
**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 23, 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 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 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On September 23, 2024, (the “**Grant Date**”), the Compensation Committee (the “**Compensation Committee**”) of the Board of Directors (the “**Board**”) of Avenue Therapeutics, Inc. (the “**Company**”) and the Board, respectively, approved the granting of equity awards under the Company’s 2015 Incentive Plan, as amended (the “**Plan**”), to certain named executive officers as follows: (a) an award of 170,000 restricted stock units to Alexandra MacLean, M.D. (**MacLean**), the Company’s Chief Executive Officer (the “**MacLean RSUs**”), and (b) an award of 65,000 restricted stock units to David Jin (**Jin**), the Company’s Interim Principal Financial Officer and Chief Operating Officer (the “**Jin RSUs**” and together with the MacLean RSUs, the “**RSUs**”). The RSUs vest in four equal installments on each of the following dates: September 30, 2024, December 31, 2024, September 20, 2025, and September 20, 2026 (each an “**RSU Vesting Date**”), provided that the grantee provides continuous service to the Company from the Grant Date through the applicable RSU Vesting Date and subject to the other terms of the restricted stock unit agreement (“**RSU Agreement**”). Once vested, the settlement of the RSUs will be deferred until the earlier of the tenth business day of January of the year following termination of service of the recipient to the Company under certain conditions and/or the occurrence of a Change in Control event (as defined in the Plan).

The RSUs were granted pursuant to an RSU Agreement, the form of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated by reference in this Item 5.02.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are furnished herewith:

Exhibit Number	Description
<u>10.1</u>	<u>Form of Restricted Stock Unit Agreement.</u>
104	Cover Page Interactive Data File, formatted in Inline Extensible Business Reporting Language (iXBRL).

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 27, 2024

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

[FORM OF]
AVENUE THERAPEUTICS, INC.
2015 INCENTIVE PLAN

RESTRICTED STOCK UNIT AWARD AGREEMENT

This Restricted Stock Unit Award Agreement (this “*Agreement*”) is made and entered into between Avenue Therapeutics, Inc. (the “*Company*”) and [●] (“*Grantee*”), effective as of [●] (such date the “*Date of Grant*”). This Agreement sets forth the terms and conditions associated with the Company’s award to Grantee of Restricted Stock Units payable as described below in shares of Common Stock from the Company pursuant to the Company’s 2015 Incentive Plan (the “*Plan*”) for the number of Units set forth below (collectively, the “*Award*”). Capitalized terms used herein which are not otherwise defined herein will have the meanings ascribed to them under the Plan.

NOW, THEREFORE, in consideration of the foregoing and Grantee’s continued provision of valuable services as an employee and/or consultant of the Company and/or its Affiliate, it is agreed by and between the parties as follows:

1. Grant of Units. Effective as of the Date of Grant, the Company hereby grants the Grantee [●] Restricted Stock Units (the “*Units*”). The Units are subject to the vesting, payment, and other provisions of this Agreement and the Plan. Each Unit is subject to settlement into one (1) Share that will be delivered to the Grantee if such Unit becomes vested subject to the terms of this Agreement, including the settlement provisions in Section 4 below. The Company will account for the Units in a bookkeeping account on the Grantee’s behalf until they become payable or are forfeited.

2. Vesting. The Units are unvested when granted and will vest in accordance with the schedule on Exhibit A, subject to Grantee’s Continuous Service through the applicable vesting dates, provided that vesting may accelerate or cease as provided for in this Agreement or in the Plan. Notwithstanding the foregoing, in the event of a Change in Control the Units shall become 100% vested effective immediately prior to the consummation of the Change in Control.

3. Effect of Termination of Continuous Service. In the event of the termination of Grantee’s Continuous Service, all Units that are not vested will be forfeited.

4. Delivery of Shares to Settle Vested Units. Units vested as provided in Section 2 will be settled by delivering to Grantee a number of Shares equal to the number of vested Units on the 10th business day of January following termination of Grantee’s Continuous Service. On such date, the Company will, at its election, either: (a) issue a certificate representing the Shares payable pursuant to this Agreement; or (b) not issue any certificate representing the Shares payable pursuant to this Agreement and instead document the Grantee’s interest in the Shares by registering such Shares with the Company’s transfer agent (or another custodian selected by the Company) in bookentry form in the Grantee’s name. Notwithstanding the foregoing, in the event of a Change in Control prior to settlement, settlement of any vested Units will be accelerated and made in cash within five (5) business days after the Change in Control date, in an amount equal to the result of multiplying the vested Units by the fair market value of one share of common stock on the Change in Control date, as determined by the Administrator. In addition, notwithstanding the foregoing, in the event of the death of Grantee prior to settlement, settlement of any vested Units will be accelerated and made in cash within thirty (30) business days after Grantee’s date of death, in an amount equal to the result of multiplying the vested Units by the fair market value of one share of common stock on Grantee’s date of death, as determined by the Administrator.

5. Capitalization Changes. The number of Units convertible to Shares subject to this Award may be adjusted from time to time by the Administrator to account for changes in capitalization as described in Section 12 of the Plan.

6. Rights as a Stockholder. The Units represent a right to payment from the Company if the conditions of the Agreement are met and do not give the Grantee ownership of any Common Stock prior to delivery as provided in Section 4. Grantee shall not have any rights and/or privileges of a stockholder of the Company with respect to the Units prior to such delivery. If Grantee becomes vested in Units as provided in Section 2, any Shares to which Grantee becomes entitled shall be delivered to Grantee as provided in Section 4, and Grantee shall have full ownership of the Shares upon such delivery.

7. Non-Transferability of the Award. The Units and the right to payment under this Agreement are not transferable, may not be sold, exchanged, transferred, pledged, hypothecated, encumbered or otherwise disposed of except as provided in the Plan. Any purported transfer of the Units or the right to payment under this Agreement is null and void and will not be given effect.

8. Award Not An Employment Agreement. The Award is not an employment or service contract, and nothing this Agreement confers or will be construed as conferring upon the Grantee any right to continue in the employment or service of the Company, or as interfering with or restricting in any way the right of either party to terminate such employment or service at any time.

9. Tax Consequences. Grantee acknowledges that he/she understands the federal, state, and local tax consequences of the Award and the issuance, vesting, forfeiture, and delivery provisions hereof relating to the Units. Grantee will rely solely on the advice of his/her own tax advisors and not on any statements or representations of the Company or any of its agents. Grantee understands that Grantee (and not the Company) shall be responsible for his/her own tax liability that may arise as a result of the Award or the transactions contemplated by this Agreement.

10. Withholding Obligations. Grantee understands that, at the time that Grantee becomes vested and/or receives payment for any Units (including through the delivery of Shares), the Company may be required to withhold federal, state and local income and employment taxes. At the time of vesting, or at or before the time Grantee receives a distribution of the Shares underlying the Units or other consideration, or at any time thereafter as requested by the Company, Grantee hereby authorizes the Company to satisfy any required withholding to satisfy federal, state, local, payroll, and foreign tax withholding obligations of the Company or any Affiliate that arise in connection with the Units (the “*Withholding Taxes*”). Notwithstanding any other provision of this Section, the Company may, in its sole discretion, satisfy all or any portion of the Withholding Taxes obligation relating to the Units by any of the following means or by a combination of such means: (a) withholding from any compensation otherwise payable to the Grantee by the Company; (b) causing the Grantee to tender a cash payment; or (c) withholding Shares from the Shares issued or otherwise issuable to Grantee in connection with the Units with a Fair Market Value (measured as of the date the Withholding Taxes are to be determined) equal to the amount of such Withholding Taxes; *provided, however*, that the number of such Shares so withheld shall not exceed the amount necessary to satisfy the Company’s required tax withholding obligations using the minimum statutory withholding rates for federal, state, local and foreign tax purposes, including payroll taxes, that are applicable to supplemental taxable income (or such lesser amount as may be necessary to avoid classification of the Units as a liability for financial accounting purposes). Grantee understands that all matters with respect to the total amount of taxes to be withheld in respect of such compensation income will be determined by the Administrator in its reasonable discretion. Grantee further understands that, although the Company may pay withheld amounts to the applicable taxing authorities, the Grantee is responsible for payment of all taxes due as a result of compensation arising under the Agreement.

11. Data Privacy. Grantee acknowledges that the Company holds certain personal information about Grantee, including, but not limited to: name, home address and telephone number, date of birth, social security number or other identification number, compensation, nationality, job title, details of the Award, and any other entitlement to shares of stock awarded, cancelled, exercised, vested or unvested. Grantee consents to the collection, use and transfer, in electronic or other form, of such personal data for the purpose of implementing, administering, and managing this Award.

12. Notices. Any notice or request required or permitted hereunder shall be given in writing to each of the other parties hereto and shall be deemed effectively given on the earlier of (a) the date of personal delivery, or (b) three days after the date of deposit in the United States Mail by registered or certified mail, postage prepaid, return receipt requested, addressed in the case of the Company to the Company’s Chief Executive Officer at the Company’s primary business address and in the case of the Grantee to the most recent address shown in the Company’s records.

13. Incorporation of the Plan; Entire Agreement; Modification. The Award is subject to all the provisions of the Plan, the provisions of which are hereby

made a part of this Agreement, and is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of this Agreement and those of the Plan, the provisions of the Plan shall control. This Agreement (including the Plan) sets forth all of the promises, agreements, conditions and understandings between the parties hereto with respect to the Award, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, between them with respect to the Award other than as set forth therein or herein. This Agreement supersedes and replaces any and all prior agreements between the parties hereto with respect to Restricted Stock Units granted under this Award. Except as provided by the Plan, no modification, amendment or waiver of any of the provisions of this Agreement will be effective unless approved in writing by both parties.

14. Choice of Law. The interpretation, performance and enforcement of this Agreement shall be governed by the law of the state of New York without regard to the conflicts of laws rules of any jurisdiction.

15. Miscellaneous.

(a) The headings of the Sections in this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the meaning of this Agreement.

(b) If all or any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

(c) This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. The rights and obligations of the Company under this Agreement shall be transferable by the Company to any one or more persons or entities, and all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by, the Company's successors and assigns.

(d) The waiver by either party of compliance with any provision of this Agreement by the other party will not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

(e) Grantee agrees upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of the Award.

(f) Grantee acknowledges and agrees that he/she (i) has reviewed this Agreement and the Plan in their entirety; (ii) fully understands the provisions of each such document; and (iii) has had an opportunity to obtain the advice of counsel prior to executing and accepting the Award. Grantee further acknowledges receipt or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act.

(g) This Agreement shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(h) All obligations of the Company under the Plan and this Agreement shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

(i) This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement. Facsimile or PDF reproductions of original signatures will be deemed binding for the purpose of the execution of this Agreement.

16. Application of Section 409A of the Code.

(a) The parties intend that the delivery of Shares or other consideration in respect of the Units provided under this Agreement satisfies, to the greatest extent possible, the exemption from or is compliant with the application of Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect (collectively, "**Section 409A**") provided under Treasury Regulations Section 1.409A-1(b)(4) (or any other applicable exemption), and this Agreement will be construed to the greatest extent possible as consistent with those provisions. To the extent not so exempt, the delivery of Shares or other consideration in respect of the Units provided under this Agreement will be conducted, and this Agreement will be construed, in a manner that complies with Section 409A and is consistent with the requirements for avoiding taxes or penalties under Section 409A.

(b) The parties further intend that each installment of any payments provided for in this Agreement is a separate "payment" for purposes of Section 409A.

(c) To the extent any payment hereunder due upon the occurrence of a Change in Control is deferred compensation that is subject to Section 409A, and is not otherwise exempt from complying with the provisions of Section 409A, then a Change in Control shall only be deemed to occur if the Change in Control also qualifies as a "change in control event" with respect to the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5).

(d) The Company makes no representations to Grantee regarding the compliance of this Agreement or the Units with Section 409A, and Grantee is solely responsible for the payment of any taxes or penalties arising under Section 409A(a)(1), or any state law of similar effect, with respect to the grant or vesting of the Units or the delivery of the Shares subject to this Award.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Agreement to be signed by its duly authorized officer, and Grantee has hereunto set his/her hand and seal.

GRANTEE:

[•]

[•]

COMPANY:

AVENUE THERAPEUTICS, INC.

By: _____

Name:

Title:

EXHIBIT A
Vesting Schedule

[•]