

**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): October 5, 2022

CANOO INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

001-38824
(Commission
file number)

82-1476189
(I.R.S. employer
identification number)

19951 Mariner Avenue, Torrance, California 90503
(Address of principal executive offices) (Zip Code)

(424) 271-2144
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

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 each exchange on which registered
Common stock, \$0.0001 par value	GOEV	The Nasdaq Global Select Market
Warrants, each whole warrant exercisable for one share of Common stock at an exercise price of \$11.50 per share	GOEVW	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Side Letter to Pre-Paid Purchase Agreement

On July 20, 2022, Canoo Inc. (the "Company") entered into a Pre-Paid Advance Agreement (the "PPA") with YA II PN, Ltd., a Cayman Islands exempt limited partnership ("Yorkville"). In accordance with the terms of the PPA, the Company may request advances of cash (the "Pre-Paid Advance"), from time to time. Pursuant to the PPA, the Company is permitted to enter into an "at the market offering" or other continuous offering or similar offering of shares of the Company's common stock, par value \$0.0001 per share (the "Common Stock"); however, the Company is not permitted to execute any transactions under such agreement unless, among other conditions, there is no balance outstanding under all prior Pre-Paid Advances. The Company has a balance of \$10,000,000 (the "Subject Balance") outstanding under prior Pre-Paid Advances as of October 5, 2022.

As permitted pursuant to the PPA, on August 8, 2022, the Company entered into an Equity Distribution Agreement (as supplemented by that certain side letter also entered into among the parties on August 8, 2022 (the "Side Letter"), the "Sales Agreement") with Evercore Group L.L.C. ("Evercore") and H.C. Wainwright & Co., LLC ("H.C. Wainwright") and together with Evercore, the "agents") to sell Common Stock, from time to time, through an "at the market offering" program under which the agents will act as sales agents.

On October 5, 2022, the Company entered into a Side Letter to the PPA with Yorkville (the “PPA Side Letter”), pursuant to which the parties agreed that the Company shall be permitted to submit sales orders, and consummate sales pursuant to such orders, in respect of shares of Common Stock under the Sales Agreement beginning on October 5, 2022 for so long as the Company pays to Yorkville the sum of \$1.0 million per calendar week (to be applied in the following order: first to the Redemption Premium (as defined under the PPA), second to accrued interest and third to the outstanding balance) toward the Subject Balance commencing on October 10, 2022 and continuing weekly thereafter until there is no Subject Balance outstanding. Failure to make timely payments under the PPA Side Letter shall automatically result in the reinstatement of restrictions on the Company’s ability to consummate sales under the Sales Agreement and shall be deemed an Event of Default (as defined under the PPA).

The foregoing description of the PPA Side Letter is qualified in its entirety by reference to the PPA Side Letter, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Side Letter to Sales Agreement

Pursuant to Section 4(x) of the Sales Agreement, the Company may not have any orders or agreements outstanding to effect Variable Rate Transactions (as defined in the Sales Agreement) pursuant to the PPA at the time the Company submits an order to sell the Common Stock pursuant to the Sales Agreement.

Concurrently with the PPA Side Letter, the Company entered into a Side Letter to the Sales Agreement with the agents (the “Sales Agreement Side Letter”), pursuant to which, notwithstanding the Subject Balance, but only for so long as any portion of the Subject Balance is outstanding, the parties agreed to waive the restriction set forth under Section 4(x) of the Sales Agreement and the Company shall be permitted to submit orders to sell the Common Stock under the Sales Agreement beginning on October 5, 2022.

Notwithstanding anything to the contrary in the Sales Agreement or the side letter to the Sales Agreement, dated as of August 8, 2022, during the period from October 5, 2022 until the beginning of the third (3rd) business day after the Company files its Annual Report on Form 10-K for the fiscal year ended December 31, 2022: (i) only H.C. Wainwright may be designated as a Designated Manager (as defined under the Sales Agreement) and act as sales agent or principal under the Sales Agreement and receive the entire compensation payable thereunder (equal to 3.0% of the gross proceeds of the shares of Common Stock sold pursuant to the Sales Agreement), and (ii) for so long as H.C. Wainwright acts as the sole Designated Manager, H.C. Wainwright agreed to waive the additional fee of 1.5% of the gross proceeds from any sales under the Sales Agreement, which is set forth in the side letter to the Sales Agreement, dated as of August 8, 2022.

The foregoing description of the Sales Agreement Side Letter is qualified in its entirety by reference to the Sales Agreement Side Letter, a copy of which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

Forward Looking Statements

The information in this Form 8-K includes “forward-looking statements” within the meaning of the “safe harbor” provisions of the United States Private Securities Litigation Reform Act of 1995. Forward-looking statements may be identified by the use of words such as “estimate,” “plan,” “project,” “forecast,” “intend,” “will,” “expect,” “anticipate,” “believe,” “seek,” “target” or other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements include, but are not limited to, statements regarding the amount of advances the Company may request from Yorkville, if any, the amount of shares of Common Stock the Company may issue pursuant to the PPA and/or the Sales Agreement, estimates and forecasts of financial and performance metrics, expectations and timing related to commercial product launches and achievement of operational milestones, including the ability to meet and/or accelerate anticipated production timelines and delivery, and the Company’s ability to capitalize on commercial opportunities and anticipated customer orders. These statements are based on various assumptions, whether or not identified in this document, and on the current expectations of the Company’s management and are not predictions of actual performance. These forward-looking statements are provided for illustrative purposes only and are not intended to serve as, and must not be relied on by any investor as, a guarantee, an assurance, a prediction or a definitive statement of fact or probability. Actual events and circumstances are difficult or impossible to predict and will differ from assumptions. Many actual events and circumstances are beyond the Company’s control. These forward-looking statements are subject to a number of risks and uncertainties, including the Company’s, Yorkville’s and the agents’ ability to sell Common Stock in the market; the Company’s ability to continue as a going concern; ability to access future capital; changes in domestic and foreign business, market, financial, political and legal conditions; the rollout of the Company’s business and the timing of expected business milestones and commercial launch; future market adoption of the Company’s offerings; risks related to the Company’s go-to-market strategy and manufacturing strategy; the effects of competition on the Company’s future business; and those factors discussed under the captions “Risk Factors” in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as well as its Quarterly Reports on Form 10-Q and other filings with the Securities and Exchange Commission. These forward-looking statements should not be relied upon as representing the Company’s assessments as of any date subsequent to the date of this document. Accordingly, undue reliance should not be placed upon the forward-looking statements.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
<u>10.1</u>	<u>Side Letter to Pre-Paid Advance Agreement, dated October 5, 2022, by and between Canoo Inc. and YA II PN, Ltd.</u>
<u>10.2</u>	<u>Side Letter to Equity Distribution Agreement, dated October 5, 2022, by and among Canoo Inc., Evercore Group L.L.C. and H.C. Wainwright & Co., LLC</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

Date: October 5, 2022

CANOO INC.

By: /s/ Hector Ruiz

Name:

Hector Ruiz

Title: General Counsel and Corporate Secretary





October 5, 2022

Ladies and Gentlemen:

Reference is made to the Pre-Paid Advance Agreement entered into on July 20, 2022 (the “PPA”) between Canoo Inc., a Delaware corporation (the “Issuer”), and YA II PN, Ltd. (the “Investor”). Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to them in the PPA.

On August 8, 2022, the Issuer entered into the Equity Distribution Agreement (the “Equity Distribution Agreement”) with Evercore Group L.L.C. (“Evercore”) and H.C. Wainwright & Co., LLC (“H.C. Wainwright”) and collectively with Evercore, the “Managers”) pursuant to which the Issuer may issue and sell through or to the Managers, as sales agents and/or principals, shares of the Issuer’s common stock, \$0.0001 par value per share (the “Common Stock”) having an aggregate offering price of up to \$200,000,000, from time to time.

The parties hereby agree as follows:

Pursuant to Section 1.55 of the PPA, the Issuer is permitted to enter into an “at the market offering” or other continuous offering or similar offering of Common Stock; however, the Issuer shall not be permitted to execute any transactions under such agreement unless (i) the Market Price is below the Floor Price, or (ii) there is no balance outstanding under all prior Pre-Paid Advances.

The parties hereby agree that the Issuer shall be permitted to submit sales orders, and consummate sales pursuant to such orders, in respect of shares of Common Stock under the Equity Distribution Agreement beginning on the date hereof for so long as the Issuer pays to the Investor the sum of \$1.0 million per calendar week (to be applied in the following order: first, to the Redemption Premium, second to accrued interest and third to the outstanding balance) toward the balance outstanding under prior Pre-Paid Advances commencing on October 10, 2022 and continuing each Monday thereafter (or if any such date is not a Business Day then such payment shall be due on the next Business Day) until there is no balance outstanding under prior Pre-Paid Advances; *provided, however*, that the Investor shall have the sole and exclusive right to waive any payment by delivering written notice to the Issuer prior to each payment date.

Any failure to make a timely payment hereunder shall automatically and without any action by the Investor result in the reinstatement of the restrictions set forth in Section 1.55 of the PPA and shall be deemed an Event of Default under the PPA. Upon the Investor’s failure to make a timely payment hereunder, the Investor shall immediately notify the Managers to suspend sales under the Equity Distribution Agreement.

Nothing in this letter agreement is intended to amend or modify the Investor’s right to effect Advances at its sole discretion pursuant to Purchase Notices on the prior Pre-Paid Advances, even during the period that the Issuer is obligated to make the payments hereunder.

[Signature page follows.]

IN WITNESS WHEREOF, each of the Investor and Issuer has executed or caused this letter agreement to be executed by its duly authorized representative as of the date set forth above.

INVESTOR:

YA II PN, LTD.

By: Yorkville Advisors Global, LP
Its: Investment Manager

By: Yorkville Advisors Global II, LLC
Its: General Partner

By: /s/ Troy Rillo
Name: Troy Rillo, Partner

ISSUER:

CANOO INC.

By: /s/ Hector Ruiz
Name: Hector Ruiz
Title: General Counsel

CANOO INC.

EQUITY DISTRIBUTION AGREEMENT WAIVER

October 5, 2022

Ladies and Gentlemen:

1. Reference is made to the Equity Distribution Agreement entered into on August 8, 2022 (the "Equity Distribution Agreement") by and among Canoo Inc., a Delaware corporation (the "Issuer"), Evercore Group L.L.C. ("Evercore") and H.C. Wainwright & Co., LLC ("H.C. Wainwright") and collectively with Evercore, the "Managers") pursuant to which the Issuer may issue and sell through or to the Managers, as sales agents and/or principals, shares of the Issuer's common stock, \$0.0001 par value per share (the "Common Stock") having an aggregate offering price of up to \$200,000,000, from time to time. Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to them in the Equity Distribution Agreement.

2. On July 20, 2022, the Issuer entered into the Pre-Paid Advance Agreement (the "PPA") with YA II PN, Ltd. (the "Investor"), pursuant to which the Issuer may request advances of up to \$50,000,000 in cash from the Investor (or such greater amount that the parties may mutually agree) (each, a "Pre-Paid Advance") with an aggregate limitation on the Pre-Paid Advances of \$300,000,000.

3. Pursuant to Section 4(x) of the Equity Distribution Agreement, the Issuer shall not have any orders or agreements outstanding to effect Variable Rate Transactions pursuant to the Yorkville Agreements (including the PPA) at the time the Issuer submits an order to sell shares of Common Stock pursuant to the Equity Distribution Agreement. As of the date of this letter agreement, the Issuer has a balance of \$10,000,000 (the "Subject Balance") outstanding under prior Pre-Paid Advances (as defined in the PPA). Notwithstanding the Subject Balance, but only for so long as any portion of the Subject Balance is outstanding, the parties hereby agree to waive the restriction set forth under Section 4(x) and the Issuer shall be permitted to submit orders to sell shares of Common Stock under the Equity Distribution Agreement beginning on Wednesday, October 5, 2022.

4. Notwithstanding anything to the contrary in the Equity Distribution Agreement or the side letter to the Equity Distribution Agreement, dated as of August 8, 2022 (the "Side Letter"), among the parties hereto, during the period from the date hereof until the beginning of the third (3rd) Business Day after the Issuer files its Annual Report on Form 10-K for the fiscal year ended December 31, 2022, (i) only H.C. Wainwright may be designated as a Designated Manager and act as sales agent or principal under the Equity Distribution Agreement and receive the entire compensation payable thereunder in connection therewith (equal to 3.0% of the gross proceeds of the Shares sold pursuant to the Equity Distribution Agreement), and for so long as H.C. Wainwright acts as the sole Designated Manager, H.C. Wainwright agrees to waive the additional fee of 1.5% of the gross proceeds from any sales under the Equity Distribution Agreement, which is set forth in the Side Letter.

5. None of the Managers, their respective affiliates, directors, officers, employees or agents shall have any liability, and the Issuer agrees to indemnify and hold harmless all such persons, hereunder or in connection herewith, or under or in connection with the Equity Distribution Agreement (as amended from time to time), with respect to sales of shares of Common Stock pursuant to the Equity Distribution Agreement during any period when such Manager cannot be designated as a Designated Manager.

6. Notwithstanding anything to the contrary contained herein, the Issuer shall be solely responsible for compliance with the limitations set forth herein. In addition, the Issuer shall immediately notify the Managers in the event of the Issuer's failure to make a timely payment as required under, or to otherwise comply with, the side letter to the PPA, dated as of the date hereof, between the Issuer and the Investor.

7. Other than as modified by this letter agreement and the Side Letter, the Equity Distribution Agreement shall remain in full force and effect. In the event of any inconsistency between the terms hereof and the Equity Distribution Agreement (as amended by the Side Letter), the terms hereof shall prevail.

8. This letter agreement and any claim, controversy or dispute arising under or related to this letter agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflicts of laws to the extent such principles would result in the application of the laws of another jurisdiction.

By signing this waiver, the Issuer and the Managers shall be bound by the waiver and agreements set forth above. This waiver will be binding on the parties and their successors and assigns.

CANOO INC.

Dated: October 5, 2022

By: /s/ Hector Ruiz
 Name: Hector Ruiz
 Title: General Counsel

H.C. WAINWRIGHT & CO., LLC

Dated: October 5, 2022

By: /s/ Edward D. Silvera
 Name: Edward D. Silvera
 Title: Chief Operating Officer

EVERCORE GROUP L.L.C.

Dated: October 5, 2022

By: /s/ Kristen Grippi
 Name: Kristen Grippi
 Title: Senior Managing Director
