

BIOLASE, INC
Form 10-K/A
July 06, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Mark One)

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

For the fiscal year ended December 31, 2011

OR

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

For the transition period from _____ to _____

Commission file number 000-19627

BIOLASE, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of

Incorporation or Organization)

87-0442441
(I.R.S. Employer

Identification No.)

4 Cromwell

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Irvine, California 92618

(Address of Principal Executive Offices, including zip code)

(949) 361-1200

(Registrant's Telephone Number, Including Area Code)

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

(Title of each class)	(Name of each exchange on which registered)
Common Stock, par value \$0.001 per share	The NASDAQ Stock Market LLC

(NASDAQ Capital Market)

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

None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller Reporting Company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the Registrant's common stock held by non-affiliates was \$153,404,960 based on the last sale price of common stock on June 30, 2011.

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As of March 9, 2012, there were 30,548,205 shares of the Registrant's common stock, par value \$0.001 per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive proxy statement related to its 2012 Annual Meeting of Stockholders, were filed with the Securities and Exchange Commission pursuant to Regulation 14A within 120 days after the Registrant's fiscal year ended December 31, 2011, and are incorporated by reference into Part III of this Annual Report on Form 10-K.

BIOLASE, INC.

FORM 10-K/A

EXPLANATORY NOTE

The registrant has prepared this Amendment No. 1 (Amendment) on Form 10-K/A to its Annual Report on Form 10-K for the fiscal year ended December 31, 2011 (the Form 10-K) for the purpose of re-filing Exhibit 10.32 to the Form 10-K. No revisions are being made to the Company's financial statements and, except as described below, this Amendment does not reflect events occurring after the filing of the Form 10-K, or modify or update those disclosures that may be affected by subsequent events, and no other changes are being made to any other disclosure contained in the Form 10-K.

This Amendment is an exhibit-only filing in response to comments received from the staff of the Securities and Exchange Commission regarding a request for confidential treatment of certain portions of Exhibit 10.32 originally filed with the Form 10-K. This Amendment is being filed solely to re-file Exhibit 10.32. Except for the changes to Exhibit 10.32, this Amendment does not otherwise update any exhibits as originally filed or previously amended. This Amendment is being filed to replace Exhibit 10.32 to include certain portions of the Exhibit that had previously been omitted or redacted pursuant to a request for confidential treatment. This Amendment provides a revised redacted version of Exhibit 10.32.

In addition, as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, new certifications by our principal executive officer and principal financial officer are filed herewith as exhibits to this Amendment.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.

(b) *Exhibits:*

- 10.32 Settlement Agreement, dated February 22, 2012, by and between Biolase Technology, Inc. and Henry Schein, Inc.
- 31.1 Rule 13a-14(a) Certification of Chief Executive Officer *
- 31.2 Rule 13a-14(a) Certification of Chief Financial Officer*

* Filed herewith.

Confidential treatment has been requested for a portion of this exhibit.

SIGNATURES

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

BIOLASE, INC.

July 6, 2012

By /s/ Federico Pignatelli

Federico Pignatelli

Chief Executive Officer

(Principal Executive Officer)

By /s/ Frederick D. Furry

Frederick D. Furry

Chief Financial Officer

(Principal Financial and Accounting Officer)