

ARCA biopharma, Inc.
Form 8-K
January 11, 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): January 11, 2017

ARCA biopharma, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction

000-22873
(Commission File Number)

36-3855489
(I.R.S. Employer

of Incorporation)

Identification No.)

11080 CirclePoint Road, Suite 140, Westminster, CO 80020

Edgar Filing: ARCA biopharma, Inc. - Form 8-K
(Address of Principal Executive Offices) (Zip Code)

(720) 940-2200

(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 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))

Section 1 - Registrant's Business and Operations

Item 1.01. Entry into a Material Definitive Agreement.

On January 11, 2017, ARCA biopharma, Inc. (the Company) entered into a Capital on DemandTM Sales Agreement (the Sales Agreement) with JonesTrading Institutional Services LLC, as agent (JonesTrading), pursuant to which the Company may offer and sell, from time to time through JonesTrading, shares of the Company's common stock, par value \$0.001 per share (the Common Stock), having an aggregate offering price of up to \$7.3 million (the Shares).

Under the Sales Agreement, JonesTrading may sell the Shares by any method permitted by law and deemed to be an at the market offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, including sales made directly on or through The NASDAQ Capital Market, on any other existing trading market for the Common Stock or to or through a market maker. In addition, under the Sales Agreement, JonesTrading may sell the Shares by any other method permitted by law, including in negotiated transactions. The Company may instruct JonesTrading not to sell Shares if the sales cannot be effected at or above the price designated by the Company from time to time.

The Company is not obligated to make any sales of the Shares under the Sales Agreement. The offering of Shares pursuant to the Sales Agreement will terminate upon the earlier of (a) the sale of all of the Shares subject to the Sales Agreement or (b) the termination of the Sales Agreement by JonesTrading or the Company, as permitted therein.

The Company will pay JonesTrading a commission rate equal to 3.0% of the aggregate gross proceeds from each sale of Shares and have agreed to provide JonesTrading with customary indemnification and contribution rights. The Company will also reimburse JonesTrading for certain specified expenses in connection with entering into 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 10.1 to this Current Report on Form 8-K and is incorporated herein by reference. The opinion of the Company's counsel regarding the validity of the Shares that will be issued pursuant to the Sales Agreement is also filed herewith as Exhibit 5.1.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the common stock discussed herein, nor shall there be any offer, solicitation, or sale of common stock in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Section 9 - Financial Statements and Exhibits

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit Number | Description |
|-------------------|-------------|
|-------------------|-------------|

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|------|---|
| 5.1 | Opinion of Cooley LLP. |
| 10.1 | Capital on Demand TM Sales Agreement, dated January 11, 2017, by and between ARCA biopharma, Inc. and JonesTrading Institutional Services LLC. |

23.1 Consent of Cooley LLP (included 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.

Dated: January 11, 2017

ARCA biopharma, Inc.
(Registrant)

By: /s/ Brian L. Selby
Name: Brian L. Selby
Title: Vice President, Finance and
Chief Accounting Officer

INDEX TO EXHIBITS

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