

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

ACACIA RESEARCH CORP

Form: 8-K

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Corporate Issuer CIK: 934549

**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): November 9, 2020

ACACIA RESEARCH CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-37721

(Commission File Number)

95-4405754

(IRS Employer Identification No.)

**4 Park Plaza, Suite 550
Irvine, California**

(Address of principal executive offices)

92614

(Zip Code)

Registrant's telephone number, including area code: **(949) 480-8300**

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))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|-------------------|---|
| Common Stock, \$0.001 par value per share | ACTG | The NASDAQ Stock Market, LLC |

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 2.02. Results of Operations and Financial Condition.

On November 9, 2020, Acacia Research Corporation issued a press release announcing its financial results for the three months ended September 30, 2020. A copy of that release is furnished as Exhibit 99.1 to this report.

The information in this Current Report on Form 8-K and the exhibit attached hereto as Exhibit 99.1 are being furnished pursuant to Item 2.02 and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section. The information in this Current Report on Form 8-K and the exhibit attached hereto as Exhibit 99.1 shall not be incorporated by reference into any registration statement or other document filed pursuant to the Securities Act of 1933, as amended, or the Exchange Act, regardless of any general incorporation by reference language in such filings, except as shall be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

- 99.1 [Press Release dated November 9, 2020 of Acacia Research Corporation](#)
- 104 The cover page from this Current Report on Form 8-K, formatted in Inline XBRL

SIGNATURES

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.

ACACIA RESEARCH CORPORATION

Date: November 9, 2020

By: /s/ Clifford Press
Clifford Press
Chief Executive Officer

Exhibit Index

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|---|
| 99.1 | Press Release dated November 9, 2020 of Acacia Research Corporation |

Mr. Press added, "We are working intensively with Starboard to execute our investment strategy, leveraging our ready access to committed capital for strategic transactions borne of our expertise in corporate governance and operational restructuring."

Al Tobia, Acacia's Chief Investment Officer, added "We believe that structural inefficiencies in the small-cap value sector create opportunities for us. Our areas of focus remain mature technology, healthcare, industrial and certain financial services segments. We are continuing to see attractive market conditions in the IP market as well, and our team has recently completed an option agreement to add a new portfolio."

Mr. Tobia continued, "In order to provide existing stockholders of Acacia the opportunity to invest alongside Starboard with substantially similar terms as the Senior Secured Notes and Series B Warrants issued to Starboard, today we expect to file a shelf registration statement on Form S-3 with the SEC to facilitate the rights offering and provide flexibility to the Company."

Third Quarter 2020 Financial Summary:

- Cash and short-term investments totaled \$303.1 million at September 30, 2020, compared to \$184.0 million at June 30, 2020 and \$168.3 million at December 31, 2019.
- Debt, which represents the Senior Secured Notes issued to Starboard, was \$115.0 million at September 30, 2020.
- Book value totaled \$202.3 million as of September 30, 2020, compared to \$175.0 million at December 31, 2019. Acacia's current book value reflects issuance of Senior Secured Notes and liabilities associated with upfront funding of the life science portfolio acquisition, and reflects the allocated value based on U.S. GAAP of assets transferred as of September 30, 2020.
- Gross revenues were \$19.5 million.
- General and administrative expenses for the third quarter of 2020 increased by \$3.1 million or 66%, compared with the third quarter of 2019, due to business development and personnel expenses.
- Operating loss was \$2.8 million.
- GAAP net income to common stockholders was \$29.2 million, or \$0.32 per diluted share, compared to a net loss of \$(7.6 million), or \$(0.15) per diluted share, in the third quarter last year.
- The third quarter of 2020 reflected:
 - o A net non-cash benefit of \$20 million related to the change in the fair value of trading and investment securities, and securities derivatives and forward contracts; and
 - o Income of \$21 million related to the change in fair value of warrants and embedded derivatives.

Investor Conference Call:

The Company will host a conference call today, Monday, November 9, 2020 at 11 a.m. ET/ 8 a.m. PT to discuss these results and provide a business update.

To access the live call, please dial (877) 407-0778 (U.S. and Canada) or (201) 689-8565 (international). The conference call will also be simultaneously webcasted on the investor relations section of the Company's website at <http://acaciaresearch.com> under the News & Events tab. Following the conclusion of the live call, a replay of the webcast will be available on the Company's website for at least 30 days.

About Acacia Research Corporation

Founded in 1993, Acacia Research Corporation (ACTG) invests in Intellectual Property Assets and partners with inventors and patent owners to realize the financial value in their patented inventions. Acacia bridges the gap between invention and application, facilitating efficiency and delivering monetary rewards to the patent owner.

Information about Acacia Research Corporation and its subsidiaries is available at www.acaciaresearch.com.

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995

This news release contains forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. These statements are based upon our current expectations and speak only as of the date hereof. Our actual results may differ materially and adversely from those expressed in any forward-looking statements as a result of various factors and uncertainties, including the ability to successfully implement our strategic plan, the ability to successfully develop licensing programs and attract new business, changes in demand for current and future intellectual property rights, legislative, regulatory and competitive developments addressing licensing and enforcement of patents and/or intellectual property in general, general economic conditions, including the impact of the COVID-19 pandemic and the success of our investments. Our Annual Report on Form 10-K, recent and forthcoming Quarterly Reports on Form 10-Q, recent Current Reports on Form 8-K, and any amendments to the forgoing, and other SEC filings discuss some of the important risk factors that may affect our business, results of operations and financial condition. We undertake no obligation to revise or update publicly any forward-looking statements for any reason.

The results achieved in the most recent quarter are not necessarily indicative of the results to be achieved by us in any subsequent quarters, as it is currently anticipated that Acacia Research Corporation’s financial results will vary, and may vary significantly, from quarter to quarter. This variance is expected to result from a number of factors, including risk factors affecting our results of operations and financial condition referenced above, and the particular structure of our licensing transactions, which may impact the amount of inventor royalties and contingent legal fees expenses we incur from period to period.

Acacia Research Investor Contact:

FNK IR
Rob Fink, 646-809-4048
rob@fnkir.com

ACACIA RESEARCH CORPORATION
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share data)

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|-------------------|------------------------------------|--------------------|
| | 2020 | 2019 | 2020 | 2019 |
| Revenues | \$ 19,466 | \$ 1,711 | \$ 25,399 | \$ 10,558 |
| Portfolio operations: | | | | |
| Inventor royalties | 5,772 | 776 | 6,843 | 4,752 |
| Contingent legal fees | 6,609 | 35 | 6,855 | 587 |
| Litigation and licensing expenses - patents | 1,001 | 987 | 3,497 | 6,643 |
| Amortization of patents | 1,174 | 863 | 3,522 | 2,337 |
| Other portfolio expenses (income) | - | (475) | (308) | 175 |
| Total portfolio operations | <u>14,556</u> | <u>2,186</u> | <u>20,409</u> | <u>14,494</u> |
| Net portfolio income (loss) | 4,910 | (475) | 4,990 | (3,936) |
| General and administrative expenses | <u>7,692</u> | <u>4,630</u> | <u>18,089</u> | <u>12,048</u> |
| Operating loss | <u>(2,782)</u> | <u>(5,105)</u> | <u>(13,099)</u> | <u>(15,984)</u> |
| Other income (expense): | | | | |
| Change in fair value of investment, net | (3,081) | (4,266) | 3,704 | 9,622 |
| Loss on sale of investment | - | (915) | (2,762) | (8,147) |
| Impairment of other investment | - | - | - | (8,195) |
| Gain on disposal of other investment | - | 2,000 | - | 2,000 |
| Change in fair value of the Series A and B warrants and embedded derivatives | 20,672 | - | (46,612) | - |
| Change in fair value of equity securities derivative and forward contract | (64,011) | - | 17,542 | - |
| Gain on sale of prepaid investment and derivative | 2,845 | - | 2,845 | - |
| Change in fair value of trading securities and equity securities - private | 84,499 | (482) | 81,907 | 132 |
| Gain (loss) on sale of trading securities | 2,737 | 238 | (4,272) | 226 |
| Loss on foreign currency exchange | (48) | (106) | (4,938) | (106) |
| Interest expense on Senior Secured Notes | (2,410) | - | (3,178) | - |
| Interest income and other | 10 | 1,028 | 811 | 3,012 |
| Total other income (expense) | <u>41,213</u> | <u>(2,503)</u> | <u>45,047</u> | <u>(1,456)</u> |
| Income (loss) before income taxes | 38,431 | (7,608) | 31,948 | (17,440) |
| Income tax benefit (expense) | <u>(83)</u> | <u>-</u> | <u>1,257</u> | <u>(323)</u> |
| Net income (loss) including noncontrolling interests in subsidiaries | 38,348 | (7,608) | 33,205 | (17,763) |
| Net loss attributable to noncontrolling interests in subsidiaries | <u>-</u> | <u>-</u> | <u>-</u> | <u>14</u> |
| Net income (loss) attributable to Acacia Research Corporation | <u>\$ 38,348</u> | <u>\$ (7,608)</u> | <u>\$ 33,205</u> | <u>\$ (17,749)</u> |
| Net income (loss) attributable to common stockholders - basic | <u>\$ 30,529</u> | <u>\$ (7,608)</u> | <u>\$ 24,838</u> | <u>\$ (17,749)</u> |
| Basic net income (loss) per common share | <u>\$ 0.63</u> | <u>\$ (0.15)</u> | <u>\$ 0.51</u> | <u>\$ (0.36)</u> |
| Weighted average number of shares outstanding - basic | <u>48,467,885</u> | <u>49,828,361</u> | <u>48,949,706</u> | <u>49,727,385</u> |
| Net income (loss) attributable to common stockholders - diluted | <u>\$ 29,204</u> | <u>\$ (7,608)</u> | <u>\$ 21,380</u> | <u>\$ (17,749)</u> |
| Diluted net income (loss) per common share | <u>\$ 0.32</u> | <u>\$ (0.15)</u> | <u>\$ 0.36</u> | <u>\$ (0.36)</u> |
| Weighted average number of shares outstanding - diluted | <u>90,624,702</u> | <u>49,828,361</u> | <u>60,153,773</u> | <u>49,727,385</u> |

ACACIA RESEARCH CORPORATION
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

| | <u>September 30,</u> <u>2020</u> | <u>December 31,</u> <u>2019</u> |
|---|-------------------------------------|------------------------------------|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 162,564 | \$ 57,359 |
| Trading securities - debt | – | 93,843 |
| Trading securities - equity | 24,471 | 17,140 |
| Equity securities - private | 116,009 | – |
| Equity securities derivative | 17,818 | – |
| Equity securities forward contract | 340 | – |
| Prepaid investment | 42,900 | – |
| Accounts receivable | 263 | 511 |
| Prepaid expenses and other current assets | 1,685 | 2,912 |
| Total current assets | <u>366,050</u> | <u>171,765</u> |
| Long-term restricted cash | 35,000 | 35,000 |
| Investment at fair value | 982 | 1,500 |
| Patents, net of accumulated amortization | 18,071 | 7,814 |
| Leased right-of-use assets | 1,101 | 1,264 |
| Other non-current assets | 5,311 | 818 |
| Total assets | <u>\$ 426,515</u> | <u>\$ 218,161</u> |
| LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY | | |
| Current liabilities: | | |
| Accounts payable | \$ 2,707 | \$ 1,765 |
| Accrued expenses and other current liabilities | 4,849 | 7,265 |
| Accrued compensation | 2,595 | 507 |
| Royalties and contingent legal fees payable | 14,230 | 2,178 |
| Senior Secured Notes Payable - short-term | 113,933 | – |
| Total current liabilities | <u>138,314</u> | <u>11,715</u> |
| Series A warrant liabilities | 5,604 | 3,568 |
| Series A embedded derivative liabilities | 25,682 | 17,974 |
| Series B warrant liabilities | 42,796 | – |
| Long-term lease liabilities | 1,101 | 1,264 |
| Other long-term liabilities | 593 | 593 |
| Total liabilities | <u>214,090</u> | <u>35,114</u> |
| Series A redeemable convertible preferred stock, par value \$0.001 per share; stated value \$100 per share; 350,000 shares authorized, issued and outstanding as of September 30, 2020 and December 31, 2019, respectively; aggregate liquidation preference of \$35,000 as of September 30, 2020 and December 31, 2019, respectively | 10,134 | 8,089 |
| Stockholders' equity: | | |
| Preferred stock, par value \$0.001 per share; 10,000,000 shares authorized; no shares issued or outstanding | – | – |
| Common stock, par value \$0.001 per share; 300,000,000 shares authorized; 49,279,453 and 50,370,987 shares issued and outstanding as of September 30, 2020 and December 31, 2019, respectively | 49 | 50 |
| Treasury stock, at cost, 4,604,365 and 2,919,828 shares as of September 30, 2020 and December 31, 2019, respectively | (43,270) | (39,272) |
| Additional paid-in capital | 650,130 | 652,003 |
| Accumulated deficit | (406,451) | (439,656) |
| Total Acacia Research Corporation stockholders' equity | <u>200,458</u> | <u>173,125</u> |
| Noncontrolling interests | 1,833 | 1,833 |
| Total stockholders' equity | <u>202,291</u> | <u>174,958</u> |
| Total liabilities, redeemable convertible preferred stock, and stockholders' equity | <u>\$ 426,515</u> | <u>\$ 218,161</u> |