

TRIOUS THERAPEUTICS INC

FORM 8-K (Current report filing)

Filed 12/12/12 for the Period Ending 12/12/12

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|-------------|---|
| Address | 6310 NANCY RIDGE DR SUITE 105 SAN DIEGO, CA, 92121 |
| Telephone | 858-452-0370 |
| CIK | 0001356857 |
| SIC Code | 2834 - Pharmaceutical Preparations |
| Industry | Pharmaceuticals |
| Sector | Healthcare |
| Fiscal Year | 12/31 |

**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): December 12, 2012

TRIUS THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation
or organization)

001-34828
(Commission
file number)

20-1320630
(I.R.S. Employer
Identification Number)

6310 Nancy Ridge Drive, Suite 105
San Diego, CA
(Address of principal executive offices)

92121
(Zip code)

(858) 452-0370

Registrant's telephone number, including area code

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))
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Item 8.01 Other Events.

As disclosed previously in our Current Report on Form 8-K filed on August 31, 2012, we entered into a Common Stock Purchase Agreement (the "Purchase Agreement") with Terrapin Opportunity, L.P. ("Terrapin") pursuant to which we may, from time to time and subject to the terms and limitations set forth in the Purchase Agreement, sell Terrapin shares of our common stock. On December 13, 2012, we expect to settle with Terrapin on the purchase of 1,122,218 shares of our common stock under the Purchase Agreement at an aggregate purchase price of \$5.0 million. We will receive estimated net proceeds from the sale of these shares of approximately \$4.9 million after deducting our estimated offering expenses. In connection with this sale of our common stock, we are filing, as Exhibit 5.1 hereto, an opinion of our counsel, Cooley LLP.

The foregoing description is qualified in its entirety by reference to the Purchase Agreement, which was filed as an exhibit to our Current Report on Form 8-K filed on August 31, 2012, and is incorporated herein by reference.

Forward-Looking Statements

Certain statements in this Form 8-K are forward-looking statements that involve a number of risks and uncertainties. Such forward-looking statements include statements about the expected settlement of the sale and purchase of common stock described herein and our receipt of net proceeds therefrom. For such statements, we claim the protection of the Private Securities Litigation Reform Act of 1995. Actual events or results may differ materially from our expectations. Factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to, our ability to satisfy applicable closing conditions under the Purchase Agreement and Terrapin's compliance with its obligations to purchase the shares of common stock. Additional factors that could cause actual results to differ materially from those stated or implied by our forward-looking statements are disclosed in our other filings with the Securities and Exchange Commission. These forward-looking statements represent our judgment as of the time of the filing of this Form 8-K. We disclaim any intent or obligation to update these forward-looking statements, other than as may be required under applicable law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| <u>Exhibit Number</u> | <u>Description</u> |
|---------------------------|------------------------|
| 5.1 | Opinion of Cooley LLP. |

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.

Trius Therapeutics, Inc.

Dated: December 12, 2012

By: _____ /s/ John P. Schmid
Name: **John P. Schmid**
Title: **Chief Financial Officer**

INDEX TO EXHIBITS

| <u>Exhibit Number</u> | <u>Description</u> |
|---------------------------|------------------------|
| 5.1 | Opinion of Cooley LLP. |



Charles J. Bair
T: +1 858 550 6142
cbair@cooley.com

December 12, 2012

Trius Therapeutics, Inc.
6310 Nancy Ridge Drive, Suite 105
San Diego, CA 92121

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the sale by Trius Therapeutics, Inc., a Delaware corporation (the "**Company**"), of 1,122,218 shares of the Company's common stock, par value \$0.0001 (the "**Shares**"), pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-176621) (the "**Registration Statement**"), filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**Act**"), the prospectus dated September 15, 2011, as filed with the Commission on September 15, 2011 (the "**Prospectus**"), and the prospectus supplements dated August 31, 2012 and December 12, 2012, relating to the Shares, filed or to be filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations of the Act (collectively, the "**Prospectus Supplement**"). All of the Shares are to be sold by the Company as described in the Registration Statement, the Prospectus and the Prospectus Supplement pursuant to that certain Common Stock Purchase Agreement, dated August 30, 2012, by and between the Company and Terrapin Opportunity, L.P.

In connection with this opinion, we have examined and relied upon the Registration Statement, the Prospectus, the Prospectus Supplement, the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, and the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof. We are not rendering any opinion as to compliance with any federal or state antifraud law, rule or regulation relating to securities, or to the sale or issuance thereof. Our opinion herein is expressed solely with respect to the federal laws of the United States of America and the General Corporation Law of the State of Delaware.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold in accordance with the Registration Statement and the Prospectus and the Prospectus Supplement, will be validly issued, fully paid and nonassessable.

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Trius Therapeutics, Inc.
December 12, 2012
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We consent to the reference to our firm under the caption "Legal Matters" in the Prospectus Supplement, the filing of this opinion as an exhibit to a current report on Form 8-K of the Company and the incorporation by reference of this opinion in the Registration Statement.

Sincerely,

Cooley LLP

/s/ Charles J. Bair

Charles J. Bair

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