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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): December 22, 2017**

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**ZOGENIX, INC.**

(Exact Name of Registrant as Specified in its Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-34962**  
(Commission  
File Number)

**20-5300780**  
(IRS Employer  
Identification No.)

**5858 Horton Street, #455, Emeryville, CA**  
(Address of Principal Executive Offices)

**94608**  
(Zip Code)

**Registrant's telephone number, including area code: (510) 550-8300**

(Former Name or Former Address, if Changed Since Last Report.)

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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.

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**Item 8.01. Other Events.**

On December 22, 2017, Zogenix, Inc. (the “Company”) filed a prospectus supplement (“Prospectus Supplement”) to the Company’s effective registration statement on Form S-3 (Registration No. 333-220759) related to the Company’s at the market offering of shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”), pursuant to the Controlled Equity Offering<sup>SM</sup> sales agreement (the “Sales Agreement”) previously entered into on May 10, 2016, by and between the Company and Cantor Fitzgerald & Co. as sales agent (“Cantor”).

Under the terms of the Sales Agreement, from and after December 22, 2017, the Company may issue and sell from time to time through or to Cantor, as sales agent, shares of Common Stock having an aggregate offering price of up to \$75.0 million. The prospectus supplement replaces and supersedes the offering pursuant to the Company’s registration statement (Registration No. 333-211265) filed on May 10, 2016.

Upon delivery of a placement notice and subject to the terms and conditions of the Sales Agreement, Cantor may sell the shares by methods deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, including sales made directly on the Nasdaq Global Market or on any other existing trading market for the common stock. In addition, Cantor may sell the common stock by any other method permitted by law, including in privately negotiated transactions. Subject to the terms and conditions of the Sales Agreement, Cantor will use commercially reasonable efforts, consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the Nasdaq Global Market, to sell the shares from time to time, based upon the Company’s instructions. The Company has no obligation to sell any shares of Common Stock under the Sales Agreement, and the Company and Cantor may each terminate the Sales Agreement at any time upon ten days’ prior notice. Cantor will be entitled to compensation at a commission rate of up to 3.0% of the gross sales proceeds of any shares of Common Stock sold under the Sales Agreement.

The foregoing description of the Sales Agreement does not purport to be complete and is qualified in its entirety by the Sales Agreement, a copy of which is filed with Company’s Form S-3 (Registration No. 333-211265) filed on May 10, 2016, and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits***(d) Exhibits*

- 5.1 [Opinion of Latham & Watkins LLP](#)
- 10.1 [Sales Agreement, dated May 10, 2016, by and between the Company and Cantor Fitzgerald & Co. \(incorporated by reference to the Company’s Form S-3 \(Registration No. 333-211265\) filed on May 10, 2016\)](#)
- 23.1 [Consent of Latham & Watkins LLP \(contained in the opinion filed as Exhibit 5.1 hereto\)](#)

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This report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainties and reflect the Company’s judgment as of the date of this report. Such forward-looking statements include statements regarding the ability to sell shares and raise additional funds pursuant to the Sales Agreement. Such forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from predicted or expected

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results. The inclusion of forward-looking statements should not be regarded as a representation by the Company that any of these results will be achieved. Actual results may differ from those set forth in this report due to the risks and uncertainties associated with market conditions and the satisfaction of pre-sale conditions under the Sales Agreement, as well as risks and uncertainties inherent in the Company's business, including those described in the Company's periodic filings with the SEC. These forward-looking statements are made only as the date hereof, and, except as required by law, the Company undertakes no obligation to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise. All forward-looking statements are qualified in their entirety by this cautionary statement.

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**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.

ZOGENIX, INC.

Date: December 22, 2017

By: /s/ Michael P. Smith

Name: Michael P. Smith

Title: Executive Vice President, Chief Financial Officer,  
Treasurer and Secretary

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 San Diego, California 92130  
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**LATHAM & WATKINS** LLP

December 22, 2017

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Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

File No. 042073-0033

Zogenix, Inc.  
 5858 Horton Street, #455  
 Emeryville, CA 94608

Re: At-The-Market Issuance of Common Stock, par value \$0.001 per share, having an aggregate offering price of up to \$75,000,000

Ladies and Gentlemen:

We have acted as special counsel to Zogenix, Inc., a Delaware corporation (the “*Company*”), in connection with the sale through Cantor Fitzgerald & Co. (“*Cantor*”) as the sales agent from time to time by the Company of shares (the “*Shares*”) of common stock of the Company, par value \$0.001 per share (the “*Common Stock*”), having an aggregate offering price of up to \$75,000,000, to be issued pursuant to a registration statement on Form S-3 filed by the Company with the Securities and Exchange Commission (the “*Commission*”) on October 2, 2017 (the “*Registration Statement*”), the base prospectus included in the Registration Statement (the “*Base Prospectus*”), a prospectus supplement dated December 22, 2017 (the “*Prospectus Supplement*”) and together with the Base Prospectus, the “*Prospectus*”), and that certain Controlled Equity Offering<sup>SM</sup> Sales Agreement, dated as of May 10, 2016, by and between the Company and Cantor (the “*Sales Agreement*”).

This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the Prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “*DGCL*”), and we express no opinion with respect to any other laws.

**LATHAM & WATKINS**<sup>LLP</sup>

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company against payment therefor (not less than par value) in the circumstances contemplated by the Sales Agreement, the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that (i) the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL and (ii) upon the issue of any of the Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under its Fifth Amended and Restated Certificate of Incorporation, as amended.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Company's Registration Statement and to the reference to our firm in the Prospectus under the heading "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP