

ACCURAY INC
Form 10-K/A
March 25, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended June 30, 2012

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number 001-33301

ACCURAY INCORPORATED

(Exact name of registrant as specified in its charter)

DELAWARE
(State or Other Jurisdiction of
Incorporation or organization)

20-8370041
(I.R.S. Employer
Identification No.)

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1310 Chesapeake Terrace

Sunnyvale, California 94089

(Address of Principal Executive Offices) (Zip Code)

Registrants telephone number, including area code: (408)716-4600

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$.001 par value per share	The NASDAQ Stock Market LLC

Securities registered pursuant to section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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Indicate by check mark whether the registrant is a Shell Company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant based on the last sale price for such stock on December 31, 2011, the last business day of the registrant's most recently completed second fiscal quarter was: \$176,019,053. Shares of the registrant's common stock held by each executive officer, director and 5% stockholder have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of August 24, 2012, the number of outstanding shares of the registrant's common stock, \$0.001 par value, was 72,006,666.

DOCUMENTS INCORPORATED BY REFERENCE

None

EXPLANATORY NOTE

We are filing this Amendment No. 1 (the "Amendment") to our Annual Report on Form 10-K for the year ended June 30, 2012, which we filed with the U.S. Securities and Exchange Commission (the "SEC") on September 10, 2012 (the "Original Filing") to re-file Exhibit 10.36 to (i) include a section of this exhibit for which we are no longer seeking confidential treatment from the SEC and (ii) include an additional schedule not previously filed with this exhibit. In addition, we are also renumbering in this Amendment the previously filed Exhibit 10.48 as Exhibit 4.4.

Pursuant to Rule 12b-15 of the Rules and Regulations under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), the Company has included with this Amendment currently dated certifications by the Company's principal executive officer and principal financial officer, as required by Exchange Act Rules 13a-14(a) and (b). Except for Exhibit 10.36 submitted herewith, the renumbering of Exhibit 10.48 as Exhibit 4.4 and the currently dated certifications, this Amendment contains no other modifications and does not reflect events occurring after the filing of the Original Filing. Accordingly, this Amendment should be read in conjunction with the Original Filing and our other filings with the SEC.

PART IV**Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) We have filed the following documents as part of this Form 10-K/A Amendment No. 1:

1. **Exhibits**

The following exhibits are incorporated by reference or filed herewith.

Exhibit No.	Exhibit Description	Filer (ARRAY/TOMO)	Incorporated by Reference				Furnished or Filed Herewith
			Form	File No.	Exhibit	Filing Date	
2.1	Agreement and Plan of Merger of Accuray Incorporated, a Delaware Corporation, and Accuray Incorporated, a California Corporation, dated as of February 3, 2007.	ARRAY	S-1/A	333-138622	2.1	02/07/2007	
2.2	Agreement and Plan of Merger, dated March 6, 2011, among Registrant, Jaguar Acquisition, Inc. and TomoTherapy Incorporated.	ARRAY	8-K	001-33301	2.1	03/07/2011	
3.1	Amended and Restated Certificate of Incorporation of Registrant.	ARRAY	10-Q	001-33301	3.1	11/08/2010	
3.2	Amended and Restated Bylaws of Registrant.	ARRAY	8-K	001-33301	3.1	08/29/2011	
4.2	Investors Rights Agreement dated October 30, 2006 by and between Registrant and purchasers of Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and certain holders of common stock.	ARRAY	S-1	333-138622	4.2	11/13/2006	
4.3	Form of Common Stock Certificate.	ARRAY	S-1/A	333-138622	4.3	02/05/2007	
4.4		ARRAY	10-Q	001-33301	10.1	11/08/2011	

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Indenture by and between
Registrant and the Bank of New
York Mellon Trust Company,
N.A., dated as of August 1, 2011.

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Exhibit No.	Exhibit Description	Filer (ARRAY/TOMO)	Incorporated by Reference				Furnished or Filed Herewith
			Form	File No.	Exhibit	Filing Date	
10.1	Industrial Complex Lease dated July 14, 2003 by and between Registrant and MP Caribbean, Inc., as amended by the First Amendment to Industrial Complex Lease effective as of December 9, 2004 and the Second Amendment to Industrial Complex Lease effective as of September 25, 2006.	ARRAY	S-1	333-138622	10.1	11/13/2006	
10.1(a)	Third Amendment to Industrial Complex Lease dated January 16, 2007.	ARRAY	10-K	001-33301	10.1(a)	09/04/2007	
10.2	Fourth Amendment to Industrial Complex Lease, dated September 18, 2007, by and between the Registrant and BRCP Caribbean Portfolio, LLC.	ARRAY	10-Q	001-33301	10.3	02/04/2010	
10.3	Fifth Amendment to Industrial Complex Lease, dated April 1, 2008, by and between the Registrant and BRCP Caribbean Portfolio, LLC.	ARRAY	10-Q	001-33301	10.4	02/04/2010	
10.4	Sixth Amendment to Industrial Complex Lease, dated December 18, 2009, by and between the Registrant and I & G Caribbean, Inc.	ARRAY	10-Q	001-33301	10.5	02/04/2010	
10.5	Standard Industrial Lease effective as of June 30, 2005 by and between Registrant and The Realty Associates Fund III, L.P.	ARRAY	S-1	333-138622	10.2	11/13/2006	
10.6*	Accuray Incorporated 1993 Stock Option Plan and forms of agreements relating thereto.	ARRAY	S-1	333-138622	10.3	11/13/2006	
10.7*	Accuray Incorporated 1998 Equity Incentive Plan and forms of agreements relating thereto.	ARRAY	S-1	333-138622	10.4	11/13/2006	
10.8*	Accuray Incorporated 2007 Incentive Award Plan.	ARRAY	10-K	001-3330110.8	10.8	09/19/2011	
10.9*	Accuray Incorporated 2007 Employee Stock Purchase Plan and forms of agreements relating thereto.	ARRAY	S-1/A	333-138622	10.6	01/16/2007	

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10.10*	Form of Indemnification Agreement by and between Registrant and each of its directors and executive officers.	ARRAY	10-Q	001-33301	10.7	05/10/2011
10.11*	Amended and Restated Employment Terms Letter dated September 29, 2011 by and between Registrant and Euan S. Thomson, Ph.D.	ARRAY	10-Q	001-33301	10.4	11/08/2011

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Exhibit No.	Exhibit Description	Filer (ARRAY/TOMO)	Incorporated by Reference				Furnished or Filed Herewith
			Form	File No.	Exhibit	Filing Date	
10.12*	Amended and Restated Employment Terms Letter dated February 2, 2011 by and between Registrant and Chris A. Raanes.	ARRAY	10-Q	001-33301	10.2	05/10/2011	
10.13*	Amendment to Employment Terms Letter Agreement by and between Registrant and Chris Raanes, effective July 25, 2011.	ARRAY	10-Q	001-33301	10.3	11/08/2011	
10.14*	Employment Terms Letter dated January 7, 2011 by and between Registrant and Eric Pauwels.	ARRAY	10-Q	001-33301	10.6	05/10/2011	
10.15*	Employment Letter Agreement by and between Registrant and Kelly Londy, dated September 13, 2011	ARRAY	S-1	001-33301	10.5	11/08/2011	
10.16*	Amended and Restated Employment Terms Letter effective as of February 2, 2011 by and between Registrant and Theresa Dadone.	ARRAY	10-Q	001-33301	10.5	05/10/2011	
10.17*	Amended and Restated Employment Terms Letter dated February 2, 2011 by and between Registrant and Derek Bertocci.	ARRAY	10-Q	001-33301	10.2	05/10/2011	
10.18*	Amended and Restated Employment Letter Agreement dated February 2, 2011 by and between Registrant and Darren J. Milliken.	ARRAY	10-Q	001-33301	10.4	05/10/2011	
10.19	Nonexclusive End-User Software License Agreement dated September 9, 2005 by and between Registrant and The Regents of the University of California.	ARRAY	S-1	333-138622	10.18	11/13/2006	
10.20	License Agreement effective as of July 9, 1997 by and between Registrant and The Board of Trustees of the Leland Stanford Junior University.	ARRAY	S-1	333-138622	10.19	11/13/2006	
10.21	Non-Exclusive System Partner Agreement effective as of September 23, 2005 by and between Registrant and KUKA Robotics Corporation.	ARRAY	S-1/A	333-138622	10.21	1/16/2007	
10.22		ARRAY	S-1/A	333-138622	10.46	01/16/2007	

Exclusive Manufacturing
Agreement effective as of
November 29, 2006 by and
between the Registrant and Forte
Automation Systems, Inc.

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Exhibit No.	Exhibit Description	Filer (ARRAY/TOMO)	Incorporated by Reference				Furnished or Filed Herewith
			Form	File No.	Exhibit	Filing Date	
10.23	Patent and Trademark License Agreement effective as of November 29, 2006 by and between the Registrant and Forte Automation Systems, Inc.	ARRAY	S-1/A	333-138622	10.49	01/23/2007	
10.24	License and Development Agreement dated April 27, 2007 by and between the Registrant and CyberHeart, Inc.	ARRAY	10-K	001-33301	10.51	08/31/2007	
10.25	License Agreement dated December 10, 2010 by and between the Registrant and CyberHeart, Inc.	ARRAY	10-Q	001-33301	10.3	01/27/2011	
10.26	Patent License Agreement dated December 10, 2010 by and between the Registrant and CyberHeart, Inc.	ARRAY	10-Q	001-33301	10.4	01/27/2011	
10.27*	Accuray Incorporated Performance Bonus Plan.	ARRAY	10-Q	001-33301	10.1	02/08/2012	
10.28	Lease Agreement, dated January 26, 2005, by and between TomoTherapy Incorporated and Old Sauk Trails Park Limited Partnership	TOMO	S-1	333-140600	10.13	02/12/2007	
10.29	Lease Agreement, dated October 28, 2005, between TomoTherapy Incorporated and Adelphia, LLC	TOMO	S-1	333-140600	10.14	02/12/2007	
10.30	TomoTherapy Incorporated 2000 Stock Option Plan, as amended, and forms of option agreements thereunder.	ARRAY	S-8	333-174952	99.1	06/17/2011	
10.31	TomoTherapy Incorporated 2002 Stock Option Plan, as amended, and forms of option agreements thereunder.	ARRAY	S-8	333-174952	99.2	06/17/2011	
10.32	TomoTherapy Incorporated 2007 Equity Incentive Plan, as amended, and forms of option agreements thereunder.	ARRAY	S-8	333-174952	99.3	06/17/2011	
10.33	Stock Purchase Agreement, dated April 25, 2008, between Compact Particle Acceleration Corporation and its investors	TOMO	8-K	001-33452	10.1	04/28/2008	

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10.34	Preferred Stock and Warrant Purchase Agreement, dated April 20, 2012 for Compact Particle Acceleration Corporation and its investors	09/10/2012
10.35	Series B Common Stock Purchase Agreement dated April 20, 2012 between the Registrant and Compact Particle Acceleration Corporation	09/10/2012

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Exhibit No.	Exhibit Description	Filer (ARAY/TOMO)	Incorporated by Reference				Furnished or Filed Herewith
			Form	File No.	Exhibit	Filing Date	
10.36	Second Amended and Restated Shareholder Agreement, dated April 20, 2012, between Compact Particle Acceleration Corporation and its investors						X
10.37	Amended and Restated Investors Rights Agreement, dated April 20, 2012, between Compact Particle Acceleration Corporation and its investors					09/10/2012	
10.38	Amended and Restated Limited Exclusive Sublicense and Cross-License Agreement for Dielectric Wall Accelerator Technology, dated April 20, 2012, between TomoTherapy Incorporated and Compact Particle Acceleration Corporation					09/10/2012	
10.39	Development and OEM Supply Agreement, dated January 27, 2003, by and between TomoTherapy Incorporated and Analogic Corporation	TOMO	S-1/A	333-140600	10.11	04/16/2007	
10.40	License Agreement 98-0228, dated February 22, 1999, between TomoTherapy Incorporated and Wisconsin Alumni Research Foundation	TOMO	S-1/A	333-140600	10.4	04/19/2007	
10.41	Amendment to License Agreement 90-0228, dated April 16, 2007, between TomoTherapy Incorporated and Wisconsin Alumni Research Foundation	TOMO	S-1	333-146219	10.31	09/21/2007	
10.42	Amendment to License Agreement 90-0228, dated December 16, 2008, between TomoTherapy Incorporated and Wisconsin Alumni Research Foundation	TOMO	8-K	001-33452	10.2	12/30/2008	
10.43	Limited Exclusive License Agreement, dated February 23, 2007, between TomoTherapy Incorporated and Regents of the University of California	TOMO	8-K	001-33452	10.4	04/28/2008	
10.44	Amendment One to Limited Exclusive License Agreement,	TOMO	8-K	001-33452	10.5	04/28/2008	

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dated April 8, 2008, between
TomoTherapy Incorporated and
Lawrence Livermore National
Security, LLC

10.45	Long-term Purchase Agreement, dated December 22, 2008, among TomoTherapy Incorporated, e2v, Inc. and e2v Technologies (UK) Limited	TOMO	8-K	001-33452	10.1	12/30/2008
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Exhibit No.	Exhibit Description	Filer (ARRAY/TOMO)	Incorporated by Reference				Furnished or Filed Herewith
			Form	File No.	Exhibit	Filing Date	
10.46	Magnetron Subscription Agreement, dated April 24, 2009 and effective May 1, 2009, between TomoTherapy Incorporated and e2v, Inc. and e2v Technologies (UK) Limited	TOMO	8-K/A	001-33452	10.1	10/28/2009	
10.47	Amendment to Lease, dated April 12, 2011, between Registrant and OAW Orleans 1310, LLC, as successor to The Realty Associates Fund III, L.P.	ARRAY	10-K	001-33301	10.54	09/19/2012	
21.1	List of subsidiaries.					09/10/2012	
23.1	Consent of Grant Thornton LLP, independent registered public accounting firm.					09/10/2012	
24.1	Power of Attorney (incorporated by reference to the signature page of this annual report on Form 10-K).					09/10/2012	
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.						X
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.						X
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes- Oxley Act of 2002.					09/10/2012	
99.1*	Form of Performance Stock Unit Grant Notice and Performance Stock Unit Agreement	ARRAY	10-Q	001-33301	99.1	02/08/2012	
99.2*	Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement	ARRAY	8-K	001-33301	99.2	11/23/2011	
99.3*	Form of Stock Option Grant Notice and Stock Option Agreement	ARRAY	8-K	001-33301	99.3	11/23/2011	
101.INS**	XBRL Instance Document					09/10/2012	
101.SCH**	XBRL Taxonomy Extension Schema Document					09/10/2012	
101.CAL**						09/10/2012	

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XBRL Taxonomy Extension
Calculation Linkbase Document

101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document	09/10/2012
101.LAB**	XBRL Taxonomy Extension Label Linkbase Document	09/10/2012
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document	09/10/2012

* Management contract or compensatory plan or arrangement.

Portions of the exhibit have been omitted pursuant to a request for confidential treatment, which has been granted. The omitted information has been filed separately with the Securities and Exchange Commission.

Portions of the exhibit have been omitted pursuant to a request for confidential treatment. The omitted information has been filed separately with the Securities and Exchange Commission.

** XBRL (eXtensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise is not subject to liability under these sections.

The certification attached as Exhibit 32.1 that accompanies the Annual Report on Form 10-K is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Accuray Incorporated under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date of the Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sunnyvale, State of California, on the 21st day of March, 2013.

ACCURAY INCORPORATED

By:

/s/ Joshua Levine
Joshua Levine
President and Chief Executive Officer

By:

/s/ Derek Bertocci
Derek Bertocci
Senior Vice President and Chief Financial Officer