

**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): **February 20, 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 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On January 9, 2024, stockholders holding a majority of the outstanding voting power of Avenue Therapeutics, Inc. (the "**Company**") executed and delivered to the Board of Directors of the Company a written consent approving, among other items, an increase in the number of shares of common stock, par value \$0.0001 per share, authorized under the Company's Third Amended and Restated Certificate of Incorporation, as amended (the "**Certificate of Incorporation**"), from 75,000,000 to 200,000,000 (the "**Authorized Shares Increase**").

On February 20, 2024, the Company filed a Certificate of Amendment to its Certificate of Incorporation (the "**Certificate of Amendment**") with the Secretary of State for the State of Delaware effectuating the Authorized Shares Increase. The foregoing description of the Certificate of Amendment to the Certificate of Incorporation is qualified in its entirety by reference to the full text of the Certificate of Amendment of the Certificate of Incorporation, which is filed as exhibit 3.1 to this Current Report on Form 8-K and incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits. The following exhibits filed with this Current Report on Form 8-K:

Exhibit Number	Description
3.1 104	Certificate of Amendment of the Third Amended and Restated Certificate of Incorporation of Avenue Therapeutics, Inc., as filed on February 20, 2024 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: February 23, 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 ARTICLE IV shall be amended and restated as follows:

Authorized Stock. The total number of shares of all classes of capital stock that the Corporation shall have the authority to issue is (i) two hundred million (200,000,000) shares of Common Stock, with \$0.0001 par value, and (ii) two million (2,000,000) shares of Preferred Stock, with \$.0001 par value (the "**Preferred Stock**"), 250,000 of which are designated as Class A Preferred Stock (the "**Class A Preferred Stock**") and the remainder are undesignated Preferred Stock.

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

THIRD. That this amendment was duly adopted by the holders of a majority of the voting power of the Corporation by written consent, pursuant to Section 228 of the DGCL.

IN WITNESS WHEREOF, this Certificate of Amendment of the Certificate of Incorporation has been signed by the Chief Executive Officer of the Corporation this 20th day of February, 2024.

AVENUE THERAPEUTICS, INC.

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