

# ARQULE INC

## **FORM 8-K** (Current report filing)

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Address	ONE WALL STREET BURLINGTON, MA, 01803
Telephone	781-994-0300
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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): **September 27, 2017**

**ARQULE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation)

**000-21429**

(Commission File Number)

**04-3221586**

(I.R.S. Employer Identification No.)

**One Wall Street**

**Burlington, MA 01803**

(Address of principal executive offices) (Zip Code)

**(781) 994-0300**

(Registrant's telephone number, including area code)

**N/A**

(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.

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**Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

As described below, ArQule, Inc., a Delaware corporation (the "Company"), has been communicating with The Nasdaq Stock Market LLC ("Nasdaq") regarding an issue of inadvertent non-compliance with Nasdaq Listing Rule 5635(c) (Shareholder Approval of Equity Compensation). Nasdaq has confirmed that the Company has regained compliance with the rule, and the matter is now closed.

As disclosed in the Company's annual proxy statements, a portion of each independent director's annual compensation includes a grant of stock options under the Company's Amended and Restated 1996 Director Stock Option Plan (the "1996 Plan"). In June 2017, after a full investigation, the Company determined that stock options covering 250,000 shares were issued under the 1996 Plan after its stated expiration date. The Company found that, while stockholders had approved an increase in the number of shares available for grants under the 1996 Plan as recently as May 2014, the Company inadvertently did not seek stockholder approval of an amendment to extend the expiration date of that Plan beyond May 2016. The Company also concluded that at no time did it award options in excess of amounts approved by stockholders and that the same awards could have been made under the Company's 2014 Equity Incentives Plan ("2014 Plan").

On July 11, 2017, the Company voluntarily notified Nasdaq of this administrative oversight and discussed its proposed remediation plan. On September 19, 2017, the Company's board of directors unanimously approved resolutions to ratify the issuance of stock options to directors under the 1996 Plan, as well as the other acts discussed below, in accordance with the Delaware General Corporation Law and to reduce the number of shares reserved for issuance under the Company's 2014 Plan by the number of shares underlying the directors' stock options that were ratified. The board also agreed that the directors' stock options ratified by the vote would be governed by the terms of the 2014 Plan.

In response to the Company voluntarily notifying Nasdaq of the administrative oversight described above, by letter dated September 27, 2017, Nasdaq notified the Company that, as a result of the Company's granting options under the 1996 Plan after its termination date, Nasdaq had determined that the Company did not comply with Nasdaq's stockholder approval requirement with respect to the 1996 Plan as set forth in Listing Rule 5635(c). Nasdaq further determined that, as a result of the remedial action taken, the Company has regained compliance with the Rule and that this matter is now closed.

**Item 8.01 Other Events.**

The information set forth in Item 3.01 is incorporated by reference herein.

In addition to the findings and actions discussed above, in conjunction with its investigation, the Company determined that (i) grants of options for the purchase of 36,399 shares of common stock, and issuances of 36,399 shares of common stock upon the exercise of those options under the Company's Amended and Restated 1996 Employee Stock Purchase Plan (an employee plan intended to satisfy the requirement of Section 423 under the Internal Revenue Code) and (ii) issuances of 64,696 shares of common stock to directors (upon each director's election in lieu of cash fees) under the Company's 2005 Director Stock Compensation Plan were issued after the expiration dates of such plans. On September 19, 2017, the board adopted resolutions ratifying any potential "defective corporate acts" under both plans. In no instance were the options granted or shares issued under these plans in excess of those approved by the Company's stockholders.

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The statutory notice required by Section 204 of the Delaware General Corporation Law to the Company's stockholders is set forth in Exhibit 99.1 hereto and incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

**(d) Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Statutory Notice Pursuant to Section 204 of the Delaware General Corporation Law</u></a>

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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.

ArQule, Inc.  
(Registrant)

By: /s/ Peter S. Lawrence

Peter S. Lawrence  
President  
Chief Operating Officer

Date: September 29, 2017

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EXHIBIT INDEX

Exhibit Number

[99.1](#) [Statutory Notice Pursuant to Section 204 of the Delaware General Corporation Law](#)

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**NOTICE OF RATIFICATION OF POTENTIALLY DEFECTIVE CORPORATE ACTS**

**BY THE**

**BOARD OF DIRECTORS OF ARQULE, INC.**

(Pursuant to Section 204(g) of the Delaware General Corporation Law)

Notice is hereby given, pursuant to Section 204 (“**Section 204**”) of the Delaware General Corporation Law (the “**DGCL**”), that on September 19, 2017, the Board of Directors of ArQule, Inc., a Delaware corporation (the “**Corporation**”), adopted resolutions approving the ratification of potentially defective corporate acts, as describe below, pursuant to Section 204 of the DGCL (the “**Ratification**”).

*Ratification of Stock Under the 2005 Director Stock Compensation Plan*. The Board determined that issuances of 64,696 shares of Common Stock of the Corporation (the “**Common Stock**”), as set forth on Exhibit A (the “**2005 Director Shares**”), to directors of the Corporation pursuant to the 2005 Director Stock Compensation Plan (the “**2005 Plan**”) were potentially defective corporate acts because of the following possible failures of authorization: the options were granted after the 2005 Plan expired on November 11, 2015, the 2005 Plan was not amended to extend the expiration date, and the resolutions of the Board authorizing the issuance of such 2005 Director Shares did not expressly reference the 2005 Plan. On September 19, 2017, the Board ratified the issuance of the 2005 Director Shares pursuant Section 204 to avoid any uncertainty related to such shares. The dates of the issuances of the 2005 Director Shares are the dates listed in the Issuance Date column of Exhibit A (the “**Issuance Dates**”). In connection with such ratification, the Board also amended the 2005 Plan to extend the expiration of such plan to the extent necessary to give effect to the ratification of the Director Options.

*Ratification of Options Under the 1996 Director Stock Option Plan*. The Board determined that grants of options for the purchase of 250,000 shares of Common Stock, as set forth on Exhibit B (the “**Director Options**”), to directors of the Corporation pursuant to the 1996 Director Stock Option Plan (as amended and restated, the “**1996 Plan**”), were potentially defective corporate acts because of the following possible failures of authorization: the options were granted after the Director Plan expired on May 18, 2016, the Director Plan was not amended to extend the expiration date, and the option grants may not have satisfied the requirements of Section 157 of the DGCL, including by failing to expressly reference the Director Plan. On September 19, 2017, the Board ratified the grant of the Director Options pursuant to Section 204 to avoid any uncertainty related to such options. The dates of the grants of the Director Options are the dates listed on Exhibit B in the Grant Date column. In connection with such ratification, the Board also amended the Director Plan to extend the expiration of such plan to the extent necessary to give effect to the ratification of the Director Options.

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*Ratification of Stock Under the Amended and Restated 1996 Employee Stock Purchase Plan.* The Board determined that grants of options for the purchase of 36,399 shares of Common Stock, and issuances of 36,399 shares of Common Stock upon the exercise of such options, as set forth on Exhibit C (the “**Employee Options and Shares**”), to employees of the Corporation pursuant to the 1996 Employee Stock Purchase Plan (as amended and restated, the “**Employee Plan**”), were potentially defective corporate acts because of the following possible failures of authorization: the options were granted after the Employee Plan expired on May 18, 2016, the shares were issued upon exercise of potentially improperly authorized options, the Employee Plan was not amended to extend the expiration date, and the option grants might not have satisfied the requirements of Section 157 of the DGCL, including by failing to expressly reference the Employee Plan. On September 19, 2017, the Board ratified the grant and issuance of the Employee Options and Shares pursuant to Section 204 to avoid any uncertainty related to such options or shares. The dates of the grants and issuances of the Employee Options and Shares are the dates listed on Exhibit C in the Grant Date and Issuance Date columns. In connection with such ratification, the Board amended the Employee Plan to extend the expiration of such plan to give effect to the ratification of the Employee Options and Shares.

**Any claim that the defective corporate acts (including all putative stock) identified in this Notice are void or voidable due to the failure of authorization, or any claim that the Court of Chancery of the State of Delaware should declare in its discretion that the ratifications not be effective or be effective only on certain conditions, must be brought within 120 days from September 29, 2017.**

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**EXHIBIT A**

**ArQule, Inc.  
Shares of Common Stock Under the 2005 Plan**

Issuance Date	Number of Shares Issued		Issuance Date	Number of Shares Issued
1/11/2015	504		11/7/2016	976
11/17/2015	801		11/15/2016	724
11/17/2015	411		11/15/2016	1,413
11/18/2015	2,459		11/18/2016	2,232
11/18/2015	1,280		11/18/2016	4,285
12/10/2015	294		12/5/2016	459
1/5/2016	595		1/12/2017	838
1/19/2016	558		1/17/2017	653
1/19/2016	670		1/17/2017	784
2/18/2016	1,689		2/18/2017	2,604
2/18/2016	3,243		2/18/2017	5,000
2/24/2016	336		3/1/2017	480
2/24/2016	403		3/15/2017	1,024
3/14/2016	776		3/21/2017	847
3/22/2016	578		4/26/2017	618
3/22/2016	693		5/18/2017	2,561
4/26/2016	374		5/23/2017	813
4/26/2016	449		6/26/2017	1,000
5/11/2016	766		<b>Total</b>	<b>64,696</b>
5/18/2016	1,965			
5/18/2016	3,773			
5/24/2016	595			
5/24/2016	714			
7/11/2016	730			
7/18/2016	613			
7/18/2016	736			
7/27/2016	383			
7/27/2016	460			
8/18/2016	2,042			
8/18/2016	3,921			
9/12/2016	850			
9/20/2016	1,250			
9/20/2016	1,500			
10/25/2016	443			
10/25/2016	531			

**EXHIBIT B**

**ArQule, Inc.  
Outstanding Options Granted After May 18, 2016 Under  
The 1996 Plan**

<b>Grant Date</b>	<b>Options Granted</b>
5/24/2016	20,000
5/24/2016	20,000
5/24/2016	20,000
5/24/2016	20,000
5/24/2016	20,000
5/24/2016	25,000
5/23/2017	20,000
5/23/2017	20,000
5/23/2017	20,000
5/23/2017	20,000
5/23/2017	20,000
5/23/2017	25,000
Total	<b>250,000</b>

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**EXHIBIT C**

**ArQule, Inc.  
Shares Issued After May 18, 2016 Under  
The Employee Plan**

<b>Grant Date</b>	<b>Issuance Date/Exercise Date</b>	<b>Number of Shares Issued</b>
5/1/2016	10/31/2016	438
5/1/2016	10/31/2016	3,511
5/1/2016	10/31/2016	2,633
5/1/2016	10/31/2016	1,646
5/1/2016	10/31/2016	263
5/1/2016	10/31/2016	6,234
5/1/2016	10/31/2016	1,712
11/1/2016	4/30/2017	594
11/1/2016	4/30/2017	3,565
11/1/2016	4/30/2017	2,228
11/1/2016	4/30/2017	475
11/1/2016	4/30/2017	11,883
11/1/2016	4/30/2017	594
11/1/2016	4/30/2017	386
11/1/2016	4/30/2017	237
		<b><u>36,399</u></b>

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