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Xenon Pharmaceuticals Inc.
Form 8-K
July 12, 2018

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): July 11, 2018

XENON PHARMACEUTICALS INC.

(Exact name of Registrant as Specified in Its Charter)

Canada
(State or Other Jurisdiction

001-36687 98-0661854
(Commission (IRS Employer

of Incorporation)

File Number) Identification No.)

200-3650 Gilmore Way

Burnaby, British Columbia, Canada
(Address of Principal Executive Offices)

V5G 4W8
(Zip Code)

Registrant's Telephone Number, Including Area Code: (604) 484-3300

Not Applicable

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(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 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 July 11, 2018, Xenon Pharmaceuticals Inc. (the “Company”) entered into an at-the-market equity offering sales agreement (the “Sales Agreement”) with Jefferies LLC (“Jefferies”) and Stifel, Nicolaus & Company, Incorporated (“Stifel”) to sell common shares of the Company having aggregate sales proceeds of up to \$50,000,000, from time to time, through an “at the market” equity offering program under which Jefferies and Stifel will act as sales agents (collectively referred to as the “Sales Agents” and each, individually, as a “Sales Agent”).

Under the Sales Agreement, the Company will set the parameters for the sale of common shares, including the number of common shares to be issued, the time period during which sales are requested to be made, limitation on the number of common shares that may be sold in any one trading day and any minimum price below which sales may not be made. Subject to the terms and conditions of the Sales Agreement, the Sales Agents may sell the common shares by methods deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended, including sales made directly on The Nasdaq Global Market, or on any other existing trading market for the common shares. In addition, with the Company’s prior written approval, the Sales Agents may also sell common shares by any other method permitted by law, including in negotiated transactions. Each Sales Agent will use its commercially reasonable efforts in conducting such sales activities consistent with its normal trading and sales practices, applicable state and federal laws, rules and regulations and the rules of The Nasdaq Stock Market LLC. The Sales Agreement may be terminated by the Company upon written notice to the Sales Agents for any reason. Each Sales Agent may terminate its participation in the Sales Agreement upon written notice to the parties for any reason. The Sales Agents may terminate the Sales Agreement upon written notice to the Company for any reason or at any time under certain circumstances, including but not limited to the occurrence of a material adverse change in the Company. Under the terms of the Sales Agreement, the Company may also sell common shares to each Sales Agent acting as principal for such Sales Agent’s own account at prices agreed upon at the time of sale.

The Sales Agreement provides that each Sales Agent will be entitled to compensation for its services of up to 3.0% of the gross sales price per common share of all common shares sold through such Sales Agent under the Sales Agreement. The Company has no obligation to sell any common shares under the Sales Agreement, and may at any time suspend solicitation and offers under the Sales Agreement. The Sales Agreement contains customary representations, warranties and agreements by the Company, indemnification obligations of the Company and the Sales Agents, other obligations of the parties and termination provisions. The representations, warranties and covenants contained in the Sales 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 common shares will be issued pursuant to the Company’s effective shelf registration statement on Form S-3 (File No. 333-208376) (the “Registration Statement”), declared effective by the Securities and Exchange Commission (the “SEC”) on January 5, 2016. The Company intends to file a prospectus supplement with the SEC on or about July 12, 2018 in connection with the offer and sale of the common shares pursuant to the Sales Agreement.

The foregoing description of the 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 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The legal opinion of McCarthy Tétrauld LLP relating to the common shares being offered is filed as Exhibit 5.1 to this Current Report on Form 8-K.

This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy the securities discussed herein, nor shall there be any sale of such securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

Item 1.02 Termination of a Material Definitive Agreement.

On May 8, 2018, the Company entered into an at-the-market equity offering sales agreement (the “Prior Sales Agreement”) with Stifel. In connection with the Company’s entry into the Sales Agreement, the Prior Sales Agreement was mutually terminated by the Company and Stifel effective as of July 11, 2018.

The foregoing description of the Prior Sales Agreement is not complete and is qualified in its entirety by reference to the full text of the Prior Sales Agreement, a copy of which is filed as Exhibit 1.1 to the Company’s Current Report on Form 8-K filed with the SEC on May 8, 2018.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
1.1	<u>At-the-Market Equity Offering Sales Agreement, dated as of July 11, 2018, by and among Xenon Pharmaceuticals Inc., Jefferies LLC and Stifel, Nicolaus & Company, Incorporated.</u>
5.1	<u>Opinion of McCarthy Tétrauld LLP.</u>
23.1	<u>Consent of McCarthy Tétrauld 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.

Xenon Pharmaceuticals Inc.

Date: July 12, 2018 By: /s/ Ian Mortimer
Ian Mortimer
President & Chief Financial Officer