

PTC THERAPEUTICS, INC.

FORM 8-K (Current report filing)

Filed 09/18/17 for the Period Ending 09/18/17

Address	100 CORPORATE COURT SOUTH PLAINFIELD, NJ, 07080-2449
Telephone	9082227000
CIK	0001070081
Symbol	PTCT
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

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): **September 18, 2017**

PTC THERAPEUTICS, INC.

(Exact Name of Company as Specified in Charter)

Delaware	001-35969	04-3416587
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

100 Corporate Court	07080
South Plainfield, NJ	
(Address of Principal Executive Offices)	(Zip Code)

Company's telephone number, including area code: **(908) 222-7000**

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 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On September 18, 2017, Dr. C. Geoffrey McDonough, a member of the board of directors (the "Board") of PTC Therapeutics, Inc. (the "Company"), notified the Company of his resignation from the Board effective immediately. Dr. McDonough has informed the Company that his decision is based on his need to focus on commitments to his principal work activities and was not due to any disagreement with the Company.

The Company and Dr. McDonough entered into a consulting agreement (the "Consulting Agreement") for Dr. McDonough to remain as an advisor to the Company, effective as of September 18, 2017, with a term continuing through March 18, 2018. Pursuant to the Consulting Agreement, Dr. McDonough will receive an hourly consulting fee of \$292. Certain of Dr. McDonough's restricted stock awards and stock options will continue to vest and be eligible to be exercised in accordance with Schedule A of the Consulting Agreement. The foregoing description of the Consulting Agreement, which is filed herewith as Exhibit 10.1 and is incorporated herein by reference, is qualified in its entirety by reference to its terms.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Consulting Services Agreement between the Registrant and Dr. C. Geoffrey McDonough

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.

PTC Therapeutics, Inc.

Date: September 18, 2017

By: /s/ Christine Utter
Name: Christine Utter
Title: Principal Financial Officer

PTC CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (together with all attachments hereto, this “Agreement”), effective as of September 18, 2017 (the “Effective Date”), is made by and between PTC Therapeutics, Inc. (“PTC” or the “Company”) and Geoffrey McDonough, M.D. (the “Consultant ”).

WHEREAS, the Consultant has served as a member of the Board of Directors of PTC (the “Board”), and in such capacity has participated in the oversight of PTC and its activities, until his resignation from the Board effective as of the Effective Date;

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions governing (i) Consultant’s rendering consulting services to PTC in an advisory and/or oversight capacity, in exchange for the consideration as further described in this Agreement, and (ii) various related matters, including without limitation Consultant’s obligations to protect information and property which is confidential and proprietary to PTC and its affiliated entities.

NOW THEREFORE, PTC and Consultant agree as follows:

SERVICES AND NATURE OF ENGAGEMENT

Services. Consultant shall perform advisory and/or oversight services for PTC, its management and/or the Board, as reasonably requested from time to time (the “Services”). Consultant shall also provide such other Services as the parties may mutually agree. Consultant represents that he is capable of properly performing the Services.

Independent Contractor Status. The Consultant understands and agrees that he is engaged herein as an independent contractor, and not an employee of the Company. The Consultant shall retain control over the manner and method by which he provides the Services and shall not be subject to the control or direction of the Company, except that the Company may specify the general services that the Company engages Consultant to perform. Consultant specifically acknowledges and agrees that he has the requisite knowledge, expertise, experience, training and, if applicable, license(s) and/or certification(s), to perform the Services, and that the Company will not provide Consultant with any training concerning the manner or methods of performance of the Services.

No Employment Relationship. Nothing in this Agreement shall create any contract or relationship of employment between the Consultant and the Company or render the Consultant an employee of the Company. The Consultant shall be deemed an independent contractor and not an employee of the Company for all purposes, including all federal/national, state/regional and local laws pertaining to income taxes, withholding taxes, social security, unemployment compensation, workers compensation/employers’ liability or any other rights, benefits, or obligations relating to employment. The Consultant specifically understands and agrees that he: (i) shall not receive a salary or any health, welfare, or other benefits provided by the Company to its employees; (ii) is not entitled to submit any claim for injury or illness either directly to the Company or under any workers’ compensation/employers’ liability coverage maintained by the Company; and (iii) shall, in relation to the Services rendered pursuant to this Agreement, receive an IRS Form 1099 (or equivalent) from the Company with respect to his compensation for the Services, and it shall be the Consultant’s sole responsibility to report and to pay all applicable income taxes on all payments made to the Consultant by the Company under this Agreement, and the Company shall not withhold any taxes except to the extent required by applicable law. The Consultant shall not, at any time, represent to others that he is, nor will he hold himself out to be, an employee of the Company. The Consultant is not authorized to bind the Company or to incur any obligation or liability on behalf of the Company.

COMPENSATION

As Consultant’s total cash compensation for Consultant’s Services hereunder, PTC shall pay Consultant \$292 (TWO HUNDRED NINETY TWO UNITED STATES DOLLARS) per hour spent performing the Services. Consultant shall send all invoices for Services via email to accountspayable@ptcbio.com, sguzman@ptcbio.com and mboulding@ptcbio.com. Such invoices shall contain a general description of the Services performed and the dates and hours of performance.

In addition, the outstanding options to purchase common stock of PTC

issued/granted to Consultant prior to the Effective Date based on his prior services as a member of the Board shall be treated as set forth on Schedule A hereto (the "Equity Awards").

In addition to the foregoing amount, PTC shall pay Consultant for (i) all reasonable and necessary travel expenses (other than ordinary commuting expenses) incurred by Consultant at the prior request of PTC in providing the Services, and (ii) other expenses pre-approved in writing by an authorized PTC representative that are necessary to performance of the Services.

Payment for such expenses shall be made to Consultant within 45 calendar days of receipt by PTC of invoices and receipts substantiating such expenses and detailing the services to which they relate, and PTC shall then have no further obligation to Consultant for such expenses.

Consultant shall keep or cause to be kept full, timely and accurate records in reasonable form and detail and to which PTC and its designated employees, agents or representatives shall have access at any reasonable time for auditing purposes. When requested by PTC, Consultant shall be required to report on the status of its work on the Services in a manner satisfactory to PTC.

NO CONFLICTS

Throughout the term of this Agreement the parties hereto agree that the type of services to be rendered hereunder by Consultant are not exclusive to PTC. Consultant, during the term of this Agreement, may accept from others, concurrent consulting work provided that such consulting work does not in any way interfere with the Services Consultant is required to perform under this Agreement and is not a breach of any of Consultant's obligations under this Agreement. Notwithstanding the foregoing, Consultant represents that (i) he has not, and will not during the term of this Agreement, enter into any agreement or relationship that would interfere with or prevent his performance under this Agreement, (ii) by entering into and performing this Agreement, he is not and will not be violating any agreement or arrangement with any third parties, and (iii) that during the term of this Agreement he will not solicit or divert business, customers or employees of PTC on behalf of Consultant, himself or any other business.

CONFIDENTIALITY

(a) In providing consulting services to PTC pursuant to this Agreement, Consultant may have continued access to or acquire PTC's confidential or proprietary information, including without limitation information that pertains to PTC's employees, products, sales/marketing/distribution activities, processes, equipment, programs, development efforts, therapeutic targets, compounds, assays, know-how, or plans ("Proprietary Information"). Consultant agrees not to disclose any Proprietary Information to third parties or to use any Proprietary Information for any purpose other than performance of the Services.

(b) Proprietary Information subject to the foregoing paragraph does not include information Consultant can demonstrate: (i) is or later becomes available to the public through no breach of this Agreement by Consultant; (ii) is obtained by Consultant from a third party who Consultant had a commercially reasonable basis to believe had the legal right to disclose the information to Consultant; (iii) is already in the possession of Consultant on the Effective Date; or (iv) is required to be disclosed by law, government regulation, or court order; provided, however, that Consultant shall use his best efforts to provide PTC with notice and an opportunity to oppose or limit such disclosure.

(c) Consultant shall not disclose to PTC any confidential information of other parties without the prior written consent of PTC.

(d) Consultant agrees to promptly return, upon termination of this Agreement or at any other time, upon request by PTC, all Proprietary Information and all other materials in Consultant's possession that were either (i) supplied by PTC or its representatives in conjunction with the Services or (ii) generated by Consultant in the performance of the Services and contain or reference Proprietary Information. This obligation of return of materials is in addition to, and shall not be construed to limit, any deliverables with respect to the Services.

INTELLECTUAL PROPERTY

(a) Consultant hereby assigns to PTC any right, title, and interest Consultant may have in any know-how, invention, discovery, improvement, or other intellectual property which Consultant develops during the course of and as a direct result of performing the Services. Any intellectual property assignable to PTC pursuant to the preceding sentence is hereinafter referred to as "PTC Intellectual Property". Upon the request of PTC, Consultant shall (i) provide such documentation relating to any PTC Intellectual Property, and (ii) execute such further assignments, documents, and other instruments, as may be necessary to assign PTC Intellectual Property to PTC and to assist PTC in applying for, obtaining and enforcing patents or other rights in the United States and in any foreign country with respect to any PTC Intellectual Property. PTC will bear the cost of preparation of all patent or other applications and assignments, and the cost of obtaining and enforcing all patents and other rights to PTC Intellectual Property. Consultant hereby designates PTC as agent, and grants to PTC a power of attorney with full power of substitution, for the purpose of effecting the foregoing assignments. Consultant agrees not to publish any PTC Intellectual Property without the prior written consent of PTC.

TERM AND TERMINATION

(a) Unless terminated earlier pursuant to the following paragraphs, this Agreement

shall terminate on the date which is exactly six months after the Effective Date (the Effective Date through such termination date being the "Term") or such lesser period as PTC and the Consultant may mutually agree. The parties may extend the Term by mutual written agreement.

(b) Either party may terminate this Agreement at any time on thirty days' written notice.

(c) Termination of this Agreement under this section shall not affect (i) PTC's obligation to pay for services previously performed by Consultant or expenses reasonably incurred by Consultant for which Consultant is entitled to reimbursement under this Agreement, (ii) Consultant's rights relating to the Equity Awards which survive termination per their express terms and the

express terms of this Agreement or (iii) Consultant's continuing obligations to PTC under the Confidentiality, Intellectual Property, Term and Termination, and Miscellaneous sections of this Agreement. However, except as specifically set forth in this paragraph, Consultant shall not be entitled to any form of continuing compensation or other remuneration of any nature following the termination of this Agreement.

MISCELLANEOUS

(a) Failure of any party to insist, in one or more instances, on performance by the other in strict accordance with the terms and conditions of this Agreement shall not be deemed a waiver or relinquishment of any right granted hereunder or of the future performance of any such term or condition or of any other term or condition of this Agreement, unless such waiver is contained in a writing signed by or on behalf of the waiving party.

(b) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey, U.S.A., without application of the conflicts of law provisions thereof.

(c) PTC may assign its rights and obligations hereunder (i) to any person or entity who succeeds to all or substantially all of PTC's business or that aspect of PTC's business in which Consultant is principally involved, or (ii) to any affiliate wholly owned by or under common control with PTC. Consultant's rights and obligations under this Agreement are of a personal nature and therefore may not be assigned without the prior written consent of PTC.

(d) This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, successors, representatives, and authorized assigns of the parties, as the case may be.

(e) The relationship created by this Agreement shall be that of third party contractor, and, as such, the Consultant shall be responsible for the payment of all taxes including, but not limited to, social security and income tax relating to the rendering of the Services and compensation paid to the Consultant pursuant to the terms of this Agreement. Consultant shall not be entitled to any rights, benefits, or privileges of PTC employees, nor shall Consultant have any authority to bind or act as agent for PTC or its employees for any purpose.

(f) Consultant acknowledges that any breach or threatened breach of the terms or conditions of this Agreement will result in substantial, continuing and irreparable injury to PTC. Therefore, Consultant agrees that, in addition to any other remedy that may be available to PTC, PTC shall be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach of this Agreement, and Consultant waives any requirements relating to the posting of bond or other surety in connection with such injunctive or equitable relief.

(g) Notice or payments given by one party to the other hereunder shall be in writing and deemed to have been properly given or paid if deposited with the United States Postal Service, registered or certified mail, addressed as follows:
If to PTC:

PTC Therapeutics
Attention: Legal Department
100 Corporate Court
Middlesex Business Center
South Plainfield NJ 07080

with an email copy to: legal@ptcbio.com

If to Consultant:

Geoffrey McDonough, M.D.
303 Franklin St.
Newton, MA 02458

(h) Consultant represents and warrants that he has never been: (i) excluded, barred from participation in, or sanctioned by any state or federal health care program, including Medicare or Medicaid in the United States, or any similar programs in any other country; (ii) the recipient of a criminal conviction related to any such health care program; or (iii) Debarred (as defined below) or under investigation by any regulatory authority for Debarment action. Consultant will not knowingly use the services of any person who has been Debarred, in any capacity, in connection with the Services. Consultant shall notify PTC in the event that he shall become subject to any of the conditions set forth in this subparagraph (h) during or after the term of this Agreement, and provide PTC upon request with a list of the full names of all persons who have or will supervise, administer or perform any Services. The foregoing obligation shall survive the termination or expiration of this Agreement. "Debarred" or "Debarment" in relation to a person or an entity means, as applicable,

a person or entity subject to limitations or any form of endorsement (x)

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under the Generic Drug Enforcement Act or by the FDA (including persons or entities required to be listed under Section 306(k)(2) of the U.S. Food, Drug and Cosmetic Act), or (y) under any competent regulatory authority or other recognized national, multi-national or industry body.

(i) Except as expressly set forth herein (and except for the Separation Agreement), this Agreement replaces all previous agreements and the discussions relating to the subject matters hereof and constitutes the entire agreement between PTC and Consultant with respect to the subject matters of this Agreement; provided, however, that the Equity Awards shall be governed exclusively by the terms of a separate stock option or equity certificate/agreement and the applicable PTC equity plan documents, as amended or otherwise modified by this Agreement. This Agreement may not be modified in any respect by any verbal statement, representation, or agreement made by any employee, officer, or representative of PTC, or by any written documents unless it is signed by an officer of PTC and by Consultant.

(j) If any term or provision of this Agreement is deemed invalid, contrary to, or prohibited under applicable laws or regulations of any jurisdiction, the remainder of this Agreement shall remain in effect, and the relevant term or provision shall be limited to the maximum permissible extent.

JURY TRIAL WAIVER

The parties agree to waive any right to a trial by jury regarding any dispute, claim or cause of action arising out of, concerning, or related to, this Agreement or the Services.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

CONSULTANT:

/s/ Geoffrey McDonough

Geoffrey McDonough, M.D.

Date: September 18, 2017

PTC THERAPEUTICS, INC.

/s/ Mark E. Boulding

Name: Mark E. Boulding

Title: EVP & CLO

Date: September 18, 2017

Schedule A

STOCK OPTIONS

Complete List of Stock Options (the “Stock Options”)

- (i) stock options to purchase 12,000 shares granted on January 3, 2017 with an exercise price of \$11.23 per share, comprised of:
 - (x) 8,000 which have vested but remained unexercised; and
 - (y) 4,000 which remain unvested;
- (ii) stock options to purchase 12,000 shares granted on January 4, 2016 with an exercise price of \$30.86 per share, all of which have vested but remained unexercised;
- (iii) stock options to purchase 12,000 shares granted on January 2, 2015 with an exercise price of \$51.00 per share, all of which have vested but remained unexercised;
- (iv) stock options to purchase 10,000 shares granted on January 28, 2014, with an exercise price of \$27.05 per share, all of which have vested but remained unexercised; and
- (v) stock options to purchase 30,000 shares granted on May 15, 2013, with an exercise price of \$10.85 per share, all of which have vested but remained unexercised.

Vesting and Exercisability of Stock Options; Withholding Obligations:

- (i) vesting:

The Stock Options shall continue to vest per the regular schedule set forth in the applicable stock option agreement/certificate and related documentation, from the Effective Date through and including the date this Agreement is terminated in accordance with its terms, based on Consultant’s continuity of services under this Agreement.

- (ii) *exercise period* :

During the Term, consistent with and subject to the terms of the applicable stock option agreement/certificate and related documentation, Consultant shall have the right to exercise the vested portion of the Stock Options; provided, however, that in no event may Consultant exercise any such options beyond the date that is ten (10) years from the initial grant date of any such options as set forth in the applicable option agreement or certificate. Following the Term, Consultant’s right to exercise the vested portion of the Stock Options shall be as set forth in the applicable stock option agreement/certificate and related documentation,

- (iii) *withholding obligations* :

When and if Consultant exercises any Stock Options, PTC shall require him to satisfy any applicable income and tax withholding obligations prior to PTC’s issuance of any shares with respect to such options.

Certification of Insider Trading Policy:

Consultant will read and execute PTC's current "Consultant Certification Regarding Insider Trading Policy".

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