

**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): **April 25, 2024**

Avenue Therapeutics, Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-38114
(Commission File Number)

47-4113275
(IRS Employer Identification No.)

**1111 Kane Concourse, Suite 301
Bay Harbor Islands, Florida 33154**
(Address of Principal Executive Offices)

(781) 652-4500
(Registrant's telephone number, including area code)

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.
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act.
- Pre-commencement communications pursuant to Rule 14d-2b under the Exchange Act.
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act.

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

Title of Class	Trading Symbol(s)	Exchange Name
Common Stock	ATXI	Nasdaq Capital 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 3.03 Material Modification to Rights of Security Holders

On April 25, 2024, Avenue Therapeutics, Inc. (the “**Company**”) filed a Certificate of Amendment to its Third Amended and Restated Certificate of Incorporation (the “**Amendment**”) with the Secretary of State of the State of Delaware to effect a 1-for-75 reverse stock split (the “**Reverse Stock Split**”) of the Company’s shares of common stock, \$0.0001 par value (the “**Common Stock**”).

As previously disclosed in a Definitive Information Statement on Schedule 14C filed with the Securities and Exchange Commission on March 18, 2024 (the “**Information Statement**”), the Company’s stockholders approved the Reverse Stock Split within a range of between 30-for-1 and 75-for-1, such ratio to be determined by the Board of Directors of the Company (the “**Board**”), which the Board also approved. On April 10, 2024, the Board selected the 1-for-75 reverse stock split ratio.

As a result of the Reverse Stock Split, every 75 shares of the Company’s pre-reverse split Common Stock will be combined and reclassified as one share of Common Stock. Proportionate voting rights and other rights of common stockholders will not be affected by the reverse. No fractional shares will be issued in connection with the Reverse Stock Split. Instead, stockholders who would otherwise be entitled to receive fractional shares because they hold a number of shares of Common Stock that is not evenly divided by the reverse split ratio will automatically be entitled to have their fractional shares rounded up to the next whole share in lieu of such fractional shares. In any event, cash will not be paid for fractional shares.

The Reverse Stock Split became effective on April 26, 2024, and the Common Stock was quoted on the Nasdaq Stock Market on a post-split basis at the open of business on April 26, 2024. The Company’s post-reverse split Common Stock has a new CUSIP number, 05360L403, but the par value and other terms of the Common Stock were not affected by the Reverse Stock Split.

The Company’s transfer agent, VStock Transfer, LLC, is acting as exchange agent for the Reverse Stock Split.

The foregoing description of the Amendment and the Reverse Stock Split set forth above does not purport to be complete and is qualified in its entirety by reference to the Amendment and the Information Statement. A copy of the Amendment is being filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

The disclosures set forth in Item 3.03 of this Current Report on Form 8-K are incorporated into this Item 5.03 by reference.

Item 8.01 Other Events

On April 24, 2024, Avenue Therapeutics, Inc. issued a press release announcing the Reverse Stock Split. A copy of such press release is being furnished as Exhibit 99.1 to this report.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

The following exhibit is furnished herewith:

Exhibit No.	Description
3.1	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation of Avenue Therapeutics, Inc.
99.1	Press Release, dated April 24, 2024
104	Cover Page Interactive Data File (embedded within Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AVENUE THERAPEUTICS, INC.
(Registrant)

Date: April 26, 2024

By: /s/ David Jin
David Jin
Interim Principal Financial Officer and Chief Operating Officer

**CERTIFICATE OF AMENDMENT
TO
THE THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
AVENUE THERAPEUTICS, INC.**

Avenue Therapeutics, Inc. (the “*Corporation*”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “*DGCL*”), does hereby certify:

FIRST. The Certificate of Incorporation of the Corporation is hereby amended by changing ARTICLE IV, so that, as amended, the first paragraph of said Section 5 shall be amended to add the following paragraph:

At 12:01 a.m., Eastern Time, on April 26, 2024 (the “*Effective Time*”) pursuant to the DGCL, and this Certificate of Amendment to the Certificate of Incorporation, every seventy-five (75) issued and outstanding shares or shares held by the Corporation as treasury stock of the Corporation’s common stock, par value \$.0001 per share (the “*Common Stock*”), as of the date and time immediately preceding the Effective Time (the “*Old Shares*”), shall automatically be reclassified as and converted into one (1) validly issued, fully paid and non-assessable share of Common Stock of the Corporation (the “*New Shares*”) without any further action by the Corporation or the holder thereof, subject to the treatment of fractional share interests as described below (the “*Reverse Stock Split*”). Further, every right, option and warrant to acquire Old Shares outstanding immediately prior to the Effective Time shall, as of the Effective Time and without any further action, automatically be reclassified into the right to acquire one (1) New Share based on the conversion ratio of shares of Old Shares to New Shares set forth in the preceding sentence, but otherwise upon the terms of such right, option or warrant (except that the exercise or purchase price of such right, option or warrant shall be proportionately adjusted). No fractional shares shall be issued in connection with the Reverse Stock Split. Stockholders who otherwise would be entitled to receive fractional shares of Common Stock shall be entitled to receive that number of New Shares based on the conversion ratio of their shares of Old Shares to New Shares set forth above, rounded up to the next whole share of Common Stock. Each holder of record of a certificate which immediately prior to the last trading day preceding the date of the Effective Time (the “*Effective Date*”) represents Old Shares (the “*Old Certificates*”) shall be entitled to receive upon surrender of such Old Certificates to the Corporation’s transfer agent for cancellation, a certificate (the “*New Certificates*”) representing the number of whole shares of Common Stock into and for which the shares formerly represented by such Old Certificates so surrendered are exchangeable. From and after the Effective Date, Old Certificates shall represent only the right to receive New Certificates pursuant to the provisions hereof.

SECOND. That a resolution was duly adopted by unanimous written consent of the directors of the Corporation, pursuant to Section 242 of the General Corporation Law of the State of Delaware, setting forth the above-mentioned amendment to the Certificate of Incorporation and declaring said amendment to be advisable.

THIRD. That this amendment was duly authorized by the holders of a majority of the voting stock of the Corporation by written consent of the stockholders of the Corporation. Said amendment was duly adopted in accordance with the provisions of the General Corporation Law.

IN WITNESS WHEREOF, this Certificate of Amendment of the Certificate of Incorporation has been signed by a duly appointed officer of the Corporation this 25th day of April, 2024.

AVENUE THERAPEUTICS, INC.

By: /s/ Alexandra MacLean
Name: Alexandra MacLean, M.D.
Title: Chief Executive Officer



Avenue Therapeutics Announces Reverse Stock Split

Miami, FL – April 24, 2024 – Avenue Therapeutics, Inc. (Nasdaq: ATXI) (“Avenue” or the “Company”), a specialty pharmaceutical company focused on the development and commercialization of therapies for the treatment of neurologic diseases, today announced that it will effect a 1-for-75 reverse split of its issued and outstanding common stock. Avenue expects its common stock to begin trading on a split-adjusted basis on the Nasdaq Capital Market as of the commencement of trading on April 26, 2024 with a new CUSIP number of 05360L403. The ticker symbol for the Company’s stock will remain “ATXI.”

The reverse stock split was approved on March 6, 2024 by Avenue’s Board of Directors and stockholders representing approximately 56% of the voting power of Avenue’s outstanding capital stock, with the authorization to determine the final ratio (within a specified range) having been granted to the Company’s Board of Directors. The reverse stock split is intended to bring the Company into compliance with Nasdaq’s \$1.00 per share minimum bid price requirement for continued listing.

After the effectiveness of the reverse stock split, the number of outstanding shares of common stock will be reduced from approximately 44.7 million to approximately 0.6 million, subject to adjustment to give effect to the treatment of any fractional shares that stockholders would have received in the reverse stock split. No fractional shares will be issued in connection with the reverse stock split, and stockholders who would otherwise be entitled to receive a fractional share will be entitled to have such fractional share rounded up to the next whole share. Proportional adjustments will be made to the number of shares of the Company’s common stock issuable upon exercise or conversion of the Company’s preferred stock, warrants and equity awards, as well as the applicable exercise or conversion prices, and the number of shares reserved for issuance under the Company’s equity compensation plan.

Avenue’s transfer agent, VStock Transfer, LLC, is acting as the exchange agent for the reverse stock split. VStock Transfer, LLC will provide instructions to stockholders regarding the process for exchanging physical share certificates. Avenue does not expect that stockholders holding their shares in book-entry form or through a bank, broker or other nominee need to take any action in connection with the reverse stock split. Beneficial holders are encouraged to contact their bank, broker or other nominee with any procedural questions. Additional information concerning the reverse stock split can be found in Avenue’s definitive information statement on Schedule 14C filed with the Securities and Exchange Commission on March 18, 2024.

About Avenue Therapeutics

Avenue Therapeutics, Inc. (Nasdaq: ATXI) is a specialty pharmaceutical company focused on the development and commercialization of therapies for the treatment of neurologic diseases. It is currently developing three assets including AJ201, a first-in-class asset for spinal and bulbar muscular atrophy, BAER-101, an oral small molecule selective GABA_A α 2/3 receptor positive allosteric modulator for CNS diseases, and IV tramadol, which is in Phase 3 clinical development for the management of acute postoperative pain in adults in a medically supervised healthcare setting. Avenue is headquartered in Miami, FL and was founded by Fortress Biotech, Inc. (Nasdaq: FBIO). For more information, visit www.avenuetx.com.

Forward-Looking Statements

This press release contains predictive or “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of current or historical fact contained in this press release, including statements that express our intentions, plans, objectives, beliefs, expectations, strategies, predictions or any other statements relating to our future activities or other future events or conditions are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will,” “should,” “would” and similar expressions are intended to identify forward-looking statements. These statements are based on current expectations, estimates and projections made by management about our business, our industry and other conditions affecting our financial condition, results of operations or business prospects. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in, or implied by, the forward-looking statements due to numerous risks and uncertainties. Factors that could cause such outcomes and results to differ include, but are not limited to, risks and uncertainties arising from: the fact that we currently have no drug products for sale and that our success is dependent on our product candidates receiving regulatory approval and being successfully commercialized; the possibility that serious adverse or unacceptable side effects are identified during the development of our current or future product candidates, such that we would need to abandon or limit development of some of our product candidates; our ability to successfully develop, partner, or commercialize any of our current or future product candidates including AJ201, IV tramadol, and BAER-101; the substantial doubt raised about our ability to continue as a going concern, which may hinder our ability to obtain future financing; the significant losses we have incurred since inception and our expectation that we will continue to incur losses for the foreseeable future; our need for substantial additional funding, which may not be available to us on acceptable terms, or at all, which unavailability of could force us to delay, reduce or eliminate our product development programs or commercialization efforts; our reliance on third parties for several aspects of our operations; our reliance on clinical data and results obtained by third parties that could ultimately prove to be inaccurate, or unreliable, or unacceptable to regulatory authorities; the possibility that we may not receive regulatory approval for any or all of our product candidates, or that such approval may be significantly delayed due to scientific or regulatory reasons; the fact that even if one or more of our product candidates receives regulatory approval, they will remain subject to substantial regulatory scrutiny; the effects of current and future laws and regulations relating to fraud and abuse, false claims, transparency, health information privacy and security, and other healthcare laws and regulations; the effects of competition for our product candidates and the potential for new products to emerge that provide different or better therapeutic alternatives for our targeted indications; the possibility that the government or third-party payors fail to provide adequate coverage and payment rates for our product candidates or any future products; our ability to establish sales and marketing capabilities or to enter into agreements with third parties to market and sell our product candidates; our exposure to potential product liability claims; related to the protection of our intellectual property and our potential inability to maintain sufficient patent

protection for our technology and products; our ability to maintain compliance with the obligations under our intellectual property licenses and funding arrangements with third parties, without which licenses and arrangements we could lose rights that are important to our business; the fact that Fortress Biotech, Inc. controls a majority of the voting power of our outstanding capital stock and has rights to receive significant share grants annually; our current noncompliance with certain applicable listing standards of The Nasdaq Capital Market, which could result in our common stock being delisted from The Nasdaq Capital Market; and those risks discussed in our filings which we make with the SEC. Any forward-looking statements speak only as of the date on which they are made, and we undertake no obligation to publicly update or revise any forward-looking statements to reflect events or circumstances that may arise after the date of this press release, except as required by applicable law. Investors should evaluate any statements made by us in light of these important factors.

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