

Invitae Corp
Form 8-K
March 01, 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: February 28, 2019

(Date of earliest event reported)

Invitae Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-36847
(Commission
File Number)

27-1701898
(I.R.S. employer
identification number)

1400 16th Street, San Francisco, California 94103

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(Address of principal executive offices, including zip code)

(415) 374-7782

(Registrant's telephone number, including area code)

N/A

(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:

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 February 28, 2019, Invitae Corporation (the Company) entered into an amendment to that certain Sales Agreement dated November 9, 2018 (as amended, the Agreement) with Cowen and Company, LLC (the Sales Agent), which amendment increases the amount of common stock that can be sold by the Company under the Agreement from an aggregate offering price of up to \$75,000,000 to an aggregate offering price of up to \$175,000,000. Pursuant to the Agreement, the Company may offer and sell the shares in transactions deemed to be an at-the-market offering as defined in Rule 415(a)(4) of the Securities Act of 1933, which shares can be sold by the Company from time to time, depending upon market demand, with the Sales Agent acting as an agent for sales. As of the date hereof, the Company has sold approximately \$61.1 million of its common stock pursuant to the Agreement.

The Company will pay the Sales Agent a commission equal to 3% of the gross proceeds from the sale of shares of common stock by it as agent under the Agreement. The Agreement provides that the Company will provide customary indemnification rights to the Sales Agent. The Company has no obligation to sell any shares of common stock pursuant to the Agreement and may at any time suspend sales pursuant to the Agreement. Either party may terminate the Agreement pursuant to the terms of the Agreement without liability of any party.

The shares of common stock will be sold pursuant to a shelf registration statement on Form S-3 which has been filed by the Company and declared effective by the Securities and Exchange Commission (SEC) on August 24, 2018, and a prospectus supplement filed by the Company with the SEC on February 28, 2019. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state.

The foregoing description of the Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the Agreement, copies of which are filed or incorporated by reference as Exhibits 1.1 and 1.2 hereto and are incorporated into this Item 1.01 by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

| Exhibit No. | Description |
|--------------------|--|
| 1.1 | <u>Sales Agreement dated November 9, 2018 between Invitae Corporation and Cowen and Company, LLC (incorporated by reference to Exhibit 10.19 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018).</u> |
| 1.2 | <u>Amendment No. 1 to Sales Agreement dated February 28, 2019 between Invitae Corporation and Cowen and Company, LLC.</u> |
| 5.1 | <u>Opinion of Pillsbury Winthrop Shaw Pittman LLP.</u> |
| 23.1 | <u>Consent of Pillsbury Winthrop Shaw Pittman LLP (included in Exhibit 5.1).</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.

Dated: February 28, 2019

INVITAE CORPORATION

By: /s/ Shelly D. Guyer
Name: Shelly D. Guyer
Title: Chief Financial Officer