

**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 13, 2023

ATHENEX, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38112
(Commission
File Number)

43-1985966
(IRS Employer
Identification No.)

1001 Main Street, Suite 600, Buffalo, New York
(Address of principal executive offices)

14203
(Zip Code)

Registrant's telephone number, including area code: (716) 427-2950

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 (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications 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 Exchange Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	ATNX	The Nasdaq Global Select 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.

To the extent required by Item 3.03 of Form 8-K, the information contained in Item 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

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

On February 13, 2023, Athenex, Inc. (the “Company”) filed a Certificate of Amendment (the “Amendment”) to the Company’s Amended and Restated Certificate of Incorporation, with the Delaware Secretary of State to implement a reverse stock split of the Company’s issued shares of common stock at a ratio of 1-for-20, effective at 12:01 a.m. Eastern Time on February 15, 2023 (the “Reverse Stock Split”), previously approved by the Company’s Board of Directors. As a result of the Reverse Stock Split, every 20 shares of the Company’s common stock will automatically be combined into one share of common stock and the authorized shares of common stock will be reduced at the same proportion, from 500,000,000 shares to 25,000,000 shares. The Reverse Stock Split will affect all stockholders uniformly and will not alter any stockholders’ percentage interest in the Company’s common stock. Any fractional shares resulting from the Reverse Stock Split will be rounded up to the nearest whole share. Proportionate adjustments for the Reverse Stock Split will be made to the exercise prices and number of shares underlying warrants exercisable for shares of common stock, the number of shares issuable under the Company’s equity incentive plans, and the number of shares underlying outstanding equity awards, as applicable. The Reverse Stock Split will not change the par value of the common stock, modify any voting rights or other terms of the common stock, or change the number of authorized preferred shares of the Company.

The Company expects that its common stock will begin trading on the Nasdaq Stock Market (“Nasdaq”) on a post-Reverse Stock Split basis under the Company’s existing trading symbol “ATNX” when the market opens on February 15, 2023. The new CUSIP number for the Company’s common stock post-Reverse Stock Split is 04685N202.

The foregoing summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Item 8.01 Other Events.

On February 14, 2023, the Company issued a press release announcing the Reverse Stock Split. A copy of the press release is attached as Exhibit 99.1 to this report.

Forward Looking Statements

Except for the factual statements made herein, information contained in this report consists of forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that involve risks, uncertainties and assumptions that are difficult to predict. Words such as “will,” “may,” “intends,” “plans,” and similar expressions, or the use of future tense, identify forward-looking statements, but their absence does not mean that a statement is not forward-looking. Such forward-looking statements are not guarantees of performance and actual actions or events could differ materially from those contained in such statements. For example, there can be no assurance that the Company will be able to timely implement the reverse stock split, that the reverse stock split will be successful, or that the Company will be able to regain compliance with the Nasdaq Listing standards. The risks included are not exhaustive; for a more detailed description of these uncertainties and other factors, see the other risk factors set forth from time to time in the Company’s filings with the Securities and Exchange Commission, copies of which are available for free at www.sec.gov or upon request from the Company’s Investor Relations Department. All information provided in this release is as of the date hereof and the Company assumes no obligation and does not intend to update these forward-looking statements, except as required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Athenex, Inc., effective as of February 15, 2023
99.1	Press release dated February 14, 2023
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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.

ATHENEX, INC.

Date: February 14, 2023

/s/ Joe Annoni

Name: Joe Annoni

Title: Chief Financial Officer

**CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ATHENEX, INC.**

Athenex, Inc. , a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies as follows:

1. The name of the Corporation is Athenex, Inc.
2. This Certificate of Amendment (the “Certificate of Amendment”) amends the provisions of the Corporation’s Amended and Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on June 19, 2017, as amended by that Certificate of Amendment filed on November 22, 2022 (the “Certificate of Incorporation”).
3. Pursuant to Section 242 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation has duly adopted, and a majority of the outstanding stock entitled to vote thereon has duly approved, the amendment to the Certificate of Incorporation set forth in this Certificate of Amendment.
4. The Certificate of Incorporation is hereby amended as follows:

Article IV of the Certificate of Incorporation shall be amended to insert the following paragraphs immediately following the first sentence of Article IV as follows:

“As of the Effective Time, a one-for-twenty reverse stock split of the Corporation’s Common Stock shall become effective, pursuant to which each twenty shares of Common Stock issued and held of record by each stockholder of the Corporation immediately prior to the Effective Time shall be reclassified and combined into one validly issued, fully-paid and nonassessable share of Common Stock automatically and without any action by the holder thereof upon the Effective Time and shall represent one share of Common Stock from and after the Effective Time (such reclassification and combination of shares, the “Reverse Stock Split”). The par value of the Common Stock following the Reverse Stock Split shall remain at \$0.001 per share.

No fractional shares of Common Stock shall be issued as a result of the Reverse Stock Split. In lieu thereof, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Reverse Stock Split, following the Effective Time, shall be entitled to receive one (1) additional whole share of Common Stock; provided that, whether or not fractional shares would be issuable as a result of the Reverse Stock Split shall be determined on the basis of (a) the total number of shares of Common Stock that were issued and outstanding immediately prior to the Effective Time and (b) the aggregate number of shares of Common Stock after the Effective Time into which the shares of Common Stock have been reclassified; and with respect to holders of shares of Common Stock in book-entry form in the records of the Corporation’s transfer agent that were issued and outstanding immediately prior to the Effective Time, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Reverse Stock Split, following the Effective Time, shall be entitled to receive one (1) additional share of Common Stock automatically and without any action by the holder.

Beginning at the Effective Time, each certificate representing pre-Reverse Stock Split shares of Common Stock will be deemed for all corporate purposes to evidence ownership of post-Reverse Stock Split shares.”

At the Effective Time, the first sentence of Article IV of the Certificate of Incorporation shall be hereby deleted in its entirety with the following substituted in its place:

“The aggregate number of shares which the Corporation shall have authority to issue is Fifty Million (50,000,000), of which Twenty-Five Million (25,000,000) shall consist of shares of common stock, par value \$0.001 per share (“Common Stock”), and Twenty-Five Million (25,000,000) shall consist of shares of preferred stock, par value \$0.001 per share (“Preferred Stock”).”

5. This Amendment shall become effective as of February 15, 2023 at 12:01 a.m. Eastern Time (the “Effective Time”).
6. All other provisions of the Certificate of Incorporation shall remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed, signed and acknowledged by the undersigned duly authorized officer of the Corporation as of the date set forth below.

Dated: February 13, 2023

ATHENEX, INC.

By: /s/ Johnson Y.N. Lau

Name: Johnson Y.N. Lau

Title: Chief Executive Officer and Chairman of the Board
of Directors

Athenex Announces a Reverse Stock Split

BUFFALO, N.Y., **February 14, 2023 (GLOBE NEWSWIRE)** – Athenex, Inc., (NASDAQ: ATNX), a global biopharmaceutical company dedicated to the discovery, development, and commercialization of novel therapies for the treatment of cancer and related conditions, today announced that it will effect a 1-for-20 reverse stock split of its issued common stock, effective at 12:01 a.m. Eastern Time on February 15, 2023. Beginning tomorrow, February 15, 2023, the Company's common stock will trade on a split-adjusted basis.

At the Company's Special Meeting of Stockholders held on November 22, 2022, the Company's stockholders approved a proposal to authorize a reverse stock split of the Company's common stock, at a ratio within the range of 1-for-5 to 1-for-20, as determined by the Company's Board of Directors. The Board of Directors approved a 1-for-20 reverse split ratio, and on February 13, 2023, the Company filed a Certificate of Amendment to its Amended and Restated Certificate of Incorporation to effect the reverse stock split effective as of February 15, 2023.

The Company's Board of Directors implemented the reverse stock split with the objective of regaining compliance with the \$1.00 minimum bid price requirement of The Nasdaq Global Select Market. The Company has until March 14, 2023 to comply with this requirement. To evidence compliance with this requirement, the closing bid price of the Company's common stock must be at least \$1.00 per share for a minimum of 10 consecutive business days by March 14, 2023.

The Company's shares of common stock will continue to trade on The Nasdaq Global Select Market under the symbol "ATNX." The new CUSIP number for the Company's common stock post-reverse stock split is 04685N202.

As a result of the reverse stock split, every 20 shares of the Company's common stock will automatically be combined into one share of common stock. The reverse stock split will affect all stockholders uniformly and will not alter any stockholder's percentage ownership interest in the Company's equity. Any fraction of a share of common stock that would be created as a result of the reverse stock split will be rounded up to the next whole share. There will be a corresponding reduction in the total number of authorized shares of common stock in proportion to the reduction of the issued shares.

As of the effective date of the reverse stock split, the number of shares of common stock available for issuance under the Company's equity incentive plans and issuable pursuant to equity awards and warrants outstanding immediately prior to the reverse stock split will be proportionately adjusted by the reverse stock split. The exercise prices of the Company's outstanding options and warrants will be adjusted in accordance with their respective terms.

The Company's transfer agent, Computershare, Inc., is acting as the exchange agent for the reverse stock split and will provide instructions to stockholders regarding the process for exchanging their pre-split shares for post-split shares for shares held in certificate form. Shareholders owning shares via a broker, bank, trust or other nominee will have their positions automatically adjusted to reflect the reverse stock split, subject to such broker's particular processes, and will not be required to take any action in connection with the reverse stock split. Additional information regarding the reverse stock split is available on the Form 8-K filed today, as well as in the Company's definitive proxy statement filed with the Securities and Exchange Commission on October 11, 2022, a copy of which is available at www.sec.gov and on the Company's website.

About Athenex, Inc.

Founded in 2003, Athenex, Inc. is a global clinical-stage biopharmaceutical company dedicated to becoming a leader in the discovery, development, and commercialization of next generation cell therapy drugs for the treatment of cancer. In pursuit of this mission, Athenex leverages years of experience in research and development, clinical trials, regulatory standards, and manufacturing. The Company's current clinical pipeline is derived mainly from the following core technologies: (1) Cell therapy, based on NKT cells and (2) Orascovery, based on a P-glycoprotein inhibitor. Athenex's employees worldwide are dedicated to improving the lives of cancer patients by creating more active, accessible, and tolerable treatments. For more information, please visit www.athenex.com.

Forward-Looking Statements

Except for historical information, all of the statements, expectations, and assumptions contained in this press release are forward-looking statements. These forward-looking statements are typically identified by terms such as "mission," "plan," "will," and similar expressions. Actual results might differ materially from those explicit or implicit in the forward-looking statements. Important factors that could cause actual results to differ materially include: our ability to timely implement the reverse stock split, the success of the reverse stock split, and the Company's ability to regain compliance with the Nasdaq Listing standards, and the other risk factors set forth from time to time in our SEC filings, copies of which are available for free in the Investor Relations section of our website here or upon request from our Investor Relations Department. All information provided in this release is as of the date hereof, and we assume no obligation and do not intend to update these forward-looking statements, except as required by law.

Athenex Contacts

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