

Zosano Pharma Corp
Form 8-K
October 23, 2017

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): October 20, 2017

ZOSANO PHARMA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36570
(Commission
File Number)
34790 Ardentech Court

45-4488360
(I.R.S. Employer
Identification No.)

Fremont, CA 94555

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(Address of principal executive offices) (Zip Code)

(510) 745-1200

Registrant's telephone number, including area code

Not applicable

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

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

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

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

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On October 20, 2017, Zosano Pharma Corporation (the Company) entered into a purchase agreement and a registration rights agreement with an accredited investor, Lincoln Park Capital Fund, LLC (Lincoln Park), an Illinois limited liability company, providing for the purchase of up to \$35.0 million worth of the Company's common stock over the term of the purchase agreement.

Under the terms and subject to the conditions of the purchase agreement, the Company has the right, but not the obligation, to sell to Lincoln Park, and Lincoln Park is obligated to purchase, up to \$35.0 million worth of shares of the Company's common stock. In connection with the purchase agreement, the Company issued 227,500 shares of its common stock, as initial commitment shares, to Lincoln Park and the Company will issue, pro rata, up to an additional 227,500 shares of its common stock as additional commitment shares to Lincoln Park in connection with any additional purchases. Such future sales of common stock by the Company, if any, will be subject to certain limitations, and may occur from time to time, at the Company's option, over the 30-month period commencing on the date that a registration statement, which the Company agreed to file with the Securities and Exchange Commission (the SEC) pursuant to the registration rights agreement, is declared effective by the SEC, a final prospectus in connection therewith is filed and the other conditions of the purchase agreement are satisfied (such time, the Commencement).

As contemplated by the purchase agreement, from and after the Commencement and so long as the closing price of the Company's common stock exceeds \$0.50 per share, the Company may direct Lincoln Park, at its sole discretion, to purchase up to 300,000 shares of its common stock on any business day. The price per share for such purchases will be equal to the lower of: (i) the lowest sale price on the applicable purchase date and (ii) the arithmetic average of the three (3) lowest closing sale prices for the Company's common stock during the ten (10) consecutive business days ending on the business day immediately preceding such purchase date (in each case, to be appropriately adjusted for any reorganization, recapitalization, non-cash dividend, stock split or other similar transaction that occurs on or after the date of the purchase agreement). The maximum number of shares that the Company may direct Lincoln Park to purchase in any single regular purchase may increase if the closing sale price of the common stock exceeds certain threshold prices at the time of sale as set forth in the purchase agreement, provided that Lincoln Park's maximum obligation under any single regular purchase will not exceed \$1.0 million.

In addition to regular purchases, from and after the Commencement the Company may also direct Lincoln Park to purchase other amounts of shares of its common stock as accelerated purchases or as additional purchases if the closing sale price of the common stock exceeds certain threshold prices as set forth in the purchase agreement. In all instances, the Company may not sell shares of its common stock to Lincoln Park under the purchase agreement if it would result in Lincoln Park beneficially owning more than 9.99% of the Company's common stock.

Lincoln Park represented to the Company, among other things, that it was an accredited investor (as such term is defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the Securities Act)), and the Company sold the securities in reliance upon an exemption from registration contained in Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder.

The purchase agreement and the registration rights agreement contain customary representations, warranties, agreements and conditions to completing future sale transactions, indemnification rights and obligations of the parties. The Company has the right to terminate the purchase agreement at any time, at no cost or penalty. During any event of default under the purchase agreement, all of which are outside of Lincoln Park's control, Lincoln Park does not have the right to terminate the purchase agreement; however, the Company may not initiate any regular or other purchase of shares by Lincoln Park until such event of default is cured. In addition, in the event of bankruptcy proceedings by or against the Company, the purchase agreement will automatically terminate.

Actual sales of shares of common stock to Lincoln Park under the purchase agreement will depend on a variety of factors to be determined by the Company from time to time, including, among others, market conditions, the trading price of the common stock and determinations by the Company as to the appropriate sources of funding for the Company and its operations. In addition, the Company is subject to a cap on the number of shares that may be issuable under the purchase agreement to the extent that the aggregate number of shares issued would breach the Company's obligations under The NASDAQ Stock Market, which prohibits the issuance of more than 19.99%, or approximately 7.8 million shares, of the Company's outstanding shares of common stock as of August 4, 2017, unless stockholder approval is obtained, or unless the average prices at which shares are sold under the Purchase Agreement cause the transactions under the Purchase Agreement to be exempt from such limitation under applicable NASDAQ rules. Lincoln Park has no right to require any sales by the Company, but is obligated to make purchases from the Company as it directs in accordance with the purchase agreement. Lincoln Park has covenanted not to engage in or cause, in any manner whatsoever, any direct or indirect short selling or hedging of the Company's shares.

The net proceeds under the purchase agreement to the Company will depend on the frequency and prices at which the Company sells shares of its stock to Lincoln Park. The Company expects that any proceeds received by the Company from such sales to Lincoln Park will be used for working capital and general corporate purposes.

This current report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy any shares of common stock, nor shall there be any sale of shares of common stock in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

The foregoing descriptions of the purchase agreement and the registration rights agreement are qualified in their entirety by reference to the full text of such agreements, copies of which are attached hereto as Exhibit 10.1 and 10.2, respectively, and each of which is incorporated herein in its entirety by reference. The representations, warranties and covenants contained in such agreements were made only for purposes of such agreements and as of specific dates, were solely for the benefit of the parties to such agreements, and may be subject to limitations agreed upon by the contracting parties.

Item 3.02 Unregistered Sales of Equity Securities.

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 3.02.

Item 8.01 Other Events

On October 20, 2017, the Company issued a press release announcing the transaction with Lincoln Park. The press release is attached hereto as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit

Number	Exhibit Description
10.1	<u>Purchase Agreement, dated as of October 20, 2017, by and between Zosano Pharma Corporation and Lincoln Park Capital Fund, LLC.</u>
10.2	<u>Registration Rights Agreement, dated as of October 20, 2017, by and between Zosano Pharma Corporation and Lincoln Park Capital Fund, LLC.</u>
99.1	<u>Press release dated October 20, 2017.</u>

SIGNATURE

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.

ZOSANO PHARMA CORPORATION

Dated: October 23, 2017

By: /s/ Georgia Erbez
Name: Georgia Erbez
Title: Chief Business Officer and
Chief Financial Officer