

CAPSTONE TURBINE Corp
Form 8-K
June 07, 2018

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): **June 7, 2018**

CAPSTONE TURBINE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-15957
(Commission File Number)

95-4180883
(IRS Employer
Identification No.)

16640 Stagg St.

Van Nuys, California 91406

(Address of principal executive offices)

(818) 734-5300

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(Registrant's telephone number, including area code)

**21211 Nordhoff Street,
Chatsworth, California 91311**
(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:

- 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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). 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 June 7, 2018, Capstone Turbine Corporation (we, us, Capstone or the Company) entered into an At The Market Offering Agreement (the Agreement) with H.C. Wainwright & Co., LLC (Wainwright or the Agent), to create an at-the-market equity program under which the Company from time to time may offer and sell shares of its common stock, par value \$0.001 per share, having an aggregate offering price of up to \$25,000,000 (the Shares) through Wainwright.

Subject to the terms and conditions of the Agreement, Wainwright will use its commercially reasonable efforts to sell the Shares from time to time, based upon the Company s instructions. The Company has provided the Agent with customary indemnification rights, and the Agent will be entitled to a commission at a fixed commission rate equal to 3.0% of the gross proceeds per Share sold.

Sales of the Shares, if any, under the Agreement may be made in transactions that are deemed to be at the market offerings as defined in Rule 415 under the Securities Act of 1933, as amended (the Securities Act), including sales made by means of ordinary brokers transactions, including on the NASDAQ Capital Market, at market prices or as otherwise agreed with the Agent. The Company has no obligation to sell any of the Shares, and may at any time suspend offers under the Agreement or terminate the Agreement.

This report also incorporates by reference the Agreement into the shelf registration statement on Form S-3 (File No. 333-203431) previously filed with the Securities and Exchange Commission on June 16, 2015, as amended, in the form in which it became effective on June 23, 2015 (the 2015 Registration Statement) and the shelf registration statement on Form S-3 (File No. 333-[]) previously filed with the Securities and Exchange Commission on June 7, 2018 (the 2018 Registration Statement). This report shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Shares 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.

The Agreement is filed as Exhibit 10.1 to this report. The description of the Agreement does not purport to be complete and is qualified in its entirety by reference to the Agreement filed herewith as an exhibit to this report.

The opinion of the Company s counsel regarding the validity of the Shares that will be issued pursuant to the Agreement is also filed herewith as Exhibit 5.1. This opinion is also filed with reference to, and is hereby incorporated by reference into, the 2015 Registration Statement and the 2018 Registration Statement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits. The following documents are filed as exhibits to this report:

Exhibit Number

Exhibit Title

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5.1
10.1

Opinion of Goodwin Procter LLP
At The Market Offering Agreement, dated June 7, 2018, between Capstone Turbine Corporation and H.C.
Wainwright & Co., LLC

Exhibit Index

| Exhibit Number | Exhibit Title |
|-----------------------|--|
| 5.1 | <u>Opinion of Goodwin Procter LLP</u> |
| 10.1 | <u>At The Market Offering Agreement, dated June 7, 2018, between Capstone Turbine Corporation and H.C. Wainwright & Co., LLC</u> |

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.

CAPSTONE TURBINE CORPORATION

Date: June 7, 2018

By: /s/ Jayme L. Brooks
Jayme L. Brooks
Chief Financial Officer, Chief Accounting Officer and
Secretary