

TETRAPHASE PHARMACEUTICALS INC

FORM 8-K (Current report filing)

Filed 07/07/17 for the Period Ending 07/07/17

Address	480 ARSENAL STREET SUITE 110 WATERTOWN, MA 02472
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Industry	Pharmaceuticals
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**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): July 7, 2017

Tetraphase Pharmaceuticals, Inc.

(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35837
(Commission
File Number)

20-5276217
(IRS Employer
Identification No.)

480 Arsenal Way
Watertown, Massachusetts
(Address of principal executive offices)

02472
(Zip Code)

Registrant's telephone number, including area code: (617) 715-3600

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 1.01 Entry Into a Material Definitive Agreement.

On July 7, 2017, Tetrphase Pharmaceuticals, Inc. (the “Company”) entered into Amendment No. 1 (the “Amendment”) to its Controlled Equity Offering SM Sales Agreement, dated as of January 17, 2017 (the “Sales Agreement” and, as amended by the Amendment, the “Amended Sales Agreement”), with Cantor Fitzgerald & Co., as agent (“Agent”). The sole effect of the Amendment is to increase the maximum aggregate offering price of shares of the Company’s common stock, \$0.001 par value per share, which the Company may issue and sell from time to time under the Amended Sales Agreement (the “Offering”) to up to \$80,000,000 from \$40,000,000. On July 7, 2017, the Company filed a prospectus supplement with the Securities and Exchange Commission in connection with the Offering (the “Prospectus Supplement”) under its existing Registration Statement on Form S-3 (File No 333-214500), which became effective on December 7, 2016 (the “Registration Statement”).

Upon delivery of a placement notice by the Company and subject to the terms and conditions of the Amended Sales Agreement, Agent may sell the Shares in accordance with the terms set forth in the placement notice and by methods deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), including sales made directly on or through The NASDAQ Global Select Market or on any other existing trading market for the Company’s common stock. Subject to the terms of a placement notice, Agent may also sell the Shares in negotiated transactions at market prices prevailing at the time of sale and/or any other method permitted by law, subject to the Company’s prior written consent.

The Company or Agent may suspend or terminate the offering of Shares upon notice to the other party, subject to certain conditions. Under the Amended Sales Agreement, Agent has agreed to use commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal law, rules and regulations and the rules of NASDAQ to sell the Shares in accordance with the terms of the applicable placement notice.

The Company has agreed to pay Agent commissions for its services in acting as agent in the sale of the Shares in the amount equal to 3.0% of gross proceeds from the sale of the Shares pursuant to the Amended Sales Agreement. The Company has also agreed to provide Agent with certain customary indemnification and contribution rights.

A copy of the Amendment is attached as Exhibit 1.1 hereto and is incorporated herein by reference. A copy of the Sales Agreement is attached as Exhibit 1.2 hereto and is incorporated herein by reference. The foregoing description of the material terms of the Amended Sales Agreement, consisting of the Amendment and the Sales Agreement, does not purport to be complete and is qualified in its entirety by reference to such exhibits.

Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Company, has issued a legal opinion relating to the Shares. A copy of such legal opinion, including the consent included therein, is attached as Exhibit 5.1 hereto.

The Shares will be sold pursuant to the Registration Statement, and offerings of the Shares will be made only by means of the Prospectus Supplement. This Current Report on Form 8-K shall not constitute an offer to sell or solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of such state or jurisdiction.

Item 8.01. Other Events.

As of July 6, 2017, the Company had sold 2,906,462 shares under the Sales Agreement at an average price of \$7.81 per share for an aggregate offering price of \$22.7 million, before deducting sales commissions and offering expenses.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

See Exhibit Index attached 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.

Date: July 7, 2017

By: /s/ Maria D. Stahl

Maria D. Stahl

Senior Vice President, General Counsel

EXHIBIT INDEX

Exhibit No.	Description
1.1	Amendment No. 1, dated July 7, 2017 to Controlled Equity Offering SM Sales Agreement, dated as of January 17, 2017, by and between the Company and Cantor Fitzgerald & Co.
1.2	Controlled Equity Offering SM Sales Agreement, dated as of January 17, 2017, by and between the Company and Cantor Fitzgerald & Co. (incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K (File No. 001-35837), filed January 17, 2017).
5.1	Opinion of Wilmer Cutler Pickering Hale and Dorr LLP, dated July 7, 2017.
23.1	Consent of Wilmer Cutler Pickering Hale and Dorr LLP (contained in Exhibit 5.1 above).

**TETRAPHASE PHARMACEUTICALS, INC.
CONTROLLED EQUITY OFFERING SM**

**AMENDMENT NO. 1 TO
SALES AGREEMENT**

July 7, 2017

Cantor Fitzgerald & Co.
499 Park Avenue
New York, NY 10022

Ladies and Gentlemen:

Reference is made to the Sales Agreement, dated as of January 17, 2017, including the Schedules thereto (the “Sales Agreement”), between Cantor Fitzgerald & Co. (the “Agent”) and Tetrphase Pharmaceuticals, Inc., a Delaware corporation (the “Company”), pursuant to which the Company agreed to sell through the Agent, as sales agent, shares of common stock, par value \$0.001 per share, of the Company. All capitalized terms used in this Amendment No. 1 to Sales Agreement between the Agent and the Company (this “Amendment”) and not otherwise defined herein shall have the respective meanings assigned to such terms in the Sales Agreement. The Agent and the Company agree as follows:

A. Amendments to Sales Agreement. The Sales Agreement is amended as follows:

1. The heading on page 1 of the Sales Agreement shall be amended such that the reference to “\$40,000,000” shall be “\$80,000,000”.
2. The first sentence of the first paragraph of Section 1 of the Sales Agreement shall be amended such that the reference to “\$40,000,000” shall be “\$80,000,000”.
3. Schedule 1 of the Sales Agreement is amended by adding “, as amended on July 7, 2017” immediately after “January 17, 2017”.
4. The first sentence of the Form of Representation Date Certificate pursuant to Section 7(l) of the Sales Agreement is amended to add the words “, as amended on July 7, 2017” immediately after “January 17, 2017”.

B. Prospectus Supplement. The Company shall file a Prospectus Supplement pursuant to Rule 424(b) of the Securities Act of 1933, as amended, reflecting this Amendment within two Business Days of the date hereof.

C. No Other Amendments. Except as set forth in Part A above, all the terms and provisions of the Sales Agreement shall continue in full force and effect.

D. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile or electronic transmission.

E. Governing Law. This Amendment shall be governed by, and construed in accordance with laws of the State of New York without regard to the principles of conflicts of laws.

[Remainder of page intentionally left blank.]

If the foregoing correctly sets forth the understanding between us, please so indicate in the space provided below for that purpose.

Very truly yours,

TETRAPHASE PHARMACEUTICALS, INC.

By: /s/ Maria Stahl

Name: Maria Stahl

Title: Senior Vice President and General Counsel

ACCEPTED as of the date first above written:

CANTOR FITZGERALD & CO.

By: /s/ Jeffrey Lumby

Name: Jeffrey Lumby

Title: Senior Managing Director

July 7, 2017

Tetraphase Pharmaceuticals, Inc.
480 Arsenal Way
Watertown, Massachusetts 02472

Re: Prospectus Supplement to Registration Statement on Form S-3

Ladies and Gentlemen:

This opinion is furnished to you in connection with (i) the Registration Statement on Form S-3 (File No. 333-214500) (the "Registration Statement") filed by Tetraphase Pharmaceuticals, Inc., a Delaware corporation (the "Registrant"), with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), for the purpose of registering with the Commission under the Securities Act, among other things, shares of common stock, \$0.001 par value per share (the "Common Stock"), of the Registrant, all of which may be issued and sold by the Registrant from time to time on a delayed or continuous basis pursuant to Rule 415 under the Securities Act at an aggregate initial offering price not to exceed \$100,000,000, as set forth in the Registration Statement and the prospectus contained therein; and (ii) the prospectus supplement, dated July 7, 2017 (the "Prospectus Supplement"), relating to the issuance and sale from time to time by the Registrant of shares of Common Stock with an aggregate offering price of up to \$40,000,000 (the "Shares").

The Shares are to be issued and sold by the Registrant pursuant to a Controlled Equity Offering SM Sales Agreement, dated January 17, 2017 (the "Sales Agreement"), as amended by Amendment No. 1 to the Sales Agreement dated as of July 7, 2017 (as so amended, the "Amended Sales Agreement"), between the Registrant and Cantor Fitzgerald & Co. Amendment No. 1 to the Sales Agreement will be filed with the Commission as Exhibit 1.1 and the Sales Agreement will be filed with the Commission as Exhibit 1.2 to the Registrant's Current Report on Form 8-K, dated July 7, 2017. We are acting as counsel for the Registrant in connection with the issuance and sale by the Registrant of the Shares. We have examined a signed copy of the Registration Statement as filed with the Commission, including the exhibits thereto, and the Prospectus Supplement as filed with the Commission. We have also examined and relied upon the Amended Sales Agreement, the minutes of meetings of the stockholders and the Board of Directors of the Registrant as provided to us by the Registrant, the Certificate of Incorporation and Bylaws of the Registrant, each as restated and/or amended to date, and such other documents as we have deemed necessary for purposes of rendering the opinion hereinafter set forth.

In our examination of the foregoing documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, the authenticity of the originals of such latter documents and the legal competence of all signatories to such documents.

It is understood that this opinion is to be used only in connection with the offer and sale of the Shares while the Registration Statement is in effect.

We express no opinion herein as to the laws of any state or jurisdiction other than the General Corporation Law of the State of Delaware and the federal laws of the United States of America.

Based upon and subject to the foregoing, we are of the opinion that the Shares have been duly authorized for issuance and, when issued and paid for in accordance with the terms and conditions of the Amended Sales Agreement, the Shares will be validly issued, fully paid and nonassessable.

Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109
Beijing Berlin Boston Brussels Denver Frankfurt London Los Angeles New York Palo Alto Washington

Tetraphase Pharmaceuticals, Inc.

July 7, 2017

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Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Current Report on Form 8-K to be filed by the Registrant in connection with the issuance and sale of the Shares in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act and to the use of our name therein and in the Prospectus Supplement under the caption "Legal Matters." In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

WILMER CUTLER PICKERING HALE
AND DORR LLP

By: /s/ Stuart M. Falber
Stuart M. Falber, a Partner