

TRANSENERIX INC.
Form 8-K
February 09, 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):

February 9, 2016

TransEnterix, Inc.

(Exact name of registrant as specified in its charter)

Delaware

0-19437

11-2962080

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

635 Davis Drive, Suite 300, Morrisville, North
Carolina

27560

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

919-765-8400

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:

- 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))

Top of the Form

Item 1.01 Entry into a Material Definitive Agreement.

On February 9, 2016, TransEnterix, Inc. (the Company) entered into a Controlled Equity OfferingSM Sales Agreement (the Sales Agreement) with Cantor Fitzgerald & Co. (Cantor) pursuant to which the Company may sell from time to time, at its option, up to an aggregate of \$43,560,000 million of shares of the Company's common stock, \$0.001 par value per share (the Common Stock), through Cantor, as sales agent (the ATM Offering). Pursuant to the Sales Agreement, sales of the Common Stock, if any, will be made under the Company's previously filed and currently effective Registration Statement on Form S-3 (File No. 333-193235), at market prices by any method that is deemed to be an at-the-market offering as defined in Rule 415 under the Securities Act, as amended (the Securities Act), including sales made directly on the NYSE MKT and any other trading market for the Common Stock, and sales to or through a market maker other than on an exchange.

Subject to the terms and conditions of the Sales Agreement, Cantor will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the NYSE MKT to sell on the Company's behalf all of the shares of Common Stock requested to be sold by the Company. Cantor will offer the Common Stock subject to the terms and conditions of the Sales Agreement on a daily basis or as otherwise agreed upon by the Company and Cantor. The Company will designate the maximum amount of Common Stock to be sold through Cantor on a daily basis or otherwise determine such maximum amount together with Cantor. The Company may instruct Cantor not to sell Common Stock if the sales cannot be effected at or above the price designated by the Company in any such instruction. The Company or Cantor may suspend the offering of Common Stock being made through Cantor under the Sales Agreement upon proper notice to the other party.

The aggregate compensation payable to Cantor as sales agent shall be equal to 3.0% of the gross sales price of the shares sold through it pursuant to the Sales Agreement. In addition, the Company has agreed in the Sales Agreement to provide indemnification and contribution to Cantor against certain liabilities, including liabilities under the Securities Act. In addition, the Company has agreed to reimburse a portion of the expenses of Cantor in connection with this offering. The total expenses of the offering payable by the Company, excluding commissions payable to Cantor under the Sales Agreement, will be approximately \$100,000.

The offering of Common Stock pursuant to the Sales Agreement will terminate upon the termination of the Sales Agreement by the Company or by Cantor.

The Sales Agreement is attached to this Current Report on Form 8-K as Exhibit 1.1 and is incorporated herein by reference. The foregoing description of the material terms of the Sales Agreement does not purport to be complete and is qualified in its entirety by reference to the exhibit attached hereto.

Item 8.01 Other Events.

On February 20, 2015, the Company entered into a Controlled Equity OfferingSM Sales Agreement (the 2015 Sales Agreement) with Cantor, as sales agent, pursuant to which the Company could offer and sell through Cantor, from time to time, up to an aggregate of \$25 million in shares of Common Stock in an at-the-market offering (the 2015 ATM Offering).

As of February 9, 2016, we have sold 5,489,923 shares with net proceeds of approximately \$16.7 million, net of commissions, under the 2015 ATM Offering. Including trades that have been processed but not yet settled, and assuming that all trades do settle, the 2015 ATM Offering has been fully sold, with cumulative shares issued or to be issued upon settlement of 7,724,488.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

1.1 Controlled Equity OfferingSM Sales Agreement by and between TransEnterix, Inc. and Cantor Fitzgerald & Co. dated February 9, 2016.

5.1 Opinion of Ballard Spahr LLP

23.1 Consent of Ballard Spahr LLP (included in Exhibit 5.1)

Top of the Form

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.

TransEnterix, Inc.

February 9, 2016

By: Joseph P. Slattery

Name: Joseph P. Slattery

Title: EVP and CFO

Edgar Filing: TRANSENERIX INC. - Form 8-K

Top of the Form

Exhibit Index

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 1.1 | Controlled Equity OfferingSM Sales Agreement by and between TransEnterix, Inc. and Cantor Fitzgerald & Co. dated February 9, 2016 |
| 5.1 | Opinion of Ballard Spahr LLP |