

ADVANCED CELL TECHNOLOGY, INC.
Form 8-K
August 17, 2011

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): July 1, 2011

ADVANCED CELL TECHNOLOGY, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-50295
(Commission File Number)

87-0656515
(IRS Employer Identification
Number)

33 LOCKE DRIVE, MARLBOROUGH, MASSACHUSETTS 01752
(Address of principal executive offices, including zip code)

(508)756-1212
(Registrant's telephone number, including area code)

(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 CAR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

On August 9, 2011, Advanced Cell Technology Inc. (the "Company") entered into a settlement agreement and mutual release (the "Settlement Agreement") with Midsummer Investment, Ltd. and Midsummer Small Cap Master, Ltd. (collectively, "Midsummer").

Pursuant to the Settlement Agreement, upon tender by Midsummer to the Company of warrants held by Midsummer to purchase a total of 20,319,731 shares of the Company's common stock (the "Warrants"), and duly executed notices of exercise (deemed to occur upon execution of the Settlement Agreement), the Company, to settle errors involving warrant issuances to Midsummer, agreed to (i) deliver to Midsummer an aggregate of 36,000,000 shares of the Company's common stock (the "Current Shares"), as an exercise of the Warrants in respect of a partial exercise of Warrants, (ii) undertake to issue 30,585,774 additional shares of the Company's common stock (the "Future Shares"), as an exercise of the remainder of the Warrants within ten days of the date that the Company shall have sufficient authorized and unissued shares of Common Stock ("Authorized Share Increase") which are not otherwise reserved for issuance for other purposes to enable the Company to issue all of the Future Shares and (iii) issue 3,058,577 shares of the Company's common stock (the "Additional Future Shares") for every calendar month elapsed between the date of delivery of the Current Shares and the date following delivery of the Future Shares. The Company and Midsummer provided mutual general releases.

In connection with the foregoing, the Company relied on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, for transactions not involving a public offering.

Item 2.02. Results of Operations and Financial Condition

On August 8, 2011, the Company issued a press release announced its financial results for the quarter ended June 30, 2011 and certain other information. A copy of the Company's press release announcing these financial results and certain other information is attached hereto as Exhibit 99.1.

In accordance with General Instruction B.2 of Form 8-K, the information in this Item 2.02 of Current Report on Form 8-K, including Exhibit 99.1, shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, and shall not be deemed to be incorporated by reference into any of the Company's filings under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and regardless of any general incorporation language in such filings, except to the extent expressly set forth by specific reference in such a filing.

Item 3.02. Unregistered Sales of Equity Securities.

See Items 1.01 and 5.02.

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

Amended and Restated Employment Agreement between the Company and Gary H. Rabin

Effective July 1, 2011, the Company entered into an amended and restated employment agreement with Gary H. Rabin (the "Rabin Agreement"), a director of the Company since December 2007 and the Company's interim Chief Executive Officer since December 2010. Pursuant to the Rabin Agreement, the parties agreed as follows:

- Mr. Rabin will serve as the Company's chief executive officer and chief financial officer for a term commencing on July 1, 2011 until December 31, 2013 (subject to earlier termination as provided therein).
- The Company will pay Mr. Rabin a base salary of \$500,000 per year, through December 31, 2011, which amount shall increase at the end of each year of the Rabin Agreement, by an amount determined by the board, but by not less than 5% per year.
- The Company agreed to pay Mr. Rabin a retention bonus of \$41,667 within 10 days of execution of the Rabin Agreement.
- The Company shall pay Mr. Rabin an annual incentive bonus, which will be calculated by reference to the 10-day volume weighted average price of the Company's common stock, as set forth therein.
- The Company shall pay Mr. Rabin a performance bonus in amount (not less than \$100,000 per year) to be determined by the Compensation Committee of the Board of Directors.
- The Company agreed to issue to Mr. Rabin, upon execution of the Rabin Agreement, (i) 10,000,000 shares of common stock, (ii) an option to purchase 10,000,000 shares of common stock with an exercise price equal to fair market value on the date of grant, (iii) an option to purchase 5,000,000 shares of common stock with an exercise price of \$0.30, and (iv) an option to purchase 5,000,000 shares of common stock with an exercise price of \$0.45. The options will vest, and the shares will no longer be subject to the Company's right to repurchase for aggregate consideration of \$1.00, in equal installments on the last day of each calendar quarter commencing on July 1, 2011 and ending on December 31, 2013.
- If Mr. Rabin's employment under the Rabin Agreement were to be terminated by the Company without cause (as defined therein), the Company will pay Mr. Rabin (in addition to unpaid base salary, performance bonus and incentive bonus to the date of termination), a lump sum equal to the aggregate installments of base salary in effect on the date of termination and otherwise payable in respect of the period commencing on the date immediately subsequent to the date of termination and ending on the earlier to occur of the first anniversary of such date and December 31, 2013.

Amended and Restated Employment Agreement between the Company and Robert Lanza

Effective July 1, 2011, the Company entered into an amended and restated employment agreement with Robert Lanza (the "Lanza Agreement"), the Company's chief scientific officer since October 2007. Pursuant to the Lanza Agreement, the parties agreed as follows:

- Dr. Lanza will continue serve as the Company's chief scientific officer for a term commencing on July 1, 2011 until September 30, 2013 (subject to earlier termination as provided therein, and extension by mutual written agreement).
- The Company will pay Dr. Lanza a base salary of \$440,000 per year, which amount shall increase at the end of each year of the Lanza Agreement, by an amount determined by the board, but by not less than 5% per year. The Company may also pay Dr. Lanza annual bonuses in in the Company's sole discretion.
- The Company agreed to issue to Dr. Lanza, upon execution of the Lanza Agreement, (i) 15,000,000 shares of common stock (of which 6,000,000 shares will vest on the date of grant, with the balance of 9,000,000 shares vesting in equal installments on the last day of each month commencing on January 31, 2012 and ending on September 30, 2013), (ii) an option to purchase 15,000,000 shares of common stock with an exercise price equal to the closing price on the date of execution (of which 6,000,000 options will vest on the date of grant, with the

balance of 9,000,000 options vesting in equal installments on the last day of each month commencing on January 31, 2012 and ending on September 30, 2013).

- If Dr. Lanza's employment under the Lanza Agreement were to be terminated by the Company without cause (as defined therein), the Company will pay Dr. Lanza severance equal to one year base salary.

In connection with the foregoing, the Company relied upon the exemption from securities registration afforded by Section 4(2) of the Securities Act for transactions not involving a public offering.

Item 9.01 Financial Statements and Exhibits.

Exhibit Number	Description of Exhibit
10.1	Settlement Agreement and Mutual Release, dated August 9, 2011, by and between the Company, Midsummer Investment, Ltd., and Midsummer Small Cap Master, Ltd.
10.2	Amended and Restated Employment Agreement, dated July 1, 2011, by and between the Company and Robert P. Lanza
10.3	Amended and Restated Employment Agreement, dated July 1, 2011, by and between the Company and Gary H. Rabin.
99.1	Press release, dated August 9, 2011

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.

ADVANCED CELL TECHNOLOGY, INC.

Dated: August 17, 2011

By: */s/ Gary H. Rabin*
Gary H. Rabin
Chief Executive Officer
