

ACACIA RESEARCH CORP
Form 8-K
March 21, 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): March 16, 2016

ACACIA RESEARCH CORPORATION

(Exact name of registrant as specified in its charter)

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| Delaware (State or other jurisdiction of incorporation) | 000-26068 (Commission File No.) | 95-4405754 (IRS Employer Identification No.) |
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|---|---------------------|
| 520 Newport Center Drive, 12 th Floor Newport Beach, California (Address of principal executive offices) | 92660 (Zip code) |
|---|---------------------|

Registrant's telephone number, including area code: (949) 480-8300

Not Applicable

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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:

- 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.

Item 3.03 below is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders.

On March 15, 2016, the board of directors of Acacia Research Corporation (the “**Company**”) announced that it unanimously approved the adoption of a Tax Benefits Preservation Plan (the “**Plan**”). The purpose of the Plan is to protect the Company’s ability to utilize potential tax assets, such as net operating loss carryforwards (“**NOLs**”) and tax credits (“**Tax Benefits**”) to offset potential future taxable income. As of December 31, 2015, the Company had U.S. federal income tax NOLs totaling approximately \$160,840,000 and U.S. state income tax NOLs totaling approximately \$55,215,000. The Internal Revenue Code of 1986, as amended (the “**Code**”) limits the ability of a company to use its NOLs if it experiences an “ownership change,” as defined in Section 382 of the Code. A company generally experiences such an ownership change if the percentage of its stock owned by its “5-percent shareholders,” as defined in Section 382 of the Code, increases by more than 50 percentage points over a rolling three-year period.

The Plan is designed to reduce the likelihood that the Company will experience an ownership change by discouraging any (i) person or group from acquiring beneficial ownership of 4.9% or more of the Company’s outstanding common stock and (ii) any existing shareholders who, as of the time of the first public announcement of the adoption of the Plan, beneficially own more than 4.9% of the Company’s then-outstanding shares of the Company’s common stock from acquiring additional shares of the Company’s common stock (subject to certain exceptions). There is no guarantee, however, that the Plan will prevent the Company from experiencing an ownership change.

A company that experiences an ownership change generally will be subject to an annual limitation on certain of its pre-ownership change tax assets equal to the value of the corporation immediately before the ownership change, multiplied by the long-term-tax-exempt rate (subject to certain adjustments), provided that the annual limitation will be increased each year to the extent that there is an unused limitation in a prior year. The limitation arising from an ownership change on the Company’s ability to utilize the Tax Benefits depends on the value of the Company’s stock at the time of the ownership change. If the Company’s Tax Benefits are subject to limitation because it experiences an ownership change, depending on the value of the Company’s stock at the time of the ownership change, the Company’s tangible common equity might be reduced.

In connection with the adoption of the Plan, the board of directors of the Company authorized and declared a dividend distribution of one right (a “**Right**”) for each outstanding share of the common stock of the Company, \$0.001 par value, (the “**Common Stock**”) to shareholders of record at the close of business on March 16, 2016.

Summary Description of the Plan

The following summary of the Plan does not purport to be complete and is qualified in its entirety by the full text of the Plan, a copy of which is filed as Exhibit 4.1 and is incorporated herein by reference.

Distribution Date. Subject to certain exceptions, Rights would separate from the Common Stock and become exercisable apart from the Common Stock only following the earlier of (i) the close of business on the tenth (10th) business day after public announcement that a person has become an “Acquiring Person” or (ii) the close of business on the tenth (10th) business day (or such later date as the Board shall determine) after a third party makes a tender or exchange offer which, if consummated, would result in such third party becoming an Acquiring Person.

Exercise of Rights. On or after the Distribution Date, each Right would initially entitle the holder to purchase one one-thousandth of a share of the Company's Series A Junior Participating Preferred Stock, \$0.001 par value (the "**Preferred Stock**"), for a purchase price of \$15.00 (subject to adjustment) (the "**Exercise Price**"). Under certain circumstances set forth in the Plan, the Company may suspend the exercisability of the Rights.

Definition of Acquiring Person. An "**Acquiring Person**" is a person or group that, together with affiliates and associates of such person or group, acquires beneficial ownership of 4.9% or more of the Common Stock, other than: (i) the Company, its subsidiaries and their respective employee benefit plans; (ii) any shareholder that, as of the time of the first public announcement of adoption of the Plan, beneficially owns 4.9% or more of the Common Stock (unless and until such person thereafter acquires any additional shares of Common Stock, subject to certain exceptions); (iii) a person who becomes an Acquiring Person solely as a result of the Company repurchasing shares of Common Stock or a stock dividend, stock split, reverse stock split or similar transaction effected by the Company (unless and until such person acquires additional shares, other than in certain specified exempt transactions) and (iv) certain shareholders who, inadvertently or without knowledge of the terms of the Rights, buy shares in excess of 4.899% of the Common Stock and who thereafter reduce the percentage of shares owned below 4.9%. Prior to the Distribution Date, the Board has sole discretion to make an affirmative determination, taking into account the intent and purposes of the Plan or other circumstances facing the Company, that a Person is not an Acquiring Person (even if such Person satisfies the requirements of any of subclauses (i), (ii), (iii) or (iv) if and for so long as such Person complies with any limitations or conditions required by the Board in making such determination).

"Flip-in" Feature. If any person or group of affiliated or associated persons becomes an Acquiring Person, then each Right (other than Rights owned by an Acquiring Person, its affiliates, associates or certain transferees, which will become void) will entitle the holder to purchase, at the then current exercise price, Common Stock (or, in certain circumstances, a combination of Common Stock, other securities, cash or other property) having a value of twice the exercise price of the Right, in effect enabling a purchase at half-price. However, Rights are not exercisable following such an event until such time as the Rights are no longer redeemable by the Company as described below.

"Flip-over" Feature. If, at any time after a person or group of affiliated or associated persons becomes an Acquiring Person, the Company engages in a merger or other business combination transaction or series of related transactions in which the Company is not the surviving corporation, the Common Stock is changed or exchanged, or fifty percent (50%) or more of its assets, cash flow or earning power is sold, then each Right (not previously voided by the occurrence of a Flip-in Event) will entitle the holder to purchase, at the Right's then current exercise price, common stock of such Acquiring Person having a value of twice the Right's then current exercise price, in effect enabling a purchase at half-price.

Exchange Option. At any time after a person or group of affiliated or associated persons becomes an Acquiring Person and prior to the acquisition by such person or group of fifty percent (50%) or more of the then outstanding Common Stock, the Board may, in lieu of allowing Rights to be exercised, cause each outstanding Right (other than Rights owned by an Acquiring Person, its affiliates, associates or certain transferees, which will become void) to be exchanged for one share of Common Stock or one one-thousandth of a share of Preferred Stock, in each case as

adjusted to reflect stock splits or similar transactions.

Redemption. The Rights may be redeemed by the Board, at a price of \$0.001 per Right at any time prior to the earlier of (i) the tenth (10th) business day following a public announcement that a person or group of affiliated or associated persons has become an Acquiring Person or (ii) the final expiration of the Rights.

Power to Amend. Prior to a Distribution Date, the Company may amend the Plan in any respect without shareholder approval. From and after a Distribution Date, the Company may amend the Plan without the approval of holders of certificates representing Rights in order to (i) cure any ambiguity, (ii) correct or supplement any provision which may be defective or inconsistent with any other provisions, (iii) shorten or lengthen any time period (e.g., the redemption period prior to the Rights becoming non-redeemable) or (iv) change or supplement the provisions in any manner which the Company may deem necessary or desirable and which does not adversely affect the interests of the holders of certificates representing Rights. The Plan, however, may not be amended at such time as the Rights are not redeemable (other than certain limited technical amendments).

Expiration. The Rights will expire on the earliest of (i) 5:00 P.M., New York, New York time, on March 15, 2019 or such later date as may be established by the Board prior to the expiration of the Rights, (ii) the time at which the rights are redeemed or exchanged pursuant to the Plan, (iii) the close of business on the effective date of the repeal of Section 382 or any successor statute if the Board determines that the Plan is no longer necessary or desirable for the preservation of Tax Benefits or (iv) the close of business on the first day of a taxable year of the Company to which the Board determines that Tax Benefits may not be carried forward.

Rights Certificates. Prior to a Distribution Date, the Rights will be evidenced by, and trade with, the Common Stock and will not be exercisable or transferable apart from the Common Stock. After a Distribution Date, the Rights Agent will send certificates representing Rights to shareholders and the Rights will trade independent of the Common Stock.

No Rights as a Shareholder; Other Matters. Until a Right is exercised, the holder of Rights, as such, is not entitled to any separate rights as a shareholder of the Company (such as voting or dividend rights). Although the distribution of the Rights will not be taxable to shareholders or to the Company for U.S. federal income tax purposes, shareholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Common Stock (or other consideration) or for common stock of the acquiring company or in the event of the redemption of the Rights as set forth above.

Item 8.01 Other Events.

On March 9, 2016, the Board received an unsolicited, conditional and non-binding proposal from ARC Acquisition Company, LLC (“ARC”) to purchase all outstanding shares of the Company’s common stock for cash consideration of \$3.72 per share, which proposal was subject to a number of conditions (including a due diligence condition) and did not contain credible evidence that ARC has or could secure financing for such a proposal. With the assistance of its outside financial advisor, the Board considered ARC’s proposal, which provided a premium of only 5% over the Company’s unaffected trading price on March 11, 2016 and determined that the proposal was inadequate. Because of the inadequacy of the proposal, the Board’s belief that the Company’s stock is undervalued at its current trading price and the fact that the Company recently named a new interim Chief Executive Officer and management team that is focused on reviewing the business and executing on its strategic plan, the Board unanimously rejected the proposal.

Over the past few months, the Board has received other contacts from persons wanting to ascertain the Company's interest in a sale. At this time, the Company is not for sale. Because the Company's directors and members of its management believe in the Company's strategic plan and that the Company's stock is undervalued at its current trading price, individual directors and management intend, over time, to buy Company shares in the open market based on such individual's evaluation of the market.

On March 16, 2016, the Company issued a press release relating to the Plan, a copy of which is attached as Exhibit 99.1 hereto and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibit 4.1 Tax Benefits Preservation Plan, dated as of March 16, 2016, by and between Acacia Research Corporation and Computershare Inc., as Rights Agent, which includes the form of Certificate of Designation of the Company's Series A Cumulative Participating Preferred Stock as Exhibit A, the Form of Right Certificate as Exhibit B and the Summary of Terms as Exhibit C

Exhibit 99.1 Acacia Research Corporation Press Release issued March 16, 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.

ACACIA RESEARCH CORPORATION

By: /s/ Marvin Key

Name: Marvin Key

Title: Chief Executive Officer

Date: March 18, 2016

EXHIBIT INDEX

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