

BIOMARIN PHARMACEUTICAL INC
Form 8-K
June 01, 2012

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): May 31, 2012

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.)

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105 Digital Drive, Novato, California
(Address of principal executive offices)

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

94949
(Zip Code)

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 May 31, 2012, BioMarin Pharmaceutical Inc. (the **Company**) entered into an underwriting agreement (the **Underwriting Agreement**) with Merrill Lynch, Pierce, Fenner & Smith Incorporated and Barclays Capital Inc. (the **Underwriters**) pursuant to which the Underwriters agreed to purchase 6,500,000 shares (the **Shares**) of the Company's common stock, par value \$0.001 per share (**Common Stock**), at a price per share of \$36.28 (the **Offering**), which will result in net proceeds to the Company of approximately \$235.8 million, before deducting estimated offering expenses payable by the Company. The Offering is expected to close on or about June 5, 2012, 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. In addition, under the terms of the Underwriting Agreement, the Company granted the Underwriters a 30-day option to purchase up to an additional 650,000 shares of Common Stock. All of the shares in the Offering are being sold by the Company.

Pursuant to 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 (the **Act**), 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 Registration Statement on Form S-3 (Registration No. 333-181766) and the prospectus dated May 30, 2012 included in such registration statement, as supplemented by a prospectus supplement dated May 31, 2012.

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. A copy of the opinion of Paul Hastings LLP relating to the legality of the issuance and sale of the shares in the Offering is attached as Exhibit 5.1 hereto.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit 1.1 Underwriting Agreement, dated May 31, 2012, by and among BioMarin Pharmaceutical Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Barclays Capital Inc.

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: June 1, 2012

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

Senior Vice President, General Counsel

EXHIBIT INDEX

- Exhibit 1.1 Underwriting Agreement, dated May 31, 2012, by and among BioMarin Pharmaceutical Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Barclays Capital Inc.
- 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).