

Golden Minerals Co
Form 8-K
May 09, 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): **May 9, 2018**

GOLDEN MINERALS COMPANY

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

1-13627
(Commission
File Number)

26-4413382
(I.R.S. Employer
Identification Number)

350 Indiana Street, Suite 800

Golden, Colorado 80401

(Address of principal executive offices) (Zip code)

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Registrant's telephone number, including area code: **(303) 839-5060**

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 (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.

Registered Purchase Agreement

On May 9, 2018, Golden Minerals Company (the Company) entered into a purchase agreement (the Registered Purchase Agreement), pursuant to which the Company agreed to sell to Lincoln Park Capital Fund, LLC (Lincoln Park), and Lincoln Park agreed to purchase 3,153,808 shares of its common stock, \$0.01 par value per share (Common Stock), at a price of \$0.4122 per share for an aggregate purchase price of \$1,300,000, pursuant to the Company's effective shelf registration statement on Form S-3 (Registration No. 333-220461), filed with the Securities and Exchange Commission (the SEC) in accordance with the provisions of the Securities Act of 1933, as amended (the Securities Act), and declared effective on September 28, 2017, and the prospectus supplement thereto dated May 9, 2018.

The Company is filing the opinion of its counsel, Davis Graham & Stubbs LLP, relating to the legality of the shares of Common Stock to be offered and sold pursuant to the Registered Purchase Agreement, as Exhibit 5.1 hereto.

Equity Commitment Purchase Agreement and Registration Rights Agreement

On May 9, 2018, the Company entered into a purchase agreement (the Commitment Purchase Agreement and together with the Registered Purchase Agreement, the Purchase Agreements) and a Registration Rights Agreement (the Registration Rights Agreement) with Lincoln Park, pursuant to which the Company has the right to sell to Lincoln Park up to \$10,000,000 in shares of Common Stock, subject to certain limitations and conditions set forth in the Commitment Purchase Agreement.

Upon the satisfaction of the conditions in the Commitment Purchase Agreement, including that a registration statement, which the Company agreed to file with the SEC, pursuant to the Registration Rights Agreement, is declared effective by the SEC and a final prospectus in connection therewith is filed with the SEC, the Company will have the right, from time to time at its sole discretion over the 36-month term of the Commitment Purchase Agreement, to direct Lincoln Park to purchase up to 75,000 shares of Common Stock on any business day (subject to certain limitations contained in the Commitment Purchase Agreement), with such amounts increasing based on certain threshold prices, as set forth in the Commitment Purchase Agreement, *provided however*, the total purchase price proceeds per purchase date may not exceed \$500,000. The purchase price for the regular purchase of shares under the Commitment Purchase Agreement will be equal to the lower of (i) the lowest sale price of our Common Stock on the applicable purchase date and (ii) the arithmetic average of the three lowest closing sale prices for the Common Stock during the ten consecutive business days ending on the business day immediately preceding such purchase date.

In addition to regular purchases, as described above, the Company may also direct Lincoln Park to purchase additional amounts as accelerated purchases if the closing sale price of the Common Stock is not below certain threshold prices, as set forth in the Commitment Purchase Agreement. In all instances, the Company may not sell shares of its Common Stock to Lincoln Park under the Commitment Purchase Agreement if it would result in Lincoln Park beneficially owning more than 9.99% of the Common Stock.

There are no restrictions on future financings, rights of first refusal, participation rights, penalties or liquidated damages in the Commitment Purchase Agreement or Registration Rights Agreement other than a prohibition on entering into a Variable Rate Transaction as defined in the Commitment Purchase Agreement.

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Lincoln Park has covenanted not to cause or engage in any manner whatsoever, any direct or indirect short selling or hedging of the Common Stock. There is no upper limit on the price per share that Lincoln Park could be obligated to pay for the Common Stock under the Commitment Purchase Agreement. The purchase

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price per share will be equitably adjusted for any reorganization, recapitalization, non-cash dividend, stock split, or other similar transaction occurring during the business days used to compute such price.

The Company has the right to terminate the Commitment Purchase Agreement at any time, at no cost or penalty. Actual sales of shares of the Common Stock to Lincoln Park under the Commitment Purchase Agreement will depend on a variety of factors to be determined by the Company from time to time, including, among others, market conditions, the trading price of the Common Stock and determinations by the Company as to the appropriate sources of funding for the Company and its operations. As consideration for Lincoln Park's commitment to purchase shares of Common Stock pursuant to the Commitment Purchase Agreement, the Company paid Lincoln Park a \$300,000 commitment fee.

The Company expects that any proceeds received by the Company from such sales to Lincoln Park will be used for exploration and development expenditures for its El Quevar property or for acquisition, exploration, and development of other exploration or development properties in Mexico, and for other working capital requirements and general corporate purposes. The net proceeds under the Commitment Purchase Agreement to the Company will depend on the frequency and prices at which the Company sells shares of its stock to Lincoln Park. Moreover, under NYSE American rules, the Company may not sell shares below the greater of book or market value at the time of sale (as calculated under the applicable rules of the NYSE American) under the Commitment Purchase Agreement in excess of 19.99% of its currently outstanding shares (less shares issued under the Registered Purchase Agreement) without obtaining shareholder approval.

The Purchase Agreements and the Registration Rights Agreement contain customary representations, warranties and agreements of the Company and Lincoln Park and customary conditions to completing future sale transactions, indemnification rights and obligations of the parties.

The foregoing summaries of the Registered Purchase Agreement, the Commitment Purchase Agreement and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of such agreements that are filed herewith as Exhibit 10.1, 10.2 and 10.3, respectively, and incorporated by reference herein.

The representations, warranties and covenants contained in the Purchase Agreements and the Registration Rights Agreement were made only for purposes of such agreements and as of specific dates, were solely for the benefit of the parties to the Purchase Agreements and the Registration Rights Agreement, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Purchase Agreements and the Registration Rights Agreement are incorporated herein by reference only to provide investors with information regarding the terms of the Purchase Agreements and the Registration Rights Agreement, and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company's periodic reports and other filings with the SEC.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under the heading "Commitment Purchase Agreement and Registration Rights Agreement" in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 3.02 in its entirety. The Common Stock that has been and may be issued under the Commitment Purchase Agreement is being offered and sold in a transaction exempt from registration under the Securities Act, in reliance on Section 4(a)(2) thereof and Rule 506(b) of Regulation D thereunder. Lincoln Park represented that it was an accredited investor, as defined in Regulation D, and was acquiring such shares under the Commitment Purchase Agreement for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the shares of Common Stock that have been and

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may be issued to Lincoln Park under the Commitment Purchase Agreement have not been registered under the Securities Act or any applicable state securities laws and may not be offered or sold in

the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy any shares of Common Stock, nor shall there be any sale of shares of Common Stock in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit No. | Description |
|--------------------|--|
| 5.1 | Opinion of Davis Graham & Stubbs LLP |
| 10.1 | Purchase Agreement, dated May 9, 2018, by and between Golden Minerals Company and Lincoln Park Capital Fund, LLC (Registered Purchase Agreement) |
| 10.2 | Purchase Agreement, dated May 9, 2018, by and between Golden Minerals Company and Lincoln Park Capital Fund, LLC (Commitment Purchase Agreement) |
| 10.3 | Registration Rights Agreement, dated May 9, 2018, by and between Golden Minerals Company and Lincoln Park Capital Fund, LLC |
| 23.1 | Consent of Davis Graham & Stubbs LLP (included in Exhibit 5.1) |

EXHIBIT INDEX

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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.

Date: May 9, 2018

Golden Minerals Company

| | | |
|-----|----------------------|---|
| By: | /s/ Robert P. Vogels | |
| | Name: | Robert P. Vogels |
| | Title: | Senior Vice President, Chief Financial Officer and Corporate Secretary |