

NephroGenex, Inc.
Form 8-K
August 07, 2015

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): **August 7, 2015**

NEPHROGENEX, INC.

(Exact name of registrant as specified in its charter)

Delaware
(state or other jurisdiction
of incorporation)

001-36303
(Commission
File Number)

20-1295171
(I.R.S. Employer
Identification No.)

3200 Beechleaf Court
Suite 900
Raleigh, NC
(Address of principal executive offices)

27604
(Zip Code)

Registrant's telephone number, including area code: **(609) 986-1780**

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(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))
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Item 1.01 Entry into a Material Definitive Agreement.

On August 7, 2015, NephroGenex, Inc. (the Company) filed a shelf registration statement on Form S-3 (the Registration Statement). This Registration Statement contained two prospectuses: (i) a base prospectus which covers the offering, issuance and sale by the Company of up to a maximum aggregate offering price of \$100 million of its common stock, preferred stock, debt securities, warrants, rights, purchase contracts and/or units; and (ii) a sales agreement prospectus covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of \$18.0 million of its common stock that may be issued and sold under an At Market Issuance Sales Agreement (the Sales Agreement), with MLV & Co. LLC (MLV). No sales will be made until the Registration Statement is declared effective by the Securities and Exchange Commission.

MLV may sell the shares of common stock by any method that is deemed to be an at the market offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the Securities Act), including by means of ordinary brokers transactions at market prices, in block transactions or as otherwise agreed by MLV and the Company. MLV may also sell the shares of common stock in negotiated transactions, subject to the Company's prior approval. Subject to the terms and conditions of the Sales Agreement, MLV will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable laws, rules and regulations to sell the shares of the Company's common stock from time to time, based upon the Company's instructions (including any price, time or size limits or other parameters or conditions the Company may impose). The Company will pay MLV a commission of up to 3.0% of the gross proceeds of the sale of any shares of common stock sold through MLV as agent under the Sales Agreement. The Company has also provided MLV with customary indemnification rights.

The Company is not obligated to make any sales of common stock under the Sales Agreement and no assurance can be given that the Company will sell any shares under the Sales Agreement, or, if it does, as to the price or amount of shares that it will sell, or the dates on which any such sales will take place. The Sales Agreement will terminate upon the earlier of the sale of all common stock subject to the Sales Agreement or termination of the Sales Agreement by the Company or MLV.

The foregoing description of the Sales Agreement is not complete and is qualified in its entirety by reference to the full text of the Sales Agreement, a copy of which is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference. The Sales Agreement is also incorporated by reference into the Registration Statement. A copy of the opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., relating to the legality of the shares of common stock issuable under the Sales Agreement, is filed as Exhibit 5.1 to this Current Report on Form 8-K and is also incorporated by reference into the Registration Statement.

The above disclosure shall not constitute an offer to sell or the solicitation of an offer to buy the securities discussed herein, nor shall there be any offer, solicitation, or sale of the securities 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.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

- 1.1 At Market Issuance Sales Agreement, dated as of August 7, 2015, between the Company and MLV & Co. LLC.
- 5.1 Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
- 23.1 Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in the opinion filed as Exhibit 5.1)

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.

NEPHROGENEX, INC.

Date: August 7, 2015

/s/ Pierre Legault
Pierre Legault
Chief Executive Officer