

ZOGENIX, INC.  
Form 8-K  
July 24, 2012

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, DC 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): July 24, 2012**

**ZOGENIX, INC.**

**(Exact Name of Registrant as Specified in its Charter)**

**Delaware**  
**(State or Other Jurisdiction**  
  
**of Incorporation)**

**001-34962**  
**(Commission**  
  
**File Number)**

**20-5300780**  
**(IRS Employer**  
  
**Identification No.)**

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**12400 High Bluff Drive, Suite 650,**

**San Diego, CA**  
(Address of Principal Executive Offices)

**Registrant's telephone number, including area code: (858) 259-1165**

**92130**  
(Zip Code)

**(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 8.01 Other Events.**

On July 24, 2012, Zogenix, Inc. (the Company or Zogenix) entered into an underwriting agreement (the Underwriting Agreement) with Stifel, Nicolaus & Company, Incorporated and Wells Fargo Securities, LLC, as representatives of the several underwriters named therein (collectively, the Underwriters), relating to the issuance and sale of 32,500,000 shares (the Shares) of the Company's common stock, par value \$0.001 per share (Common Stock), and warrants to purchase 14,625,000 shares of Common Stock (the Warrants). The Shares and Warrants will be sold in units (Units), with each Unit consisting of (i) one Share of Common Stock and (ii) a Warrant to purchase 0.45 of a share of Common Stock. The Warrants will be exercisable beginning one year after their initial issuance date at an exercise price of \$2.50 per share and will expire five years from the date of issuance. The shares of Common Stock and the Warrants are immediately separable and will be issued separately. The price to the public in this offering is \$2.00 per Unit. The Underwriters have agreed to purchase the Units from the Company pursuant to the Underwriting Agreement at a price of \$1.88 per Unit. The net proceeds to the Company from this offering are expected to be approximately \$60.7 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by the Company. The offering is expected to close on or about July 27, 2012, subject to customary closing conditions. In addition, under the terms of the Underwriting Agreement, the Company has granted the Underwriters a 30-day option to purchase up to 4,875,000 additional Units to cover over-allotments, if any.

The offering is being made pursuant to the Company's effective shelf registration statement on Form S-3 (Registration Statement No. 333-179337) previously filed with and declared effective by the Securities and Exchange Commission (the SEC) and a prospectus supplement and accompanying prospectus filed with the SEC.

Upon closing of the offering, the Company will enter into a warrant agreement (the Warrant Agreement) with American Stock Transfer and Trust Company (the Transfer Agent), pursuant to which the Warrants will be issued and the Transfer Agent will act as registrar and transfer agent for the Warrants. The terms and conditions of the Warrants are set forth in the Warrant Agreement and the form of Warrant Certificate attached as Exhibit A thereto.

The Underwriting Agreement contains customary representations, warranties and agreements by the Company, customary conditions to closing, indemnification obligations of the Company and the Underwriters, including for liabilities under the Securities Act of 1933, as amended, other obligations of the parties and termination provisions. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties.

The foregoing descriptions of the Underwriting Agreement, the Warrants and the Warrant Agreement are not complete and are qualified in their entireties by reference to the full text of the Underwriting Agreement and Warrant Agreement, copies of which are filed as Exhibit 1.1 and Exhibit 4.1, respectively, to this report and are incorporated by reference herein. A copy of the opinion of Latham & Watkins LLP relating to the legality of the issuance and sale of the Shares and Warrants to purchase shares of Common Stock in the offering is attached as Exhibit 5.1 to this report.

The Company issued press releases on July 23, 2012 and July 24, 2012 announcing the commencement of the offering and the pricing of the offering, respectively, which press releases are attached as Exhibits 99.1 and 99.2, respectively, to this report.

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Zogenix cautions you that statements included in this report that are not a description of historical facts are forward-looking statements. These forward-looking statements include statements regarding the completion of the offering and the expected net proceeds therefrom. The inclusion of forward-looking statements should not be regarded as a representation by Zogenix that any of these results will be achieved. Actual results may differ from those set forth in this report due to the risks and uncertainties associated with market conditions and the satisfaction of customary closing conditions related to the offering, as well as risks and uncertainties inherent in Zogenix's business, including those described in the company's periodic filings with the SEC. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof, and Zogenix undertakes no obligation to revise or update this report to reflect events or circumstances after the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement. This caution is made under the safe harbor provisions of Section 21E of the Private Securities Litigation Reform Act of 1995.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
1.1	Underwriting Agreement, dated July 24, 2012, by and between Zogenix, Inc. and Stifel, Nicolaus & Company, Incorporated and Wells Fargo Securities, LLC, as representatives of the several underwriters named therein
4.1	Form of Warrant Agreement by and between Zogenix, Inc. and the American Stock Transfer and Trust Company
5.1	Opinion of Latham & Watkins LLP
23.1	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
99.1	Press Release dated July 23, 2012
99.2	Press Release dated July 24, 2012

**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.

ZOGENIX, INC.

Date: July 24, 2012

By: /s/ Ann D. Rhoads

Name: Ann D. Rhoads

Title: Executive Vice President, Chief Financial Officer,

Treasurer and Secretary