TomoTherapy Inc
Form 425
June 09, 2011

# 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 9, 2011**

# ACCURAY INCORPORATED

(Exact name of registrant as specified in charter)

**Delaware**

(State or other jurisdiction of incorporation)

| **001-33301** | **20-8370041** |
|---|---|
| (Commission File Number) | (IRS Employer Identification No.) |

**1310 Chesapeake Terrace**

**Sunnyvale, California 94089**

(Address of principal executive offices, including Zip Code)

Registrant s telephone number, including area code: **(408) 716-4600**

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:

x Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 8.01. Other Events**

As previously disclosed, on March 6, 2011, Accuray Incorporated (the Company ) entered into an Agreement and Plan of Merger (the Merger Agreement ) with TomoTherapy Incorporated ( TomoTherapy ) and Jaguar Acquisition, Inc. ( Merger Sub ), a wholly-owned subsidiary of the Company, pursuant to which Merger Sub will be merged with and into TomoTherapy, with TomoTherapy surviving as a wholly-owned subsidiary of the Company. On June 9, 2011, at a special meeting of the shareholders of TomoTherapy (the Special Meeting ), TomoTherapy s shareholders voted to approve and adopt the Merger Agreement.

On June 9, 2011, Accuray issued a press release announcing the results of the Special Meeting. A copy of the press release is furnished herewith as Exhibit 99.1 and is incorporated herein by reference.

***Forward Looking Statements***

This Current Report on Form 8-K, including the Exhibit hereto, may contain certain forward-looking statements that involve risks and uncertainties, including uncertainties associated with the medical device industry and the transaction between Accuray and TomoTherapy. Except for the historical information contained herein, the matters set forth in this Current Report on Form 8-K and the Exhibit hereto, including the expected structure and timetable for the transaction and the impact of the proposed transaction, are forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements speak only as of the date the statements are made and are based on information available at the time those statements are made and/or managements good faith belief as of that time with respect to future events. You should not put undue reliance on any forward-looking statements. Important factors that could cause actual performance and results to differ materially from the forward-looking statements we make include: the satisfaction of closing conditions for the transaction between Accuray and TomoTherapy; market conditions; the effect of the announcement of the transaction on Accuray s and TomoTherapy s respective businesses; the impact of any failure to complete the transaction; the risk that Accuray and TomoTherapy will not realize the anticipated benefits of the transaction; the potential inability to successfully operate or integrate TomoTherapy s business; general industry and economic conditions; and other factors beyond the companies control and the risk factors and other cautionary statements described in Accuray s and TomoTherapy s filings with the SEC. Please refer to the Risk Factors section of Accuray s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2011, the Risk Factors set forth in TomoTherapy s Annual Report on Form 10-K for the fiscal year ended December 31, 2010, as amended, and as updated in TomoTherapy s Form 10-Q for the fiscal quarter ended March 31, 2011, and the Risk Factors set forth in Accuray s Registration Statement on form S-4, filed with the SEC on April 7, 2011 and as amended on May 5, 2011 and May 9, 2011, for a further list and description of additional business risks, uncertainties, and other factors that may affect these statements. Neither Accuray nor TomoTherapy intends to update these statements and undertakes no duty to any person to provide any such update under any circumstance.

***Important Additional Information***

This Current Report on Form 8-K, including the Exhibit hereto, is for informational purposes only and does not constitute an offer to sell, or the solicitation of an offer to purchase, shares of common stock of Accuray, nor does it constitute an offer to purchase, or a solicitation of an offer to sell, shares of common stock of TomoTherapy. In connection with the proposed merger, Accuray and TomoTherapy filed a definitive proxy statement/prospectus with the SEC on May 9, 2011. This Current Report on Form 8-K, including the Exhibit hereto, is not a substitute for the definitive proxy statement/prospectus. The definitive proxy statement of TomoTherapy and the prospectus of Accuray was mailed to the shareholders of Tomotherapy beginning on or about May 9, 2011. Before making any voting or investment decision with respect to the transaction, investors and shareholders of TomoTherapy are urged to read the proxy statement, registration statement and the other relevant materials filed with the SEC because they will contain important information about Accuray, TomoTherapy and the proposed transaction. The definitive proxy statement/prospectus, registration statement and other relevant materials, and any other documents filed by TomoTherapy or

Accuray with the SEC, may be obtained free of charge at the SEC s website at www.sec.gov; by contacting Accuray s Investor Relations Department by email at trathjen@accuray.com, by phone at 408.789.4458, or by mail at Accuray Incorporated, 1310 Chesapeake Terrace, Sunnyvale, California 94089, USA; or by contacting TomoTherapy s Investor Relations Department by email at tpowell@tomotherapy.com, by phone at 608.824.2800 or by mail at 1240 Deming Way, Madison, WI 53717-1954 USA.

**Item 9.01. Financial Statements and Exhibits**

| Number | Description |
|---|---|
| 99.1 | Press release issued by Accuray on June 9, 2011 |

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**ACCURAY INCORPORATED**

By: /s/ Darren J. Milliken
Darren J. Milliken
*Senior Vice President, General Counsel & Corporate Secretary*

Date: June 9, 2011

**EXHIBIT INDEX**

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