

ACACIA RESEARCH CORP
Form 10-K/A
April 02, 2018
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A
(Amendment No.1)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2017

OR

TRANSACTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM _____ TO _____ .

Commission File Number 0-26068

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation organization)

95-4405754
(I.R.S. Employer
Identification No.)

520 NEWPORT CENTER DRIVE, 12TH FLOOR
NEWPORT BEACH, CA 92660
(Address of principal executive offices) (Zip Code)

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

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$0.001 par value	The NASDAQ Stock Market, LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to filing requirements for the past 90 days. Yes R No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company
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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates of the registrant on June 30, 2017, the last business day of the registrant's most recently completed second fiscal quarter, computed by reference to the last sale price of the registrant's common stock as reported by The Nasdaq Global Select Market on such date, was approximately \$202,307,000. This computation assumes that all executive officers and directors are affiliates of the registrant. Such assumption should not be deemed conclusive for any other purpose. As of March 1, 2018, 50,637,882 shares of common stock were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

In accordance with General Instruction G(3) to Form 10-K, portions of the registrant's Definitive Proxy Statement on Schedule 14A for its Annual Meeting of Stockholders to be filed with the Commission within 120 days after the close of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference into Part III of this Annual Report on Form 10-K. Only those portions of the proxy statement that are specifically incorporated by reference herein shall constitute a part of this Annual Report on Form 10-K.

EXPLANATORY NOTE

Acacia Research Corporation is filing this Amendment No. 1 on Form 10-K/A (“Amended 10-K”) to its Annual Report on Form 10-K for the year ended December 31, 2017 (“Original 10-K”) filed with the U.S. Securities and Exchange Commission (“SEC”) on March 7, 2018 to include the financial statements and related notes of Veritone, Inc. (“Veritone”), an unconsolidated investment of ours. We made our initial investment in Veritone in August 2016.

We own a 25% non-controlling interest in Veritone. Upon becoming eligible for the equity method of accounting, Acacia elected to apply the fair value option to account for its equity investment in Veritone, including all of its investments in Veritone common stock and common stock purchase warrants. Rule 3-09 of Regulation S-X under the Securities Exchange Act of 1934, as amended, provides that if a 50 percent-or-less-owned person accounted for by the equity method meets the first or third condition of the significant subsidiary tests set forth in Rule 1-02(w) of Regulation S-X, substituting 20 percent for 10 percent, separate financial statements for such 50 percent-or-less-owned person shall be filed. In applying Rule 3-09 and 4-08(g) disclosure thresholds to investments that would have been accounted for under the equity method had the fair value option not been elected, the income test is computed using as the numerator the change in the fair value reflected in the registrant’s income statement rather than the registrant’s equity in the earnings of the investee computed as if the equity method had been applied. Veritone met the significant subsidiary test described above for fiscal year ended December 31, 2017. The financial statements required by S-X 3-09 are required to be filed within 90 days after our December 31, 2017 fiscal year-end, or by April 2, 2018. Our Original 10-K is being amended by this Amended 10-K to include as exhibits: (i) the Veritone audited financial statements for the fiscal years ended December 31, 2017 and 2016 prepared in accordance with generally accepted accounting principles in the United States; (ii) the consent of the independent auditor of Veritone; and (iii) certifications by our President and Chief Financial Officer. Although we are providing full year audited financial statements of Veritone for the fiscal years ended December 31, 2017 and 2016, our initial investment in Veritone was made in August 2016. Accordingly, the audited financial statements of Veritone for the fiscal year ended December 2016 are not reflective of our investment in Veritone, which existed for only a portion of fiscal year 2016.

Except as stated in this Explanatory Note, this Amended 10-K does not update any exhibits as originally filed and does not otherwise reflect events that occurred after the filing date of the Original 10-K.

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

- (a) The following documents are filed as part of this report.
- (1) Financial Statements

The following financial statements of Acacia Research Corporation, as listed in Item 15 of the Original 10-K, are included in Item 8 of the Original 10-K:

Reports of Independent Registered Public Accounting Firm
Consolidated Balance Sheets as of December 31, 2017 and 2016
Consolidated Statements of Operations for the Years Ended December 31, 2017, 2016 and 2015
Consolidated Statements of Comprehensive Income (Loss) for the Years Ended December 31, 2017, 2016 and 2015
Consolidated Statements of Stockholders’ Equity for the Years Ended December 31, 2017, 2016 and 2015
Consolidated Statements of Cash Flows for the Years Ended December 31, 2017, 2016 and 2015
Notes to Consolidated Financial Statements

- (2) Financial Statement Schedules

Financial statement schedules are omitted because they are not applicable or the required information is shown in our consolidated financial statements or the notes thereto.

The financial statements of Veritone required by Rule 3-09 of Regulation S-X are provided as Exhibit 99.1 to this Amended 10-K.

(3) Exhibits

Refer to Item 15(b) below.

(b) Exhibits. The following exhibits are either filed herewith or incorporated herein by reference:

Exhibit Number	Description
2.1	<u>Agreement and Plan of Merger, dated November 22, 2011, by and among Acacia Research Group LLC, Apollo Patent Corp., Adaptix, Inc., and Baker Communications Fund II (QP), L.P., solely in its capacity as representative for the shareholders of Adaptix, Inc.(15)</u>
3.1	<u>Amended and Restated Certificate of Incorporation (1)</u>
3.2	<u>Amended and Restated Bylaws (20)</u>
4.1	<u>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 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 (23)</u>
10.1*	<u>Acacia Research Corporation 1996 Stock Option Plan, as amended (2)</u>
10.2*	<u>Form of Option Agreement constituting the Acacia Research Corporation 1996 Executive Stock Bonus Plan (3)</u>
10.3*	<u>2002 Acacia Technologies Stock Incentive Plan (4)</u>
10.4*	<u>2007 Acacia Technologies Stock Incentive Plan (5)</u>
10.5*	<u>Form of Acacia Technologies Stock Option Agreement under the 2007 Acacia Technologies Stock Incentive Plan (6)</u>
10.6*	<u>Form of Acacia Technologies Stock Issuance Agreement under the 2002 Acacia Technologies Stock Incentive Plan (6)</u>
10.7*	<u>Form of Acacia Technologies Stock Issuance Agreement under the 2007 Acacia Technologies Stock Incentive Plan (6)</u>
10.8	<u>Office Space Lease dated January 28, 2002, between Acacia Research Corporation and The Irvine Company (7)</u>
10.9	<u>Form of Indemnification Agreement (8)</u>
10.10	<u>Third Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (9)</u>
10.11*	<u>Employment Agreement, dated September 22, 2015, by and between Acacia Research Group LLC and Edward Treska (19)</u>
10.12	<u>Fourth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (10)</u>
10.13	<u>Fifth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (10)</u>
10.15*	<u>Employment Agreement, dated September 22, 2015, by and between Acacia Research Group LLC and Robert L. Harris (19)</u>
10.16*	<u>Employment Agreement, dated September 22, 2015, by and between Acacia Research Group LLC and Clayton J. Haynes (19)</u>
10.17*	<u>Acacia Research Corporation Amended and Restated Executive Severance Policy (12)</u>
10.18	<u>Sixth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (14)</u>
10.19	<u>Form of Purchase Agreement (16)</u>
10.20*	<u>2013 Acacia Research Corporation Stock Incentive Plan (17)</u>
10.21*	<u>Form of Stock Issuance Agreement under the 2013 Acacia Research Corporation Stock Incentive Plan (18)</u>
10.22*	<u>Employment Agreement, dated September 22, 2015, by and between Acacia Research Group LLC and Matthew Vella (19)</u>
10.23*	<u>2016 Acacia Research Corporation Stock Incentive Plan (21)</u>
10.24*	<u>Form of Stock Option Agreement under the 2016 Acacia Research Corporation Stock Incentive Plan (24)</u>

- 10.25* Form of Stock Issuance Agreement under the 2016 Acacia Research Corporation Stock Incentive Plan (24)
 - 10.26* Director Service Agreement, dated February 29, 2016, by and between Acacia Research Corporation and Robert L. Harris (22)
 - 10.27* Employment Agreement, dated September 18, 2017, by and between Acacia Research Group LLC and Robert Stewart (25)
 - 10.28* Form of Profits Interest Agreement Under AIP Operation LLC Profits Interest Plan (26)
 - 10.29 Investment Agreement dated August 15, 2016, by and between Acacia Research Corporation and Veritone, Inc. (27)
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- 10.30 Secured Promissory Note dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation (27)
- 10.31 Primary Common Stock Purchase Warrant dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation, together with form of 10% Warrant to Purchase Common Stock (27)
- 10.32 Common Stock Purchase Warrant dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation (27)
- 10.33 Common Stock Purchase Warrant dated November 25, 2016, issued by Veritone, Inc. to Acacia Research Corporation (27)
- 10.34 Common Stock Purchase Warrant dated November 25, 2016, issued by Veritone, Inc. to Acacia Research Corporation (27)
- 21.1 List of Subsidiaries (28)
- 23.1 Consent of Grant Thornton LLP (28)
- 23.2 Consent of Marcum LLP
- 24.1 Power of Attorney (included in the signature page hereto).
- 31.3† Certification of Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
- 31.4† Certification of Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
- 32.3 Certification of Chief Executive Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
- 32.4 Certification of Chief Financial Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
- 99.1 Financial Statements of Veritone, Inc.
- 101 Interactive Data Files Pursuant to Rule 405 of Regulation S-T. (28)

* The referenced exhibit is a management contract, compensatory plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(c) of Form 10-K.

The certifications attached as Exhibits 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the SEC and are not to be incorporated by reference into any filing of Acacia Research Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Annual Report on Form 10-K, regardless of any general incorporation language contained in any filing.

- (1) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on June 5, 2008 (File No. 000-26068).
- (2) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 20, 2000 (File No. 000-26068).
- (3) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 26, 1996 (File No. 000-26068).
- (4) Incorporated by reference to Annex E to the Proxy Statement/Prospectus which formed part of Acacia Research Corporation's Registration Statement on Form S-4 (File No. 333-87654) which became effective on November 8, 2002.
- (5) Incorporated by reference to Acacia Research Corporation's Registration Statement on Form S-8 (File No. 333-144754) which became effective on July 20, 2007.
- (6) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2007, filed on November 2, 2007 (File No. 000-26068).
- (7) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10 K for the year ended December 31, 2001, filed on March 27, 2002 (File No. 000 26068).

- (8) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended June 30, 2012, filed on July 30, 2012 (File No. 000-26068).
 - (9) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended March 31, 2006, filed on May 10, 2006 (File No. 000-26068).
 - (10) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2007, filed on March 14, 2008 (File No. 000-26068).
 - (11) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on April 2, 2008 (File No. 000-26068).
 - (12) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2008, filed on February 26, 2009 (File No. 000-26068).
 - (13) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2009, filed on February 26, 2010, as amended on March 1, 2010 (File No. 000-26068).
 - (14) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2010, filed on February 28, 2011, as amended on March 24, 2011 (File No. 000-26068).
 - (15) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K/A filed on January 19, 2012 (File No. 000-26068). Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24-b-2 of the Securities Exchange Act of 1934, as amended. The omitted material has been separately filed with the Securities and Exchange Commission.
 - (16) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on February 16, 2012 (File No. 000-26068).
 - (17) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 24, 2013 (File No. 000-26068).
 - (18) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on May 22, 2013 (File No. 000-26068).
 - (19) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2015, filed on November 9, 2015 (File No. 000-26068).
 - (20) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on March 28, 2016 (File No. 001-37721).
 - (21) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended June 30, 2016, filed on August 9, 2016 (File No. 001-37721).
 - (22) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on March 4, 2016 (File No. 000-26068).
 - (23) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on March 21, 2016 (File No. 000-26068).
 - (24) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2016, filed on March 10, 2017 (File No. 001-37721).
 - (25) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2017, filed on November 7, 2017 (File No. 001-37721).
 - (26) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended March 31, 2017, filed on May 10, 2017 (File No. 001-37721).
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- (27) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on March 16, 2017 (File No. 001-37721).
- (28) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K filed on March 7, 2018 (File No. 001-37721).
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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ACACIA RESEARCH CORPORATION

Dated: April 2, 2018 By: /s/ Robert Stewart
 Robert Stewart
 President
 (Authorized Signatory)

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and the capacities and on the dates indicated.

Signature	Title	Date
/s/Robert Stewart Robert Stewart	President (Principal Executive Officer)	April 2, 2018
/s/Clayton J. Haynes Clayton J. Haynes	Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	April 2, 2018
/s/* Fred A. de Boom	Director	April 2, 2018
/s/* Edward W. Frykman	Director	April 2, 2018
/s/* G. Louis Graziadio, III	Executive Chairman and Director	April 2, 2018
/s/* William S. Anderson	Director	April 2, 2018
/s/* Frank E. Walsh, III	Director	April 2, 2018
/s/* James F. Sanders	Director	April 2, 2018
/s/Paul Falzone Paul Falzone	Director	April 2, 2018
/s/Joseph E. Davis Joseph E. Davis	Director	April 2, 2018
*By: /s/ Clayton J. Haynes Clayton J. Haynes		

Attorney-in-Fact