

PACIFIC BIOSCIENCES OF CALIFORNIA INC

Form 8-K

October 05, 2012

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 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)

October 5, 2012

**Pacific Biosciences of California, Inc.**

(Exact name of registrant as specified in its charter)

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(State or other jurisdiction

(Commission

(IRS Employer

of incorporation)

File Number)  
1380 Willow Road

Identification No.)

Menlo Park, California 94025

(Address of principal executive offices, including zip code)

(650) 521-8000

(Registrant's telephone number, including area code)

(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):

- .. 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.**

On October 5, 2012, Pacific Biosciences of California, Inc. (the Company) entered into a Controlled Equity Offering<sup>SM</sup> Sales Agreement (the Agreement) with Cantor Fitzgerald & Co., as sales agent (Cantor), pursuant to which the Company may offer and sell, from time to time, through Cantor shares of the Company's common stock, par value \$0.001 per share (the Shares), having an aggregate offering price of up to \$30.0 million. The Company intends to use the proceeds of this offering for general corporate purposes, including capital expenditures and working capital. The Company may also use a portion of the net proceeds from this offering to acquire or invest in complementary businesses, technologies, product candidates or other intellectual property.

Under the Agreement, Cantor may sell the Shares by methods deemed to be an at-the-market offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the Securities Act), including sales made directly on The NASDAQ Global Select Market, on any other existing trading market for the Shares or to or through a market maker. In addition, under the Agreement, Cantor may sell the Shares by any other method permitted by law, including in privately negotiated transactions. Subject to the terms and conditions of the Agreement, Cantor will use commercially reasonable efforts, consistent with its normal trading and sales practices and applicable state and federal law, rules and regulations and the rules of The NASDAQ Global Select Market, to sell the Shares from time to time, based upon the Company's instructions (including any price, time or size limits or other customary parameters or conditions the Company may impose).

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

The Company will pay Cantor a commission of 3.0% of the gross sales price per share sold and has agreed to provide Cantor with customary indemnification and contribution rights. The Company has also agreed to reimburse Cantor for legal fees and disbursements, not to exceed \$50,000 in the aggregate, in connection with entering into the Agreement.

The Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K. The description of the Agreement does not purport to be complete and is qualified in its entirety by reference to the Agreement filed herewith as an exhibit to this Current Report on Form 8-K.

The opinion of the Company's counsel regarding the validity of the Shares that will be issued pursuant to the Agreement is also filed herewith as Exhibit 5.1.

The Shares will be issued pursuant to the Company's previously filed and effective Registration Statement on Form S-3 (File No. 333-180533), the base prospectus, dated May 1, 2012, filed as part of such Registration Statement, and the prospectus supplement, dated October 5, 2012, filed by the Company with the Securities and Exchange Commission. 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 the Shares 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.

**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

(d) Exhibits.

- 5.1 Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
- 10.1 Controlled Equity Offering<sup>SM</sup> Sales Agreement, dated October 5, 2012, by and between Pacific Biosciences of California, Inc. and Cantor Fitzgerald & Co.
- 23.1 Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1).

**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.

**Pacific Biosciences of California, Inc.**

By: /s/ Brian B. Dow  
**Brian B. Dow**  
**Vice President and Principal Accounting Officer**

Date: October 5, 2012

**EXHIBIT INDEX**

Exhibit No.	Description
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