

---

**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): **September 8, 2023**

**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 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). "

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.**

On September 8, 2023, Avenue Therapeutics, Inc. (the “**Company**”) entered into an unwritten agreement with Fortress Biotech, Inc., the holder of a majority of the voting power of the Company’s capital stock (“**Fortress**”), and Dr. Lindsay A. Rosenwald, a director on the board of directors of the Company (Dr. Rosenwald and Fortress, together, the “**Investors**”), pursuant to which the Company agreed to issue and sell 767,085 shares (the “**Shares**”) of common stock of the Company, par value \$0.0001 per share (the “**Common Stock**”), for an aggregate purchase price of approximately \$550,000 in a private placement transaction (the “**Private Placement**”) exempt from the registration requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), and the rules and regulations of the Securities and Exchange Commission (the “**SEC**”) thereunder. The shares were purchased by the Investors at a price per Share of \$0.717, which was the “consolidated closing bid price” of the Common Stock on the Nasdaq Capital Market as of September 7, 2023, in compliance with Nasdaq Listing Rule 5365(c).

The gross proceeds to the Company from the Private Placement, before deducting estimated offering expenses payable by the Company, were approximately \$550,000. The Company did not incur any underwriting or placement agent fees associated with the Private Placement. The Company intends to use the net proceeds from the Private Placement for working capital and other general corporate purposes.

In connection with the Private Placement, the Company entered into a registration rights letter agreement (the “**Registration Rights Letter Agreement**”) with the Investors. Pursuant to the Registration Rights Letter Agreement, the Company will be required to file, on or prior to September 8, 2024 (the “**Filing Date**”), a resale registration statement (the “**Resale Registration Statement**”) with the SEC to register the resale of the Shares.

The foregoing description of the Registration Rights Letter Agreement is subject to, and qualified in its entirety by, the full text of the document, which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

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

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 3.02. The offering and sale of the Shares is exempt from registration under Section 4(a)(2) of the Securities Act and corresponding provisions of state securities or “blue sky” laws. The sale of the Shares by the Company in the Private Placement has not been registered under the Securities Act or any state securities laws, and the Shares may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from the registration requirements. The sale of the Securities does not involve a public offering and was made without general solicitation or general advertising.

**Item 9.01 Financial Statements and Exhibits.**

*(d) Exhibits*

The following exhibits are filed herewith:

| <b>Exhibit Number</b> | <b>Description</b>  |
|-----------------------|---|
| <a href="#">10.1</a>  | <a href="#">Registration Rights Letter Agreement, dated September 8, 2023, by and among the Company and the purchaser parties thereto</a> |
| 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: September 8, 2023

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

---



1111 Kane Concourse, Suite 301, Bay Harbor Islands, FL 33154

September 8, 2023

Fortress Biotech, Inc.  
1111 Kane Concourse, Suite 301  
Bay Harbor Islands, FL 33154  
Attention: Lindsay Rosenwald, MD, Chief Executive Officer

Lindsay Rosenwald, MD  
c/o Fortress Biotech, Inc.  
1111 Kane Concourse, Suite 301  
Bay Harbor Islands, FL 33154

**Re: Registration Rights**

Dear Mr. Rosenwald,

Reference is hereby made to the issuance and sale of approximately \$550,000 of shares of common stock, par value \$0.0001 per share (the "**Shares**"), of Avenue Therapeutics, Inc. ("**Avenue**") to you and to Fortress Biotech, Inc. ("**Fortress**") on or about the date hereof. Because the Shares were sold in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended (the "**Securities Act**"), the Shares are "restricted securities" under the federal securities laws, and cannot be sold without registration under the Securities Act or an exemption therefrom. In light of this and as an inducement to you and Fortress to purchase the Shares, Avenue hereby agrees that it shall (i) prepare and file with the Securities and Exchange Commission (the "**SEC**") a registration statement on Form S-1 (or Form S-3, if available for use by Avenue for the registration of the resale of the Shares) with respect to the resale of all of the Shares (each such registration statement, including any replacement registration statement, the "**Shelf Registration Statement**") no later than September 9, 2024, and (ii) use reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the SEC as soon as practicable thereafter. The Shelf Registration Statement shall be on an appropriate form and shall provide for the resale of the Shares from time to time, including pursuant to Rule 415. Avenue shall thereafter use reasonable best efforts to keep the Shelf Registration Statement continuously effective until the earliest of the date that (x) all of the Shares have been sold by you and Fortress, under the Shelf Registration Statement or otherwise, (y) the Shares are no longer outstanding or (z) the Shares become eligible for resale pursuant to Rule 144 under the Securities Act without volume or manner-of-sale restrictions and without the requirement for Avenue to be in compliance with the current public information requirement under Rule 144(c)(1).

This letter agreement shall be governed by the laws of the State of Delaware, without regards to the principles of conflict of laws that would otherwise require the application of the law of any other state. Each party hereto waives any right to a jury trial in connection with any litigation pursuant to this letter agreement. This letter agreement constitutes the entire agreement among the parties with respect to the subject matter hereof, and may be executed in one or more counterparts (including by electronic mail or in .pdf), each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

If the foregoing correctly sets forth the understanding among you, Fortress and Avenue, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among such parties.

---

Best regards,

**Avenue Therapeutics, Inc.**

/s/ Alexandra MacLean  
\_\_\_\_\_  
Alexandra MacLean, Chief Executive Officer

**AGREED AND ACCEPTED:**

**Fortress Biotech, Inc.**

By: /s/ Lindsay Rosenwald  
\_\_\_\_\_  
Lindsay Rosenwald, Chief Executive Officer

/s/ Lindsay Rosenwald  
\_\_\_\_\_  
Lindsay Rosenwald (in individual capacity as purchaser)

\_\_\_\_\_