

Anthera Pharmaceuticals Inc
Form 8-K
March 16, 2015

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 12, 2015

ANTHERA PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

001-34637
(Commission

File Number)

20-1852016
(I.R.S. Employer

Identification No.)

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25801 Industrial Boulevard, Suite B, Hayward,

California

(Address of Principal Executive Offices)

Registrant's telephone number, including area code: (510) 856-5600

94545

(Zip Code)

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))

**Item 1.01. Entry into a Material Definitive Agreement.
Purchase Agreement**

On March 12, 2015, the Company entered into a purchase agreement (the **Purchase Agreement**) with Lincoln Park Capital Fund, LLC (**LPC**), pursuant to which the Company has the right to sell to LPC up to \$10,000,000 in shares of the Company's common stock, par value \$0.001 per share (**Common Stock**), subject to certain limitations and conditions set forth in the Purchase Agreement.

Pursuant to the Purchase Agreement, upon the satisfaction of all of the conditions to the Company's right to commence sales under the Purchase Agreement (the **Commencement**), on any business day and as often as every other business day over the 24-month term of the Purchase Agreement, and up to an aggregate amount of \$10,000,000 (subject to certain limitations) in shares of Common Stock, the Company has the right, from time to time, at its sole discretion and subject to certain conditions to direct LPC to purchase up to 150,000 shares of Common Stock. The purchase price of shares of Common Stock pursuant to the Purchase Agreement will be based on prevailing market prices of Common Stock at the time of sales without any fixed discount, and the Company will control the timing and amount of any sales of Common Stock to LPC. In addition, the Company may direct LPC to purchase additional amounts as accelerated purchases if on the date of a regular purchase the closing sale price of the Common Stock is not below \$1.00 per share.

All shares of Common Stock to be issued and sold to LPC under the Purchase Agreement will be issued pursuant to the Company's effective shelf registration statement on Form S-3 (Registration No. 333-187780), filed with the Securities and Exchange Commission in accordance with the provisions of the Securities Act of 1933, as amended, and declared effective on April 18, 2013, and the prospectus supplement thereto dated March 12, 2015.

The Purchase Agreement contains customary representations, warranties and agreements of the Company and LPC, limitations and conditions to completing future sale transactions, indemnification rights and other obligations of the parties. There is no upper limit on the price per share that LPC could be obligated to pay for Common Stock under the Purchase Agreement. The Company has the right to terminate the Purchase Agreement at any time, at no cost or penalty. Actual sales of shares of Common Stock to LPC 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 available and appropriate sources of funding for the Company and its operations.

As consideration for entering into the Purchase Agreement, the Company has agreed to issue to LPC 19,188 shares of Common Stock and is required to issue up to 76,751 additional shares of Common Stock pro rata as the Company requires LPC to purchase the Company's shares under the Purchase Agreement over the term of the agreement. The Company will not receive any cash proceeds from the issuance of these 19,188 shares or the 76,751 shares that may be issued if subsequent funding is received by the Company.

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 Purchase Agreement is included as Exhibit 10.1 to this current report on Form 8-K and incorporated herein by reference. The foregoing descriptions of such agreement and the transactions contemplated thereby are qualified in their entirety by reference to such exhibits. In addition, the Purchase Agreement has been included to provide investors with information regarding its terms. The Purchase Agreement is not intended to provide any other factual information about the Company. The Purchase

Agreement contains representations and warranties that the Company has made to LPC. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules that the Company has provided to LPC in connection with signing the Purchase Agreement. The disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Purchase Agreement. Accordingly, investors should not rely on the representations and warranties as characterizations of the actual state of facts at the time they were made or otherwise.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits. The following documents are filed as exhibits to this report:

- 5.1 Opinion of Goodwin Procter LLP
- 10.1 Purchase Agreement, dated as of March 12, 2015, between Anthera Pharmaceuticals, Inc. and the investor named therein
- 23.1 Consent of Goodwin Procter LLP (contained in Exhibit 5.1)

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.

Date: March 12, 2015

Anthera Pharmaceuticals, Inc.

By: /s/ May Liu
May Liu
Senior Vice President of Finance and Administration