

CANCER GENETICS, INC
Form 8-K
May 20, 2016

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): **May 19, 2016**

CANCER GENETICS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other
Jurisdiction of
Incorporation)

001-35817
(Commission
File Number)

04-3462475
(IRS Employer
Identification No.)

201 Route 17 North 2nd Floor, Rutherford, New Jersey
(Address of Principal Executive Offices)

07070
(Zip Code)

Registrant's telephone number, including area code **(201) 528-9200**

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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 Instruction A.2. below):

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

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

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

 - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On May 19, 2016, Cancer Genetics, Inc. (the **Company**) entered into a Securities Purchase Agreement (the **Purchase Agreement**) with certain institutional investors (the **Investors**) for the sale by the Company of 2,500,000 shares (the **Common Shares**) of the Company's common stock, par value \$0.0001 per share (the **Common Stock**), at a purchase price of \$2.00 per share. Concurrently with the sale of the Common Shares, pursuant to the Purchase Agreement the Company also sold warrants to purchase 1,250,000 shares of Common Stock (the **Warrants**). The aggregate gross proceeds for the sale of the Common Shares and Warrants will be approximately \$5 million. Subject to certain ownership limitations, the Warrants will be initially exercisable commencing six months from the issuance date at an exercise price equal to \$2.25 per share of Common Stock, subject to adjustments as provided under the terms of the Warrants. The Warrants are exercisable for five years from the initial exercise date. The closing of the sales of these securities under the Purchase Agreement is expected to occur on May 25, 2016.

The net proceeds to the Company from the transactions, after deducting the placement agent's fees and expenses (not including the Wainwright Warrants, as defined below), the Company's estimated offering expenses, and excluding the proceeds, if any, from the exercise of the Warrants, are expected to be approximately \$4.5 million. The Company intends to use the net proceeds from the transactions for general corporate purposes. John Pappajohn, a director of the Company, is purchasing \$700,000 of shares and warrants priced at \$2.2025 per combination of shares and warrants.

The Common Shares (but not the Warrants or shares issuable upon exercise of the Warrant) were offered and sold by the Company pursuant to an effective shelf registration statement on Form S-3, which was filed with the Securities and Exchange Commission (the **SEC**) on May 29, 2014 and subsequently declared effective on June 5, 2014 (File No. 333-196374) (the **Registration Statement**), and the base prospectus dated as of June 5, 2014 contained therein. The Company will file a prospectus supplement with the SEC in connection with the sale of the Common Shares.

The Warrants and the shares issuable upon exercise of the Warrants are being sold and issued without registration under the Securities Act of 1933 (the **Securities Act**) in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 506 promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

The representations, warranties and covenants contained in the Purchase Agreement were made solely for the benefit of the parties to the Purchase Agreement. In addition, such representations, warranties and covenants (i) are intended as a way of allocating the risk between the parties to the Purchase Agreement and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the Purchase Agreement is included with this filing only to provide investors with information regarding the terms of transaction, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in public disclosures.

The Company also entered into an engagement letter (the **Engagement Letter**) with H.C. Wainwright & Co., LLC (**Wainwright**), pursuant to which Wainwright agreed to serve as exclusive placement agent for the issuance and sale of the Common Shares and Warrants. The Company has agreed to pay Wainwright an aggregate fee equal to 7% of the gross proceeds received by the Company from the sale of the securities in the transactions. Pursuant to the Engagement Letter, the Company also agreed to grant to Wainwright or its designees warrants to purchase up to 5% of the aggregate number of shares sold in the transactions (the **Wainwright Warrants**). The Engagement Letter has twelve month tail and right of first offer periods, indemnity and other customary provisions for transactions of this nature. The Wainwright Warrants have substantially the

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same terms as the Warrants. The Wainwright Warrants and the shares issuable upon exercise of the Wainwright Warrants will be issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and in reliance on similar exemptions under applicable state laws. The Company will also pay Wainwright a reimbursement for out of pocket expenses in connection with marketing the transaction in the amount of up to \$10,000 and a reimbursement for legal fees and expenses of the placement agent in the amount of up to \$50,000.

The forms of the Purchase Agreement and the Warrant, as well as the Engagement Letter are filed as Exhibits 10.1, 4.1 and 10.2, respectively, to this Current Report on Form 8-K. The foregoing summaries of the terms of these documents are subject to, and qualified in their entirety by, such documents, which are incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

On May 20, 2016, the Company provided notice of its termination of the Controlled Equity OfferingSM Sales Agreement, dated as of July 15, 2015 (the **Sales Agreement**), by and between the Company and Cantor Fitzgerald & Co. As previously reported, pursuant to the terms of the Agreement, the Company could offer and sell shares of its common stock, \$0.0001 par value per share (the **Shares**), having an aggregate offering price of up to \$20 million from time to time through Cantor Fitzgerald. During 2015, the Company had sold an aggregate of 2,800 Shares pursuant to the Agreement for aggregate gross proceeds of approximately \$34,000. The Company had previously announced in July 2015 a suspension of sales under the Sales Agreement.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained above in Item 1.01 Entry Into a Material Definitive Agreement related to the Warrants and the Wainwright Warrants is incorporated herein by reference.

Item 8.01. Other Events.

On May 20, 2016, the Company issued a press release regarding the transactions described above under Item 1.01 of this Current Report on Form 8-K. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information in this Items 8.01 of this Current Report on Form 8-K, including Exhibit 99.2 attached hereto, shall not be deemed filed for purposes of Section 18 of the United States Securities Exchange Act of 1934 (the **Exchange Act**) or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the United States Securities Act of 1933 or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibit No.	Description.
4.1	Form of Warrant Agreement of Cancer Genetics, Inc.
5.1	Opinion of Lowenstein Sandler LLP
10.1	Form of Securities Purchase Agreement, dated May 19, 2016, by and between Cancer Genetics, Inc. and various purchasers named therein
10.2	Engagement Letter between Cancer Genetics, Inc. and Rodman & Renshaw, a unit of H.C. Wainwright & Co., LLC, dated as of May 19, 2016
23.1	Consent of Lowenstein Sandler LLP (included in the opinion of Lowenstein Sandler LLP as Exhibit 5.1)

99.1 Press Release, dated May 20, 2016

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.

CANCER GENETICS, INC.

By:	/s/ Edward J. Sitar	
	Name:	Edward J. Sitar
	Title:	Chief Financial Officer

Date: May 20, 2016