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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**February 11, 2016**

Date of Report (Date of earliest event reported)

**Discovery Laboratories, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**000-26422**

(Commission File Number)

**94-3171943**

(IRS Employer Identification Number)

**2600 Kelly Road, Suite 100**

**Warrington, Pennsylvania 18976**

(Address of principal executive offices)

**(215) 488-9300**

(Registrant's telephone number, including area 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:

- 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 February 11, 2016, Discovery Laboratories, Inc., a Delaware corporation (the "Company") entered into an amendment (the "Amendment") to the existing At-the-Market Equity Sales Agreement (the "Sales Agreement") by and between the Company and Stifel, Nicolaus & Company, Incorporated ("Stifel"), dated February 11, 2013. The Amendment extends the term of the Sales Agreement to February 11, 2019, unless terminated earlier in accordance with terms set forth in the Sales Agreement. Prior to the Amendment, the Sales Agreement would have expired on February 11, 2016. All other economic terms of the Sales Agreement remain unmodified. Currently, the Company has not determined whether to sell any shares under the Agreement, and, before undertaking a transaction, will consider among other factors, market conditions and capital requirements.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any 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.

The foregoing summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the agreement, which is filed as Exhibit 10.1 hereto and is incorporated herein by reference. Furthermore, the summary of the Sales Agreement and full text of the Sales Agreement set forth in the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 13, 2013 (the "Prior 8-K") are also incorporated herein by reference.

The Amendment and the Sales Agreement have been included as an exhibit to this Current Report on Form 8-K or the Prior 8-K to provide information regarding their respective terms and not to provide any other factual information about the Company. The Amendment and the Sales Agreement contain various customary representations and warranties, as well as customary provisions relating to confidentiality and other matters. Any representations, warranties and covenants contained in the Amendment or the Sales Agreement were made only as of the date of such agreement, only for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution and issuance of such agreement. Shareholders of the Company and other investors should not rely on any representations, warranties and covenants in the Amendment or the Sales Agreement.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

[10.1](#) Amendment No. 1 dated February 11, 2016 to the At-the-Market Equity Sales Agreement dated February 11, 2013 by and between the Company and Stifel, Nicolaus & Company, Incorporated

**Cautionary Note Regarding Forward-looking Statements:**

**To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.**



AMENDMENT NO. 1 TO AT-THE-MARKET EQUITY SALES AGREEMENT

February 11, 2016

STIFEL, NICOLAUS & COMPANY, INCORPORATED  
One South Street, 15th Floor  
Baltimore, Maryland 21202

Ladies and Gentlemen:

Discovery Laboratories, Inc., a Delaware corporation (the "Company"), and Stifel, Nicolaus & Company, Incorporated ("Stifel"), are parties to that certain At-the-Market Equity Offering Sales Agreement dated February 11, 2013 (the "Original Agreement"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement as follows:

1. Section 1(a) of the Original Agreement is hereby deleted and replaced with the following:

"Compliance with Registration Requirements. The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement under the Securities Act of 1933, as amended (the "1933 Act"), on Form S-3 (File No. 333-196420), in respect of the Common Stock (including the Shares) (collectively, the "Securities") not earlier than three years prior to the date hereof; such registration statement, and any post-effective amendment thereto, has become effective; and no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose has been initiated or, to the knowledge of the Company, threatened by the Commission (the base prospectus filed as part of such registration statement, in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "Basic Prospectus"; the various parts of such registration statement, including all exhibits thereto and any prospectus supplement relating to the Shares that is filed with the Commission and deemed by virtue of Rule 430B to be part of such registration statement, each as amended at the time such part of the registration statement became effective, are hereinafter collectively called the "Registration Statement"; the Company will, if necessary, prepare a prospectus supplement to the prospectus included as a part of such registration statement specifically relating to the Shares prepared and filed with the Commission pursuant to Rule 424(b) under the 1933 Act, hereinafter called the "Prospectus Supplement"; the prospectus relating to the Shares, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act is herein called the "Prospectus"; any reference herein to the Basic Prospectus, the Prospectus Supplement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act; any reference to any amendment or supplement to the Basic Prospectus, the Prospectus Supplement or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement relating to the Shares filed with the Commission pursuant to Rule 424(b) under the 1933 Act and any documents filed under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and incorporated therein, in each case after the date of the Basic Prospectus, the Prospectus Supplement or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the 1934 Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any "issuer free writing prospectus" as defined in Rule 433 under the 1933 Act relating to the Shares is hereinafter called an "Issuer Free Writing Prospectus").

No order preventing or suspending the use of the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and the Basic Prospectus and the Prospectus Supplement, at the time of filing thereof, conformed in all material respects to the requirements of the 1933 Act and the rules and regulations of the Commission thereunder (the "1933 Act Regulations") and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

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For the purposes of this Agreement, the “Applicable Time” means, with respect to any Shares, the time of sale of such Shares pursuant to this Agreement; the Prospectus and the applicable Issuer Free Writing Prospectus(es) issued at or prior to such Applicable Time, taken together (collectively, and, with respect to any Shares, together with the public offering price of such Shares, the “General Disclosure Package”) as of each Applicable Time and each Settlement Date, will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each applicable Issuer Free Writing Prospectus will not conflict with the information contained in the Registration Statement, the Prospectus Supplement or the Prospectus and each such Issuer Free Writing Prospectus, as supplemented by and taken together with the General Disclosure Package as of such Applicable Time, will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.”

2. Section 10(a) of the Original Agreement is hereby deleted and replaced with the following:

“Unless earlier terminated pursuant to this Section 10, this Agreement shall automatically terminate upon the earliest to occur of (i) the sale of the all of the Shares on the terms and conditions set forth in this Agreement, (ii) February 11, 2019, or (iii) termination of the Agreement pursuant to Section 10(b), (c) or (d) below.”

3. All references to “February 11, 2013” set forth in Annex 1 of the Original Agreement are revised to read “February 11, 2013 (as amended by Amendment No. 1 to Sales Agreement, dated February 11, 2016)”.

4. Except as specifically set forth herein, all other provisions of the Original Agreement shall remain in full force and effect.

5. Entire Agreement; Amendment; Severability. This Amendment No. 1 together with the Original Agreement (including all schedules and exhibits attached hereto and thereto and Placement Notices issued pursuant hereto and thereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. All references in the Original Agreement to the “Agreement” shall mean the Original Agreement as amended by this Amendment No. 1; *provided, however*, that all references to “date of this Agreement” in the Original Agreement shall continue to refer to the date of the Original Agreement, and the reference to “time of execution of this Agreement” set forth in Section 10(e) shall continue to refer to the time of execution of the Original Agreement.

6. Applicable Law; Consent to Jurisdiction. This amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this amendment and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

7. Waiver of Jury Trial. The Company and Stifel each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this amendment or any transaction contemplated hereby.

