

ZOGENIX, INC.
Form 8-K
October 03, 2017

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 2, 2017

ZOGENIX, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

001-34962
(Commission

File Number)

20-5300780
(IRS Employer

Identification No.)

5858 Horton Street, #455,

Emeryville, CA

(Address of Principal Executive Offices)

94608

(Zip Code)

Registrant's telephone number, including area code: (510) 550-8300

(Former Name or Former Address, if Changed Since Last Report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events.

On October 2, 2017, Zogenix, Inc. ("Zogenix" or the "Company") entered into an underwriting agreement (the "Underwriting Agreement") with Leerink Partners LLC and Stifel, Nicolaus & Company, Incorporated, as representatives of the several underwriters named therein (collectively, the "Underwriters"), relating to the issuance and sale of 6,700,000 shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"). The price to the public in this offering is \$37.50 per share. The Underwriters have agreed to purchase the shares from the Company pursuant to the Underwriting Agreement at a price of \$35.25 per share. The net proceeds to the Company from this offering are expected to be approximately \$235.9 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by the Company. The offering is expected to close on or about October 5, 2017, subject to customary closing conditions. In addition, under the terms of the Underwriting Agreement, the Company has granted the Underwriters a 30-day option to purchase up to 1,005,000 additional shares of Common Stock.

The offering is being made pursuant to a shelf registration statement on Form S-3 (Registration Statement No. 333-220759) filed by the Company with the Securities and Exchange Commission (the "SEC") that became automatically effective on October 2, 2017, and a prospectus supplement and accompanying prospectus filed with the SEC.

The Underwriting Agreement contains customary representations, warranties and agreements by the Company, customary conditions to closing, indemnification obligations of the Company and the Underwriters, including for liabilities under the Securities Act of 1933, as amended, other obligations of the parties and termination provisions. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties.

The foregoing description of the Underwriting Agreement is not complete and is qualified in its entirety by reference to the full text of the Underwriting Agreement, a copy of which is filed as Exhibit 1.1 to this report and is incorporated by reference herein. A copy of the opinion of Latham & Watkins LLP relating to the legality of the issuance and sale of Common Stock in the offering is attached as Exhibit 5.1 to this report.

The Company issued press releases on October 2, 2017 announcing the commencement of the offering and the pricing of the offering, which press releases are attached as Exhibits 99.1 and 99.2, respectively, to this report.

Zogenix cautions you that statements included in this report that are not a description of historical facts are forward-looking statements. These forward-looking statements include statements regarding the completion of the offering and the expected net proceeds therefrom. The inclusion of forward-looking statements should not be regarded as a representation by Zogenix that any of these results will be achieved. Actual results may differ from those set forth in this report due to the risks and uncertainties associated with market conditions and the satisfaction of customary closing conditions related to the offering, as well as risks and uncertainties inherent in Zogenix's business, including those described in the Company's other filings with the SEC. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof, and Zogenix undertakes no obligation to revise or update this report to reflect events or circumstances after the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement. This caution is made under the safe harbor provisions of Section 21E of the Private Securities Litigation Reform Act of 1995.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit No. | Description |
|--------------------|--|
| 1.1 | <u>Underwriting Agreement, dated October 2, 2017, by and between Zogenix, Inc. and Leerink Partners LLC and Stifel, Nicolaus & Company, Incorporated, as representatives of the several underwriters named therein</u> |
| 5.1 | <u>Opinion of Latham & Watkins LLP</u> |
| 23.1 | <u>Consent of Latham & Watkins LLP (included in Exhibit 5.1)</u> |
| 99.1 | <u>Press Release dated October 2, 2017</u> |
| 99.2 | <u>Press Release dated October 2, 2017</u> |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ZOGENIX, INC.

Date: October 3, 2017

By: /s/ Michael P. Smith

Name: Michael P. Smith

Title: Executive Vice President, Chief Financial Officer,
Treasurer and Secretary