

Actinium Pharmaceuticals, Inc.
Form 8-K
October 18, 2018

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): October 18, 2018

ACTINIUM PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	000-52446 (Commission File Number)	74-2963609 (IRS Employer Identification No.)
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275 Madison Avenue, 7th Floor New York, NY (Address of principal executive offices)	10016 (Zip Code)
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Registrant's telephone number, including area code: **(646) 677-3870**

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N/A

(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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

On October 18, 2018, Actinium Pharmaceuticals, Inc. (the “Company”) and Lincoln Park Capital Fund, LLC (“Lincoln Park”) entered into a purchase agreement (the “Purchase Agreement”) and a registration rights agreement (the “Registration Rights Agreement”), pursuant to which the Company has the right to sell to Lincoln Park shares of the Company’s common stock having an aggregate value of up to \$32,500,000, subject to certain limitations and conditions set forth in the Purchase Agreement (the “Offering”).

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, Lincoln Park shall initially purchase 3,376,554 shares of common stock, at a price of \$0.74 per share, for a total gross purchase price of \$2,500,000 (the “Initial Purchase”). As often as every business day from and after one business day following the date of the Initial Purchase and over the 30-month term of the Purchase Agreement, and up to an aggregate amount of an additional \$30,000,000 (subject to certain limitations) of shares of common stock, the Company has the right, from time to time, at its sole discretion and subject to certain conditions, to direct Lincoln Park to purchase up to 400,000 shares of common stock, with such amount increasing as the closing sale price of the common stock increases; provided Lincoln Park’s obligation under any single such purchase will not exceed \$1,500,000, unless the Company and Lincoln Park mutually agree to increase the maximum amount of such single purchase (each, a “Regular Purchase”). If the Company directs Lincoln Park to purchase the maximum number of shares of common stock it then may sell in a Regular Purchase, then in addition to such Regular Purchase, and subject to certain conditions and limitations in the Purchase Agreement, the Company may direct Lincoln Park in an “accelerated purchase” to purchase an additional amount of common stock that may not exceed the lesser of (i) 300% the number of shares purchased pursuant to the corresponding Regular Purchase or (ii) 30% of the total number of shares of the Company’s common stock traded during a specified period on the applicable purchase date as set forth in the Purchase Agreement. Under certain circumstances and in accordance with the Purchase Agreement, the Company may direct Lincoln Park to purchase shares in multiple accelerated purchases on the same trading day.

The Company will control the timing and amount of any sales of its common stock to Lincoln Park. There is no upper limit on the price per share that Lincoln Park must pay for its common stock under the Purchase Agreement, but in no event will shares be sold to Lincoln Park on a day the closing price is less than the floor price specified in the Purchase Agreement. In all instances, the Company may not sell shares of its common stock to Lincoln Park under the purchase agreement if it would result in Lincoln Park beneficially owning more than 9.99% of its common stock.

The Purchase Agreement does not limit the Company’s ability to raise capital from other sources at the Company’s sole discretion, except that (subject to certain exceptions) the Company may not enter into any variable rate transaction (as defined in the Purchase Agreement, including the issuance of any floating conversion rate or variable priced equity-like securities) during the 30 months after the date of the Purchase Agreement.

The Purchase Agreement and the Registration Rights Agreement contain customary representations, warranties and agreements of the Company and Lincoln Park, indemnification rights and other obligations of the parties. The Company has the right to terminate the Purchase Agreement at any time, at no cost to the Company.

As consideration for entering into the Purchase Agreement, the Company issued to Lincoln Park 852,537 shares of common stock. The Company will not receive any cash proceeds from the issuance of these shares. Lincoln Park has covenanted not to cause or engage in any manner whatsoever, any direct or indirect short selling or hedging of the Company's shares of common stock.

The Offering is being made pursuant to the Company's effective shelf registration statement on Form S-3 (SEC File No. 333-216748) (the "Registration Statement"), which was declared effective by the Securities and Exchange Commission (the "SEC") on October 12, 2017, and pursuant to a prospectus supplement dated October 18, 2018. Pursuant to the Registration Rights Agreement, under certain circumstances, if the Registration Statement is no longer available for use with respect to the Offering, the Company will be required to file additional registration statement(s).

The Company expects to use the proceeds from the Offering for general corporate purposes, including expanding the Company's products, and for general working capital purposes.

Copies of the Purchase Agreement and the Registration Rights Agreement are attached hereto as Exhibit 10.1 and 10.2, respectively, and are incorporated herein by reference.

The Company is filing the opinion of its counsel, The Matt Law Firm, PLLC, regarding the validity of the shares of common stock issued pursuant to the Purchase Agreement, as Exhibit 5.1 hereto.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
5.1	<u>Opinion of The Matt Law Firm, PLLC.</u>
10.1	<u>Purchase Agreement, dated as of October 18, 2018, by and between Actinium Pharmaceuticals, Inc. and Lincoln Park Capital Fund, LLC.</u>
10.2	<u>Registration Rights Agreement, dated as of October 18, 2018, by and between Actinium Pharmaceuticals, Inc. and Lincoln Park Capital Fund, LLC.</u>
23.1	<u>Consent of The Matt Law Firm, PLLC (contained in Exhibit 5.1).</u>

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.

ACTINIUM

Dated: October 18, 2018 **PHARMACEUTICALS,
INC.**

By: */s/ Sandesh Seth*
Name: Sandesh Seth
Title: CEO & Chairman