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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

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**FORM 8-K**

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**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 18, 2020**

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**DIAMONDBACK ENERGY, INC.**

(Exact Name of registrant as specified in charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-35700**  
(Commission  
File Number)

**45-4502447**  
(I.R.S. Employer  
Identification Number)

**500 West Texas  
Suite 1200  
Midland, Texas**  
(Address of principal executive offices)

**79701**  
(Zip code)

**(432) 221-7400**  
(Registrant's telephone number, including area code)

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

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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, \$0.01 par value	FANG	The Nasdaq Stock Market LLC (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. ☐

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**Item 1.01 Entry into a Material Definitive Agreement.**

On December 20, 2020, Diamondback Energy, Inc. (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with QEP Resources, Inc. (“QEP”) and Bohemia Merger Sub, Inc., a wholly owned subsidiary of the Company (“Merger Sub”).

The Merger Agreement provides that, among other things and subject to the terms and conditions of the Merger Agreement, (a) Merger Sub will be merged with and into QEP (the “Merger”), with QEP surviving and continuing as the surviving corporation in the Merger, and (b) at the effective time of the Merger (the “Effective Time”) each outstanding share of common stock, par value \$0.01 per share, of QEP (other than any Excluded Shares (as defined in the Merger Agreement), any Converted Shares (as defined in the Merger Agreement) and certain restricted stock awards of QEP) will be converted into the right to receive 0.05 (the “Exchange Ratio”) shares of common stock of the Company.

The Merger Agreement also specifies the treatment of outstanding QEP equity awards in connection with the Merger, which shall be treated as follows at the Effective Time: (a) each outstanding and unvested award of restricted common stock of QEP will be converted into the right to receive a number of time-based restricted shares of the Company’s common stock, rounded to the nearest whole share, equal to the product of the number of shares of QEP’s common stock subject to such unvested award multiplied by the Exchange Ratio; (b) each outstanding and unvested award of performance share units will be converted into the right to receive a time-based restricted stock unit of the Company covering a number of shares of the Company’s common stock, rounded to the nearest whole share, equal to the product of the number of shares of QEP’s common stock subject to such award, which shares would have been earned under the applicable terms of such award based upon the higher of (i) 100% of the target level of performance and (ii) actual performance, in each case, through the Closing Date (as defined in the Merger Agreement) multiplied by the Exchange Ratio; (c) each outstanding notional share of QEP’s common stock under any deferred compensation plan of QEP (other than “deferred shares” granted to QEP employees (“Employee Deferred Shares”)) will become 100% vested and be converted into a number of notional shares of the Company’s common stock equal to the product of the number of shares of QEP’s common stock subject to such award multiplied by the Exchange Ratio, and such deferred compensation will be paid in cash promptly following the Closing (as defined in the Merger Agreement); (d) each outstanding Employee Deferred Share will be converted into a number of time-based restricted shares of the Company’s common stock, rounded to the nearest whole share, equal to the product of the number of shares of QEP common stock subject to such award of Employee Deferred Shares immediately prior to the Effective Time multiplied by the Exchange Ratio; and (e) each outstanding option to purchase shares of QEP’s common stock will be automatically cancelled without payment or other consideration.

The board of directors of QEP has unanimously (a) determined that the Merger Agreement and the transactions contemplated thereby, including the Merger, are in the best interests of QEP’s stockholders, (b) approved and declared advisable the Merger Agreement and the transactions contemplated thereby, including the Merger, and (c) resolved to recommend that QEP’s stockholders adopt the Merger Agreement.

The board of directors of the Company has unanimously (a) determined that the Merger Agreement and the transactions contemplated thereby, including the Merger, are in the best interests of the Company and its stockholders and (b) approved and declared advisable the Merger Agreement and the transactions contemplated thereby, including the Merger.

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The completion of the Merger is subject to satisfaction or waiver of certain customary mutual closing conditions, including (a) the receipt of the required approvals from QEP's stockholders, (b) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (c) the absence of any governmental order or law that makes consummation of the Merger illegal or otherwise prohibited, (d) the effectiveness of the registration statement on Form S-4 to be filed by the Company pursuant to which the shares of the Company's common stock to be issued in connection with the Merger will be registered with the Securities and Exchange Commission (the "SEC") and (e) the authorization for listing of the Company's common stock to be issued in connection with the Merger on the NASDAQ. The obligation of each party to consummate the Merger is also conditioned upon the other party's representations and warranties being true and correct (subject to certain materiality exceptions), the other party having performed in all material respects its obligations under the Merger Agreement, and the receipt of an officer's certificate from the other party to such effect.

The Merger Agreement contains customary representations and warranties of QEP and the Company relating to their respective businesses, financial statements and public filings, in each case generally subject to customary materiality qualifiers. Additionally, the Merger Agreement provides for customary pre-closing covenants of QEP and the Company, including, subject to certain exceptions, covenants relating to conducting their respective businesses in the ordinary course consistent with past practice, excluding any commercially reasonable deviations due to COVID-19 (subject, in the case of QEP, to certain requirements to consult with the Company), and to refraining from taking certain actions without the other party's consent. QEP and the Company also agreed to use their respective reasonable best efforts to cause the Merger to be consummated and to obtain expiration or termination of the waiting period under the HSR Act, subject to certain limitations set forth in the Merger Agreement.

The Merger Agreement provides that, during the period from the date of the Merger Agreement until the Effective Time, QEP will be subject to certain restrictions on its ability to solicit alternative acquisition proposals from third parties, to provide non-public information to third parties and to engage in discussions with third parties regarding alternative acquisition proposals, subject to customary exceptions. QEP is required to call a meeting of its stockholders to approve the Merger Agreement and, subject to certain exceptions, to recommend that its stockholders approve the Merger Agreement.

The Merger Agreement contains termination rights for each of QEP and the Company, including, among others, if the consummation of the Merger does not occur on or before June 30, 2021, or, in certain instances, on or before September 30, 2021. Upon termination of the Merger Agreement under specified circumstances, including the (a) termination by the Company in the event of a change of recommendation by the board of directors of QEP or (b) termination by the Company because QEP, its subsidiaries or any of its directors or officers willfully or materially breached its non-solicitation obligations, QEP would be required to pay the Company a termination fee of \$17.0 million. In addition, if the Merger Agreement is terminated by QEP or the Company because of a failure of QEP's stockholders to adopt the Merger Agreement, QEP will be required to reimburse the Company for its documented, reasonable expenses up to an amount equal to \$7.5 million. In no event will the Company be entitled to receive more than one termination fee (and such termination fee will be net of any expense reimbursement previously paid to the Company).

The foregoing description of the Merger Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is attached as Exhibit 2.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference.

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The Merger Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Merger Agreement were made only for purposes of the Merger Agreement as of the specific dates therein, were solely for the benefit of the parties to the Merger Agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Merger Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

**Item 3.02. Unregistered Sales of Equity Securities.**

On December 18, 2020, the Company and Diamondback E&P LLC, a wholly-owned subsidiary of the Company, entered into a definitive purchase and sale agreement with Guidon Operating LLC ("Guidon") and certain of Guidon's affiliates to acquire approximately 32,500 net acres in the Northern Midland Basin and certain related oil and gas assets (the "Pending Guidon Acquisition"). Consideration for the Pending Guidon Acquisition consists of \$375 million in cash and 10.63 million shares of the Company's common stock, par value \$0.01 per share (the "Shares"), subject to adjustment. The Shares will be issued in reliance upon the exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), provided by Section 4(a)(2) of the Securities Act as sales by an issuer not involving any public offering. The Company has agreed to file with the SEC, and use its reasonable best efforts to cause to be declared effective, a shelf registration statement registering for resale the Shares within 60 days following the closing of the Pending Guidon Acquisition. The Pending Guidon Acquisition is expected to close at the end of February 2021.

**Item 7.01. Regulation FD Disclosure.**

On December 21, 2020, the Company posted an investor presentation relating to the Merger and the Pending Guidon Acquisition to the Company's website. The presentation can be found at [www.diamondbackenergy.com](http://www.diamondbackenergy.com) under the "Events & Presentations" section on the "Investors" page. Information on the Company's website does not constitute a part of this Current Report on Form 8-K. A copy of the investor presentation is attached as Exhibit 99.3 to this Current Report on Form 8-K.

In accordance with General Instruction B.2 of Form 8-K, the information set forth herein and in the investor presentation is deemed to be "furnished" and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act, except as shall be expressly set forth in such a filing.

**Item 8.01. Other Events.**

On December 21, 2020, the Company issued a press release announcing the Pending Guidon Acquisition. A copy of the Company's press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

On December 21, 2020, the Company and QEP issued a joint press release announcing their entry into the Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.2 to this Current Report on Form 8-K and incorporated herein by reference.

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**Item 9.01 Financial Statements and Exhibits.**

<b>Exhibit Number</b>	<b>Exhibit</b>
2.1*	<a href="#"><u>Agreement and Plan of Merger, dated as of December 20, 2020, by and among Diamondback Energy, Inc., Bohemia Merger Sub, Inc. and QEP Resources, Inc.</u></a>
99.1	<a href="#"><u>Press release, dated December 21, 2020, entitled “Diamondback Energy, Inc. Announces Midland Basin Acquisition.”</u></a>
99.2	<a href="#"><u>Joint press release, dated December 21, 2020, issued by Diamondback Energy, Inc. and QEP Resources, Inc., entitled “Diamondback Energy, Inc. to Acquire QEP Resources in All-Stock Transaction.”</u></a>
99.3	<a href="#"><u>Investor presentation.</u></a>
104	Cover Page Interactive Data File – the cover page XBRL tags are embedded within the Inline XBRL document.

\* The schedules and annexes have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the SEC upon request.

#### **CAUTIONARY STATEMENTS REGARDING FORWARD LOOKING STATEMENTS**

This filing contains certain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 and other federal securities laws. Words such as “anticipates,” “believes,” “expects,” “intends,” “will,” “should,” “may,” “plans,” “targets,” “forecasts,” “projects,” “believes,” “seeks,” “schedules,” “estimates,” “positions,” “pursues,” “could,” “budgets,” “outlook,” “trends,” “guidance,” “focus,” “on schedule,” “on track,” “is slated,” “goals,” “objectives,” “strategies,” “opportunities,” “poised,” “potential” and similar expressions may be used to identify forward-looking statements. Forward-looking statements are not statements of historical fact and reflect the Company’s and QEP’s current views about future events. Such forward-looking statements include, but are not limited to, statements about the benefits of the proposed acquisition of assets from Guidon and certain of Guidon’s affiliates, the benefits of the proposed Merger involving the Company and QEP, including future financial and operating results, the Company’s and QEP’s plans, objectives, expectations and intentions, the expected timing and likelihood of completion of the transactions, and other statements that are not historical facts, including estimates of oil and natural gas reserves and resources, estimates of future production, assumptions regarding future oil and natural gas pricing, planned drilling activity, future results of operations, projected financial information (including projected cash flow and liquidity), business strategy, other plans and objectives for future operations or any future opportunities. These statements are not guarantees of future performance and no assurances can be given that the forward-looking statements contained in this filing will occur as projected. Actual results may differ materially from those projected. Forward-looking statements are based on current expectations, estimates and assumptions that involve a number of risks and uncertainties that could cause actual results to differ materially from those projected.

The risks and uncertainties that could cause actual results to differ materially from those in forward looking statements include, without limitation, the ability to obtain the approval of the Merger by QEP stockholders; the risk that the Company or QEP may be unable to obtain governmental and regulatory approvals required for the Merger, or required governmental and regulatory approvals may delay the Merger or result in the imposition of conditions that could cause the parties to abandon the Merger; the risk that an event, change or other circumstances could give rise to the termination of the Guidon purchase agreement or the Merger Agreement; the risk that a condition to closing of the transactions may not be satisfied; the timing to consummate the proposed transactions; the risk that the assets and the businesses will not be integrated successfully; the risk that the cost savings and any other synergies from the transaction may not be fully realized or may take longer to realize than expected; the risk that any announcement relating to the proposed transactions could have adverse effects on the market price of the Company’s common stock or QEP’s common stock; the risk of litigation related to the proposed transactions; the risk of any unexpected costs or expenses resulting from the proposed transactions; disruption from the transactions making it more difficult to maintain relationships with customers, employees or suppliers; the diversion of management time from ongoing business operations due to transaction-related issues; the volatility in commodity prices for crude oil and natural gas, the presence or recoverability of estimated reserves, particularly during extended periods of low prices for crude oil and natural gas during the COVID-19 pandemic; the ability to replace reserves; environmental risks, drilling and operating risks, including the potential liability for remedial actions or assessments under existing or future environmental regulations and litigation; exploration and development risks; competition, government regulation or other actions; the ability of management to execute its plans to meet its goals and other

risks inherent in the Company's and QEP's businesses; public health crises, such as pandemics (including COVID-19) and epidemics, and any related government policies and actions; the potential disruption or interruption of the Company's or QEP's operations due to war, accidents, political events, civil unrest, severe weather, cyber threats, terrorist acts, or other natural or human causes beyond the Company's or QEP's control; the risk that the announcement or consummation of the Merger, or any other intervening event results in a requirement under certain of QEP's indebtedness to make a change of control offer with respect to some or all of such debt; and the Company's ability to identify and mitigate the risks and hazards inherent in operating in the global energy industry. Other unpredictable or unknown factors not discussed in this report could also have material adverse effects on forward looking statements.

All such factors are difficult to predict and are beyond the Company's or QEP's control, including those detailed in the Company's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on its website at <https://www.diamondbackenergy.com> and on the SEC's website at <http://www.sec.gov>, and those detailed in QEP's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on QEP's website at <https://www.qepres.com> and on the SEC's website at <http://www.sec.gov>.

Forward-looking statements are based on the estimates and opinions of management at the time the statements are made. Neither the Company nor QEP undertakes any obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

#### **IMPORTANT INFORMATION FOR INVESTORS AND STOCKHOLDERS; ADDITIONAL INFORMATION AND WHERE TO FIND IT**

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale, issuance, exchange or transfer of the securities referred to in this document in any jurisdiction in contravention of applicable law. In connection with the proposed QEP transaction, the Company intends to file with the SEC a registration statement on Form S-4 that will include a proxy statement of QEP that also constitutes a prospectus of the Company. Each of the Company and QEP also plan to file other relevant documents with the SEC regarding the proposed transaction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act. Any definitive proxy statement of QEP will be mailed to stockholders of QEP if and when available.

INVESTORS AND SECURITY HOLDERS OF THE COMPANY AND QEP ARE URGED TO READ THE REGISTRATION STATEMENT, PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS THAT MAY BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.

Investors and security holders will be able to obtain free copies of these documents (if and when available) and other documents containing important information about the Company and QEP, once such documents are filed with the SEC through the website maintained by the SEC at <http://www.sec.gov>. Copies of the documents filed with the SEC by the Company will be available free of charge on the Company's website at <https://www.diamondbackenergy.com/home/default.aspx> under the tab "Investors" and then under the heading "Financial Information." Copies of the documents filed with the SEC by QEP will be available free of charge on QEP's website at <https://www.qepres.com> under the tab "Investors" and then under the heading "Financial Information."

#### **PARTICIPANTS IN THE SOLICITATION**

The Company, QEP and certain of their respective directors, executive officers and other persons may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding the directors and executive officers of the Company is available in its definitive proxy statement for its 2020 annual meeting, filed with the SEC on April 24, 2020, and information regarding the directors and executive officers of QEP is available in its definitive proxy statement for its 2020 annual meeting, filed with the SEC on April 2, 2020.

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Other information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials to be filed with the SEC when such materials become available. Investors should read the proxy statement/prospectus carefully when it becomes available before making any voting or investment decisions. You may obtain free copies of these documents from the Company or QEP using the sources indicated above.

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**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.

Date: December 21, 2020

**DIAMONDBACK ENERGY, INC.**

By: /s/ Matt P. Zmigrosky  
Name: Matt P. Zmigrosky  
Title: Executive Vice President  
General Counsel and Secretary