

**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)
January 30, 2023

Amgen Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-37702
(Commission
File Number)

95-3540776
(IRS Employer
Identification No.)

**One Amgen Center Drive
Thousand Oaks
California**
(Address of principal executive offices)

91320-1799
(Zip Code)

Registrant's telephone number, including area code
(805) 447-1000

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 communication 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 communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communication 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	AMGN	The Nasdaq Stock Market LLC
2.000% Senior Notes due 2026	AMGN26	The Nasdaq Stock Market LLC

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.

As a consequence of BeiGene, Ltd.'s (BeiGene) ongoing growth, effective January 30, 2023, we entered into Amendment No. 3 (Amendment No. 3) to the Share Purchase Agreement, dated October 31, 2019 (the Share Purchase Agreement), by and between Amgen Inc. (the Company) and BeiGene, to relinquish our right to appoint a director to the Board of Directors (Board) of BeiGene, and as a result, our equity investment in BeiGene will move from the equity method of accounting to the fair value method of accounting. The foregoing description of the terms of Amendment No. 3 does not purport to be complete and is qualified in its entirety by reference to the full text of the agreement, which is filed herewith as Exhibit 10.1 and is incorporated herein by reference.

Item 2.02 Results of Operations and Financial Condition.

Fourth Quarter 2022 Earnings Press Release and Reconciliation of Non-GAAP Financial Measures

On January 31, 2023, the Company issued a press release announcing its unaudited results of operations for the three months and year ended December 31, 2022, and its unaudited financial position as of December 31, 2022. The full text of the press release is furnished as Exhibit 99.1 hereto.

In its press release the Company included certain non-U.S. Generally Accepted Accounting Principles (GAAP) financial measures as defined in Regulation G promulgated by the Securities and Exchange Commission. The non-GAAP financial measures included in the press release are non-GAAP earnings per share, non-GAAP operating income, non-GAAP operating margin, non-GAAP tax rate, non-GAAP net income, non-GAAP other (expense) income, net, non-GAAP interest expense, net, non-GAAP operating expenses and sub-components of non-GAAP operating expenses such as non-GAAP cost of sales, non-GAAP research and development (R&D) expenses and non-GAAP selling, general and administrative expenses. Reconciliations for such non-GAAP financial measures to the most directly comparable GAAP financial measures are included in the press release. The Company included Free Cash Flow (FCF), which is computed by subtracting capital expenditures from operating cash flow, each as determined in accordance with GAAP. The Company included Total Revenues and Product Sales Adjusted for Foreign Currency Exchange Rate Impact, which is computed by converting our current period local currency product sales using the prior period foreign currency exchange rates and comparing that to our current period product sales. The Company also included Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA), calculated by adding interest expense, provision for income taxes, and depreciation and amortization expense to GAAP net income, and debt leverage ratio, calculated as the ratio of GAAP total debt to EBITDA.

The Company believes that this presentation of non-GAAP financial measures provides useful supplementary information to and facilitates additional analysis by investors. The Company uses certain non-GAAP financial measures to enhance an investor's overall understanding of the financial performance and prospects for the future of the Company's ongoing business activities by facilitating comparisons of results of ongoing business operations among current, past and future periods. The Company believes that FCF provides a further measure of the Company's liquidity. The Company believes that Total Revenues and Product Sales Adjusted for Foreign Currency Exchange Rate Impact provides supplementary information on the Company's product sales performance by excluding changes in foreign currency exchange rates between comparative periods. Further, the Company believes its debt leverage ratio provides an important ongoing operating metric as it compares the amount of cash generated by our operations during a given period relative to our debt obligations outstanding for the same period. The Company uses non-GAAP financial measures in connection with its own budgeting and financial planning internally to evaluate the performance of the business, including to allocate resources and to evaluate results relative to incentive compensation targets. The non-GAAP financial measures are in addition to, not a substitute for, or superior to, measures of financial performance prepared in accordance with GAAP.

The following is a summary of the costs and other items excluded from the most directly comparable GAAP financial measures to calculate non-GAAP financial measures:

- Acquisition-related expenses: Acquisition-related charges are primarily associated with intangible assets acquired in connection with business acquisitions. Such charges include amortization of developed-product-technology rights, licensing rights, R&D technology rights, and marketing-related rights, as well as impairments of in-process R&D assets. Charges for purchased intangible assets are significantly impacted by the timing and magnitude of the Company's acquisitions and potential product approvals as they relate to in-process R&D projects acquired. Accordingly, these charges may vary in amount from period to period. The Company excludes these charges for purposes of calculating the non-GAAP financial measures presented to facilitate a more meaningful evaluation of the Company's current operating performance and comparisons to past operating performance. The Company believes that excluding the noncash charges related to those intangible assets acquired in business acquisitions treats those assets as if the Company had developed them internally in the past and, thus, provides a supplemental measure of profitability in which the Company's acquired intellectual property is treated in a comparable manner to its internally-developed-intellectual property.
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- Net charges pursuant to the Company's costs savings initiatives: Costs from cost savings initiatives are primarily related to facilities charges, including accelerated depreciation, and severance and benefits for employees terminated pursuant to our transformation and process improvement efforts. Costs from such initiatives are inconsistent in amount and are significantly impacted by the timing and nature of these events. Therefore, although the Company may incur these types of expenses in the future, it believes that eliminating these charges for purposes of calculating the non-GAAP financial measures provides a supplemental evaluation of the Company's current operating performance and facilitates comparisons to past operating performance.
- Other items: The Company adjusts GAAP financial results for certain income and expenses (or gains and losses). These adjustments include (1) certain items from investment transactions, including amortization and impairments from the basis difference that arises from certain equity method investments and certain gains and losses on our investments in equity securities that are recorded to other income and expense; (2) the impact of nonstrategic divestitures, which includes cumulative foreign currency translation adjustments; (3) certain items associated with judgments and/or settlements for legal proceedings discussed in our filings; and (4) amortization of the bridge credit facility fee associated with our proposed acquisition of Horizon Therapeutics plc (Horizon) that is recorded to interest expense. The Company excludes these items for the purpose of calculating the non-GAAP financial measures presented because the Company believes these items are outside the ordinary course of business. The Company believes eliminating these items provides a supplemental evaluation of the Company's current operating performance and facilitates comparisons to past operating performance.
- The tax effect of the adjustments between GAAP and non-GAAP results take into account the tax treatment and related tax rate(s) that apply to each adjustment in the applicable tax jurisdiction(s). Generally, this results in a tax impact at the U.S. marginal tax rate for certain adjustments, including the majority of amortization of intangible assets, whereas the tax impact of other adjustments, including expenses related to cost savings initiatives, depends on whether the amounts are deductible in the respective tax jurisdictions and the applicable tax rate(s) in those jurisdictions.

The press release also contains a discussion of the additional purposes for which the Company's management uses these non-GAAP financial measures.

Presentation of Non-GAAP Financial Results to Reflect Updated Non-GAAP Policy

Beginning with the first quarter of 2022, the Company has modified its presentation of non-GAAP results and no longer excludes any upfront or milestone payments for licensing or collaboration agreements (regardless of the dollar amount), asset acquisitions of pre-approval, in-process R&D assets, or premiums paid on equity investments to the extent that such premiums are expensed as part of an upfront payment, from its non-GAAP measures. This change in our non-GAAP policy does not affect the Company's non-GAAP results for the three months and year ended December 31, 2022, however it does affect previously presented three months and year ended December 31, 2021, non-GAAP results, as the Company had charges related to those items during those periods. Prior period results have been recast to conform to this new non-GAAP policy. Furnished pursuant to this Item 2.02 as Exhibit 99.2 hereto is the recast presentation of the Company's 2021 non-GAAP results to reflect our updated non-GAAP policy.

This information and the information contained in the press release and recast presentation of the Company's 2021 non-GAAP financial results shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section. The information in Item 2.02 of this Current Report is not incorporated by reference into any filings of the Company made under the Securities Act of 1933, as amended, whether made before or after the date of this Current Report, regardless of any general incorporation language in the filing unless specifically stated so therein.

Item 8.01 Other Events.

On January 30, 2023, the Company and Horizon each received a request for additional information and documentary materials (the Second Request) from the Federal Trade Commission (the FTC) in connection with the FTC's review of the Company's proposed acquisition of Horizon (the Transaction). The effect of the Second Request is to extend the waiting period imposed by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act), until 30 days after the Company and Horizon have substantially complied with the Second Request, unless that period is extended voluntarily by the Company and Horizon or terminated sooner by the FTC. Both the Company and Horizon expect to promptly respond to the Second Request and to continue to work cooperatively with the FTC in its review of the Transaction. Completion of the Transaction remains subject to the expiration or termination of the waiting period under the HSR Act and the satisfaction or waiver of the other closing conditions specified in the Transaction Agreement, dated December 11, 2022, by and among the Company, Pillartree Limited and Horizon.

Responsibility Statement Required by the Irish Takeover Rules

The directors of the Company accept responsibility for the information contained in this Item 8.01. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case), the information contained in this Item 8.01 is in accordance with the facts and does not omit anything likely to affect the import of such information.

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may be identified by words like “believe,” “expect,” “preliminary,” “scheduled,” and similar words. These forward-looking statements are based on our beliefs, assumptions and estimates using information available to us at the time and are not intended to be guarantees of future events or performance. These forward-looking statements include, among other things, statements regarding the Company’s expectations regarding the timing for the completion of the Transaction. Such forward-looking statements involve risks and uncertainties that could cause actual results to differ from predicted results. These risks and uncertainties include market conditions and other factors beyond the Company’s control and the economic, competitive, governmental, technological and other factors identified under the heading “Risk Factors” included in Item 1A of the Company’s Annual Report on Form 10-K for the year ended December 31, 2021, and information contained in subsequent filings with the Securities and Exchange Commission. These forward-looking statements are made only as the date thereof, and the Company undertakes no obligation to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

- 10.1 [Amendment No. 3 to Share Purchase Agreement, dated January 30, 2023, by and among BeiGene, Ltd. and Amgen Inc.](#)
 - 99.1 [Press Release dated January 31, 2023](#)
 - 99.2 [Recast of 2021 Non-GAAP Financial Information As Reported to Reflect Updated Non-GAAP Policy](#)
 - 104 Cover Page Interactive Data File (embedded within the Inline XBRL document).
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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.

AMGEN INC.

Date: January 31, 2023

By: /s/ Peter H. Griffith
Name: Peter H. Griffith
Title: Executive Vice President and Chief Financial Officer