
**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): July 15, 2020

CAPSTONE TURBINE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-15957
(Commission File Number)

95-4180883
(IRS Employer
Identification No.)

16640 Stagg Street,
Van Nuys, California
(Address of principal executive offices)

91406
(Zip Code)

(818) 734-5300
(Registrant's telephone number, including area code)

Former name or former address, if changed since last report: N/A

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 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of exchange on which registered
Common Stock, par value \$.001 per share	CPST	NASDAQ Capital Market
Series B Junior Participating Preferred Stock		
Purchase Rights		

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.

On July 15, 2020, Capstone Turbine Corporation (the “Company”) entered into an amendment (the “Amendment”) to the At The Market Offering Agreement (the “Agreement”), dated June 7, 2018, between the Company and H.C. Wainwright & Co., LLC (“Wainwright”). The Amendment modifies the Agreement to, among other things, amend the termination provisions of the Agreement and amend the maximum amount of shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”), that the Company may offer and sell through or to Wainwright from time to time under the Company’s at-the-market equity program (the “ATM Program”) to an amount equal to the lesser of such number of shares of the Common Stock that (a) equals the number or dollar amount of shares of Common Stock registered on the registration statement pursuant to which an offering under the ATM Program is being made, (b) equals the number of authorized but unissued shares of Common Stock (less the number of shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock), (c) equals the number or dollar amount of shares of Common Stock authorized by our board of directors, or (d) would cause the Company or an offering under the ATM Program to not satisfy the eligibility and transaction requirements for use of Form S-3, including, if applicable, general instruction I.B.6 of Registration Statement on Form S-3.

This report incorporates by reference the Amendment into the shelf registration statement on Form S-3, as amended or supplemented (File No. 333-225503) previously filed with the Securities and Exchange Commission on [June 7, 2018](#) and amended on [July 16, 2018](#). This report shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of shares of Common Stock in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The foregoing description of the Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Amendment, which is filed herewith as Exhibit 10.1 to this report and is incorporated by reference herein.

The opinion of the Company’s counsel regarding the validity of the Common Stock that will be issued pursuant to the Agreement, as amended, is also filed herewith as Exhibit 5.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
5.1	Opinion of Goodwin Procter LLP.
10.1	Amendment, dated July 15, 2020, to At The Market Offering Agreement, dated June 7, 2018, between Capstone Turbine Corporation and H.C. Wainwright & Co., LLC.

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.

CAPSTONE TURBINE CORPORATION

Date: July 15, 2020

By: /s/ Frederick S. Hencken III
Name: Frederick S. Hencken III
Title: Chief Financial Officer and Chief Accounting Officer (Principal Financial Officer)



Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
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July 15, 2020

Capstone Turbine Corporation
16640 Stagg St.
Van Nuys, CA 91406

Re: Securities Registered under Registration Statement on Form S-3

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-3 (File No. 333-225503) (as amended or supplemented, the "Registration Statement") filed on June 7, 2018 and amended on July 16, 2018 with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the offering by Capstone Turbine Corporation, a Delaware corporation (the "Company") of up to \$100,000,000 of any combination of securities of the types specified therein. The Registration Statement was declared effective by the Commission on July 18, 2018. Reference is made to our opinion letter dated July 16, 2018 and included as Exhibit 5.2 to the Registration Statement. We are delivering this supplemental opinion letter in connection with the prospectus supplement (the "Prospectus Supplement") filed with the Commission on July 15, 2020 pursuant to Rule 424 under the Securities Act. The Prospectus Supplement relates to the offering by the Company of up to \$2,781,658 in shares (the "Shares") of the Company's common stock, par value \$0.001 per share ("Common Stock") covered by the Registration Statement. The Shares are being offered and sold by the sales agent named in, and pursuant to, a sales agreement, dated June 7, 2018 and amended July 15, 2020, between the Company and such sales agent (the "Sales Agreement").

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinion set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

For purposes of the opinion set forth below, we have assumed that the Shares are issued for a price per share equal to or greater than the minimum price authorized by the Company's board of directors prior to the date hereof (the "Minimum Price") and that no event occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the number of then unissued Shares that may be issued for the Minimum Price.

For purposes of the opinion set forth below, we refer to the following as "Future Approval and Issuance": (a) the approval by the Company's board of directors (or a duly authorized committee of the board of directors) of the issuance of the Shares (the "Approval") and (b) the issuance of the Shares in accordance with the Approval and the receipt by the Company of the consideration (which shall not be less than the par value of such Shares) to be paid in accordance with the Approval.

The opinion set forth below is limited to the Delaware General Corporation Law.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, upon Future Approval and Issuance, will be validly issued, fully paid and nonassessable.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Shares (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion letter as an exhibit to the Current Report and its incorporation by reference and the reference to our firm in that report. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ Goodwin Procter LLP

GOODWIN PROCTER LLP

July 15, 2020

Capstone Turbine Corporation
16640 Stagg Street
Van Nuys, California 91406
Attention: Darren R. Jamison, President and Chief Executive Officer

Dear Mr. Jamison:

Reference is made to the At The Market Offering Agreement, dated as of June 7, 2018 (the "ATM Agreement"), between Capstone Turbine Corporation (the "Company") and H.C. Wainwright & Co., LLC (the "Wainwright"). This letter (the "Amendment") constitutes an agreement between the Company and Wainwright to amend the ATM Agreement as set forth herein. Defined terms that are used but not defined herein shall have the meanings ascribed to such terms in the ATM Agreement.

1. The defined term "Agreement" in the ATM Agreement is amended to mean the ATM Agreement as amended by this Amendment.

2. The first sentence of Section 2 of the ATM Agreement is hereby amended and restated as follows:

"The Company proposes to issue and sell through or to the Manager, as sales agent and/or principal, from time to time during the term of this Agreement and on the terms set forth herein, up to the Maximum Amount (as defined below), which is equal to the lesser of such number of shares (the "Shares") of the Company's common stock, \$0.001 par value per share ("Common Stock"), that (a) equals the number or dollar amount of shares of Common Stock registered on the Registration Statement pursuant to which the offering is being made, (b) equals the number of authorized but unissued shares of Common Stock (less the number of shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company's authorized capital stock), (c) equals the number or dollar amount of Shares authorized by Board, or (d) would cause the Company or the offering of the Shares to not satisfy the eligibility and transaction requirements for use of Form S-3, including, if applicable, General Instruction I.B.6 of Registration Statement on Form S-3 (the lesser of (a), (b), (c) and (d), the "Maximum Amount")."

3. A new Section 2(b)(ix) of the ATM Agreement is hereby inserted as follows:

“If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “Distribution” and the record date for the determination of stockholders entitled to receive the Distribution, the “Record Date”), the Company hereby covenants that, in connection with any sales of Shares pursuant to a Sales Notice on the Record Date, the Company covenants and agrees that the Company shall issue and deliver such Shares to the Manager on the Record Date and the Record Date shall be the Settlement Date and the Company shall cover any additional costs of the Manager in connection with the delivery of Shares on the Record Date.”

4. Section 8(c) of the ATM Agreement is hereby amended and restated as follows:

“This Agreement shall remain in full force and effect until the date that this Agreement is terminated pursuant to Sections 8(a) or (b) above or otherwise by mutual agreement of the parties, provided that any such termination by mutual agreement shall in all cases be deemed to provide that Sections 5, 7, 8, 9, 10, 12 and 14 shall remain in full force and effect.”

5. The Company and Wainwright hereby agree that the date of this Amendment shall be a Representation Date under the ATM Agreement and the Company shall file a Prospectus Supplement with the Commission on the date hereof.

6. Except as expressly set forth herein, all of the terms and conditions of the ATM Agreement shall continue in full force and effect after the execution of this Amendment and shall not be in any way changed, modified or superseded by the terms set forth herein.

7. This Amendment may be executed in two or more counterparts and by facsimile or “.pdf” signature or otherwise, and each of such counterparts shall be deemed an original and all of such counterparts together shall constitute one and the same agreement.

[remainder of page intentionally left blank]

In acknowledgment that the foregoing correctly sets forth the understanding reached by the Company and Wainwright, please sign in the space provided below, whereupon this Amendment shall constitute a binding amendment to the ATM Agreement as of the date indicated above.

Very truly yours,

H.C. WAINWRIGHT & CO., LLC

By /s/ Edward D. Silvera

Name: Edward D. Silvera

Title: Chief Operating Officer

Accepted and Agreed:

CAPSTONE TURBINE CORPORATION

By: /s/ Darren R. Jamison

Name: Darren R. Jamison

Title: President and Chief Executive Officer

*[SIGNATURE PAGE TO CPST AMENDMENT TO
ATM AGREEMENT]*