

BIOMARIN PHARMACEUTICAL INC

Form 8-K

January 23, 2015

**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 21, 2015**

**BioMarin Pharmaceutical Inc.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction of**

**incorporation or organization)**

**000-26727**  
**(Commission**

**File Number)**

**68-0397820**  
**(IRS Employer**

**Identification No.)**

**770 Lindaro Street, San Rafael, California**

**94901**

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: (415) 506-6700

**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))

**Item 1.01 Entry into a Material Definitive Agreement.**

On January 21, 2015, BioMarin Pharmaceutical Inc. (the Company ) entered into an underwriting agreement (the Underwriting Agreement ) with Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several underwriters named therein (collectively, the Underwriters ), in connection with the public offering, issuance and sale by the Company of 8,500,000 shares (the Initial Shares ) of the Company s common stock, par value \$0.001 per share ( Common Stock ), at the public offering price of \$93.25 per share, less underwriting discounts and commissions. Under the terms of the Underwriting Agreement, the Company also granted the Underwriters an option exercisable for 30 days to purchase up to an additional 1,275,000 shares of Common Stock (the Option Shares and, together with the Initial Shares, the Shares ) at the public offering price, less underwriting discounts and commissions. On January 22, 2015, the Underwriters exercised their option to purchase the Option Shares in full.

The gross proceeds to the Company from this offering, including from the Option Shares, are expected to be approximately \$911.5 million, before deducting underwriting discounts and commissions and estimated offering expenses payable by the Company. The Company intends to use the net proceeds from this offering for general corporate purposes and to fund the acquisition of Prosensa Holding N.V. The offering is expected to close on or about January 27, 2015, subject to customary closing conditions, including receipt of legal opinions and approval of legal matters by counsel to the Underwriters. The Shares will be listed on the NASDAQ Global Select Market.

The Underwriting Agreement includes customary representations, warranties and covenants by the Company and customary conditions to closing, obligations of the parties and termination provisions. Additionally, under the terms of the Underwriting Agreement, the Company has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended, or to contribute to payments the Underwriters may be required to make in respect of these liabilities.

The offering was made pursuant to the Company s effective Registration Statement on Form S-3 (Registration No. 333-191604) (the Registration Statement ), and the prospectus dated October 7, 2013 included in the Registration Statement, as supplemented by a prospectus supplement dated January 21, 2015.

The summary of the Underwriting Agreement is qualified in its entirety by reference to the full text of the Underwriting Agreement, which is filed as Exhibit 1.1 hereto and is incorporated herein by reference.

**Item 8.01 Other Events.**

In connection with the offering, the Company is filing the opinion and consent of its counsel, Paul Hastings LLP, regarding the validity of the securities being registered as Exhibits 5.1 and 23.1 hereto, respectively.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

Exhibit 1.1 Underwriting Agreement, dated January 21, 2015, by and between BioMarin Pharmaceutical Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several underwriters named therein.

Exhibit 5.1 Opinion of Paul Hastings LLP.

Exhibit 23.1 Consent of Paul Hastings LLP (included in its opinion filed as Exhibit 5.1 hereto).

**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.

BioMarin Pharmaceutical Inc.,

a Delaware corporation

Date: January 23, 2015

By: /s/ G. Eric Davis  
G. Eric Davis

Senior Vice President, General Counsel

**EXHIBIT INDEX**

- Exhibit 1.1 Underwriting Agreement, dated January 21, 2015, by and between BioMarin Pharmaceutical Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several underwriters named therein.
- Exhibit 5.1 Opinion of Paul Hastings LLP.
- Exhibit 23.1 Consent of Paul Hastings LLP (included in its opinion filed as Exhibit 5.1 hereto).