under the oversubscription privilege by a fraction the numerator of which is the number of

Edgar Filing: S&W Seed Co - Form S-1

unsubscribed shares and the denominator of which is the total number of shares sought to be subscribed for under the oversubscription privilege by all holders participating in such oversubscription. The subscription agent will return any excess payments by mail without interest or deduction as soon as reasonably practical after the expiration date.

In order to properly exercise your oversubscription privilege, you must