

ACELRX PHARMACEUTICALS INC  
Form 8-K  
June 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): June 21, 2016**

**ACELRX PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**                      **001-35068**                      **41-2193603**  
(State of incorporation) (Commission File No.) (IRS Employer Identification No.)

**351 Galveston Drive**

**Redwood City, CA 94063**

(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: **(650) 216-3500**

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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))

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

On June 21, 2016, AcelRx Pharmaceuticals, Inc. (the "Company") entered into a Controlled Equity Offering<sup>SM</sup> Sales Agreement (the "Sales Agreement") with Cantor Fitzgerald & Co., as 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 "Common Stock") having an aggregate offering price of up to \$40.0 million (the "Shares").

Under the Sales Agreement, Cantor may sell Shares in sales deemed to be "at-the-market" equity offerings as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), including sales made directly on or through The NASDAQ Global Market, the existing trading market for the Company's common stock, sales made to or through a market maker other than on an exchange or otherwise, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices, and/or any other method permitted by law. The Company may instruct Cantor not to sell Shares if the sales cannot be effected at or above the price designated by us from time to time.

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

The Company will pay Cantor a commission rate of up to 3.0% of the aggregate gross proceeds from each sale of Shares and have agreed to provide Cantor with customary indemnification and contribution rights. The Company will also reimburse Cantor for certain specified expenses in connection with entering into the Sales Agreement.

Under the terms of the Sales Agreement, the Company may also sell shares of its common stock to Cantor, as principal for its own account, at a price negotiated at the time of sale. If the Company sells shares to Cantor in this manner, the Company will enter into a separate agreement setting forth the terms of any such transactions.

The foregoing description of the Sales Agreement is not complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference. The opinion of the Company's counsel regarding the validity of the Shares that will be issued pursuant to the Sales Agreement is also filed herewith as Exhibit 5.1.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the common stock discussed herein, nor shall there be any offer, solicitation, or sale of common stock 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.**

**Exhibit Description**

- 5.1 Opinion of Cooley LLP
  - 10.1 Controlled Equity Offering<sup>SM</sup> Sales Agreement, dated June 21, 2016, by and between AcelRx Pharmaceuticals, Inc. and Cantor Fitzgerald & Co.
  - 23.1 Consent of Cooley LLP (included in Exhibit 5.1)
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**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.

ACELRX  
Date: June 21, 2016 PHARMACEUTICALS,  
INC.

By: /s/ Jane Wright-Mitchell  
Jane Wright-Mitchell

Chief Legal Officer

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**EXHIBIT INDEX**

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