

ARCA biopharma, Inc.
Form 8-K
March 11, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 11, 2019

ARCA biopharma, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction

000-22873

36-3855489
(IRS Employer

of Incorporation)

(Commission File Number) Identification No.)

11080 CirclePoint Road, Suite 140, Westminster, CO
(Address of Principal Executive Offices)

80020
(Zip Code)

Registrant's Telephone Number, Including Area Code: (720) 940-2200

Not Applicable

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

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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 Instructions 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 1.01 Entry Into a Material Definitive Agreement.

On March 11, 2019, ARCA biopharma, Inc. (the “Company”) entered into Amendment No. 3 (the “Amendment”) to its Capital on Demand™ Sales Agreement, dated as of January 11, 2017, as amended by the Amendment No. 1, dated as of August 21, 2017 and Amendment No. 2, dated as of January 25, 2019, (together, the “Sales Agreement” and, as amended by the Amendment, the “Amended Sales Agreement”), with JonesTrading Institutional Services LLC, as agent (“Agent”). The Amendment, among other things, increased the maximum aggregate offering value of shares of the Company’s common stock (the “Additional Shares”) which the Company may issue and sell from time to time under the Amended Sales Agreement (the “Offering”) by \$580,676, from \$12,742,739 to \$13,323,145. As of March 11, 2019, the Company had sold 9,242,406 shares of its common stock under the Sales Agreement for an aggregate offering price of approximately \$12.6 million, before deducting sales and commissions and offering expenses. The Company will file a prospectus supplement with the Securities and Exchange Commission (the “SEC”) in connection with the Offering (the “Prospectus Supplement”) under its existing Registration Statement on Form S-3 (File No 333-217459), which became effective on May 12, 2017 (the “Registration Statement”).

Under the Amended Sales Agreement, Agent may sell the Additional Shares by any method permitted by law and deemed to be an “at the market offering” as defined in Rule 415 promulgated under the Securities Act of 1933, as amended. The Company may instruct Agent not to sell Additional Shares if the sales cannot be effected at or above the price designated by the Company from time to time.

The Company is not obligated to make any sales of the Additional Shares under the Amended Sales Agreement. The Offering will terminate upon the earlier of (a) the sale of all of the Additional Shares subject to the Amended Sales Agreement or (b) the termination of the Amended Sales Agreement by Agent or the Company, as permitted therein.

The Company will pay Agent a commission rate equal to 3.0% of the aggregate gross proceeds from each sale of Additional Shares and has agreed to provide Agent with customary indemnification and contribution rights. The Company will also reimburse Agent for certain specified expenses in connection with entering into the Amended Sales Agreement.

The foregoing description of the Amended Sales Agreement is not complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference. The Company previously filed the Sales Agreement as Exhibit 10.1 to its Current Report on Form 8-K filed with the SEC on January 11, 2017, the Amendment No.1 as Exhibit 10.1 to its Current Report on Form 8-K filed with the SEC on August 21, 2017 and the Amendment No.2 as Exhibit 10.1 to its Current Report on Form 8-K filed with the SEC on January 25, 2019.

Cooley LLP, counsel to the Company, has issued a legal opinion relating to the Additional Shares. A copy of such legal opinion, including the consent included therein, is attached as Exhibit 5.1 hereto.

The Additional Shares will be sold pursuant to the Registration Statement, and offerings of the Additional Shares will be made only by means of the Prospectus Supplement and any accompanying prospectus. This Current Report on Form 8-K shall not constitute an offer to sell or solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of such state or jurisdiction.

Section 9 — Financial Statements and Exhibits

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit Number | Description |
|----------------|--|
| 5.1 | <u>Opinion of Cooley LLP.</u> |
| 10.1 | <u>Amendment No. 3 to Capital on Demand™ Sales Agreement, dated March 11, 2019, by and between ARCA biopharma, Inc. and JonesTrading Institutional Services LLC.</u> |
| 23.1 | <u>Consent of Cooley LLP (included in Exhibit 5.1).</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.

Dated: March 11, 2019

ARCA biopharma, Inc.
(Registrant)

By: /s/ Brian L. Selby
Name: Brian L. Selby
Title: Vice President, Finance and Chief Accounting Officer