
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Athenex, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

43-1985966
(I.R.S. Employer
Identification No.)

1001 Main Street, Suite 600, Buffalo, NY
(Address of Principal Executive Offices)

14203
(Zip Code)

Athenex, Inc. Amended and Restated 2017 Omnibus Incentive Plan
(Full title of the plans)

Johnson Y.N. Lau
Chief Executive Officer
Athenex, Inc. 1001 Main Street, Suite 600
Buffalo, NY 14203
(Name and address of agent for service)

(716) 427-2950
(Telephone number, including area code, of agent for service)

Copies to:

Alexander R. McClean, Esq.
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604
(585) 232-6500

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

<u>Title of Securities to be Registered</u>	<u>Amount to be Registered (1)</u>	<u>Proposed Maximum Offering Price per Share (2)</u>	<u>Proposed Maximum Aggregate Offering Price (3)</u>	<u>Amount of Registration Fee</u>
Common Stock, \$0.001 par value per share	5,000,000	\$ 3.90	\$ 19,500,000.00	\$ 2,127.45

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall be deemed to cover any additional securities that may from time to time result from stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act. The price per share and aggregate offering prices are calculated on the basis of \$3.90, the average of the high and low price of the registrant's Common Stock as reported on the NASDAQ Global Select Market on July 23, 2021.
- (3) This Registration Statement registers an additional 5,000,000 shares under the amendment to our Amended and Restated 2017 Omnibus Incentive Plan (the "Plan"). We previously issued 7,700,000 shares issuable under the Plan (Registration Statement No. 333- 218984 and Registration Statement No. 333-241666).

EXPLANATORY NOTE

Pursuant to General Instruction E to Form S-8 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement on Form S-8 (the “Registration Statement”) is filed by Athenex, Inc. (the “Company”) to register 5,000,000 additional shares of common stock, par value \$0.001 per share (the “Common Stock”) that may be issued under the Amended and Restated 2017 Omnibus Incentive Plan (the “Amended Plan”). On April 29, 2021, the Registrant filed with the U.S. Securities and Exchange Commission (the “SEC”) a definitive proxy statement that included proposals to, among other things, increase the number of shares available for issuance under the Amended Plan by 5,000,000 shares of Common Stock. The proposal to increase the number of shares available for issuance under the Amended Plan was approved by the Company’s stockholders on June 18, 2021.

Pursuant to General Instruction E to Form S-8 under the Securities Act, the Company incorporates into this Registration Statement the content of its prior Registration Statements filed on June 26, 2017 (Registration No. 333-218984) and August 6, 2020 (Registration No. 333-241666) except as expressly modified herein.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The SEC’s rules allow the Company to incorporate by reference information into this Registration Statement. This enables the Company to disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this Registration Statement from the date the Company files such document. Any reports filed by the Company with the SEC after the date of this Registration Statement, and before the date that the offering of the securities by means of this Registration Statement is terminated, will automatically update and, where applicable, supersede any information contained in this Registration Statement or incorporated by reference in this Registration Statement.

We incorporate by reference into this Registration Statement the following documents or information filed with the SEC (other than, in each case, documents or information deemed to have been furnished under Item 2.02 or Item 7.01 of Form 8-K, which is not deemed filed in accordance with SEC rules and is not incorporated by reference herein):

- Our Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2020 filed with the SEC on March 1, 2021;
- Our Quarterly Report on [Form 10-Q](#) for the quarterly period ended March 31, 2021 filed with the SEC on May 6, 2021;
- Our Current Reports on Form 8-K filed with the SEC on [May 5, 2021](#) (as amended on July 20, 2021), [May 6, 2021](#), and [June 23, 2021](#) and [July 20, 2021](#); and
- The description of our Common Stock contained in [Exhibit 4.4](#) to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 filed with the SEC on March 1, 2021, and any amendment or report filed for the purpose of updating such description.

We also incorporate by reference all documents we file in the future pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the sale of all the securities covered by this Registration Statement, except in each case the information contained in such document to the extent “furnished” and not “filed.”

INDEX TO EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
4.1	<u>Amended and Restated Certificate of Incorporation of the Company, effective as of June 19, 2017</u>
4.2	<u>Amended and Restated Bylaws of the Company, effective as of June 19, 2017</u>
4.3	<u>Specimen Common Stock Certificate</u>
4.4	<u>Description of Securities</u>
4.5	<u>Athenex, Inc. Amended and Restated 2017 Omnibus Incentive Plan</u>
4.6*	<u>First Amendment to Athenex, Inc. Amended and Restated 2017 Omnibus Incentive Plan</u>
5.1*	<u>Legal Opinion of Harter Secrest & Emery LLP</u>
23.1*	<u>Consent of Independent Registered Public Accounting Firm</u>
23.2*	<u>Consent of Moss Adams LLP</u>
23.3*	<u>Consent of Harter Secrest & Emery LLP (included in Exhibit 5.1)</u>
24.1	<u>Power of Attorney (included on signature page)</u>

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Buffalo, State of New York, on this 27 day of July, 2021.

ATHENEX, INC.

By: /s/ Johnson Y.N. Lau

Johnson Y.N. Lau

Chief Executive Officer and Board Chairman
(Principal Executive Officer)

POWER OF ATTORNEY

Each person whose signature appears below appoints Johnson Y.N. Lau and Teresa Bair, and each of them, the individual's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the person and in his name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this Registration Statement, new registration statements pursuant to General Instruction E of Form S-8 pertaining to the registration of additional securities and post-effective amendments thereto, and any and all other documents in connection therewith to be filed with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact as agents or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Johnson Y.N. Lau</u> Johnson Y.N. Lau	Chief Executive Officer and Board Chairman (Principal Executive Officer)	July 27, 2021
<u>/s/ Randoll Sze</u> Randoll Sze	Chief Financial Officer (Principal Financial and Accounting Officer)	July 27, 2021
<u>/s/ Kim Campbell</u> Kim Campbell	Director	July 27, 2021
<u>/s/ Manson Fok</u> Manson Fok	Director	July 27, 2021
<u>/s/ Jinn Wu</u> Jinn Wu	Director	July 27, 2021
<u>/s/ Benson Tsang</u> Benson Tsang	Director	July 27, 2021
<u>/s/ Stephanie Davis</u> Stephanie Davis	Director	July 27, 2021
<u>/s/ Jordan Kanfer</u> Jordan Kanfer	Director	July 27, 2021
<u>/s/ John Moore Vierling</u> John Moore Vierling	Director	July 27, 2021
<u>/s/ Robert Spiegel</u> Robert Spiegel	Director	July 27, 2021

**FIRST AMENDMENT
TO THE
ATHENEX, INC.**

**AMENDED AND RESTATED
2017 OMNIBUS INCENTIVE PLAN**

The Athenex, Inc. Amended and Restated 2017 Omnibus Incentive Plan (the “Plan”), is hereby amended as follows, effective June 18, 2021:

1. Section 3(a) of the Plan is hereby amended and restated in its entirety to provide as follows:

“(a) Subject to the provisions of Section 10 below, the maximum aggregate number of Shares which may be issued pursuant to all Awards shall be 12,700,000 Shares. Notwithstanding the foregoing, subject to the provisions of Section 10, below, the maximum aggregate number of Shares that may be issued pursuant to Incentive Stock Options is 12,700,000 Shares. The Shares to be issued pursuant to Awards may be authorized, but unissued, or reacquired Common Stock.”

2. Section 4(d) of the Plan is hereby amended and restated in its entirety to provide as follows:

“(d) [Intentionally omitted.]”

3. Section 12 of the Plan is hereby amended and restated in its entirety to provide as follows:

“12. Effective Date and Term of Plan. The original Plan became effective upon the Company’s initial public offering on June 13, 2017. On May 23, 2019, the Board adopted the amended and restated Plan, which became effective upon the approval of the stockholders thereof on June 5, 2020. The Plan was amended to increase the maximum aggregate number of Shares available under the Plan by a First Amendment thereto, which was adopted by the Board on April 19, 2021, and became effective upon the approval of the stockholders thereof on June 18, 2021. Unless sooner terminated as provided in Section 13, the Plan shall terminate on the date that is ten (10) years from the date that the Plan was last approved by the stockholders of the Company; provided that the termination of the Plan shall not adversely affect any rights under Awards already granted to a Grantee. Incentive Stock Options may only be granted for ten (10) years from the date that the Plan was last approved by the Board.”



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

July 27, 2021

Athenex, Inc.
1001 Main Street, Suite 600
Buffalo, NY 14203

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Athenex, Inc., a Delaware corporation (the "Company"), in connection with its filing of a Registration Statement on Form S-8 (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the registration of 5,000,000 additional shares of the Company's common stock (the "Shares"), par value \$0.001 per share, reserved for issuance pursuant to the terms of the Athenex, Inc. Amended and Restated 2017 Omnibus Incentive Plan, as amended by the First Amendment to the Amended and Restated 2017 Omnibus Incentive Plan, effective June 21, 2021 (the "Plan"). The Company previously registered: (i) 4,200,000 shares pursuant to the Plan under the Company's existing Registration Statement on Form S-8 (File No. 333-218984); and (ii) 3,500,000 shares pursuant to the Plan under the Company's existing Registration Statement on Form S-8 (File No. 333-241666). This opinion is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the filing of the Registration Statement.

For purposes of this opinion, we have with your permission made the following assumptions, in each case without independent verification: (i) the due authorization, execution and delivery of all documents by all the parties thereto; (ii) the genuineness of all signatures on all documents submitted to us; (iii) the authenticity and completeness of all documents, corporate records, certificates and other instruments (the "Records") submitted to us; (iv) that photocopy, electronic, certified, conformed, facsimile and other copies submitted to us of the Records conform to the original Records; (v) the legal capacity of all individuals executing documents; (vi) that all documents are the valid and binding obligations of each of the parties thereto, enforceable against such parties in accordance with their respective terms and that no such documents have been amended or terminated orally or in writing; (vii) that the statements contained in the certificates and comparable documents of public officials, officers and representatives of the Company and other persons on which we have relied for the purposes of

1600 BAUSCH & LOMB PLACE ROCHESTER, NY 14604-2711 PHONE: 585.232.6500 FAX: 585.232.2152
ROCHESTER, NY • BUFFALO, NY • ALBANY, NY • CORNING, NY • NEW YORK, NY

July 27, 2021

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this opinion are true and correct; and (viii) that at the time the Shares are issued, the Company will be validly existing and in good standing, and there will be sufficient Shares authorized under the Company's Amended and Restated Certificate of Incorporation, as amended and then in effect, and not otherwise issued or reserved for issuance. As to all questions of fact material to this opinion, we have relied (without independent verification) upon certificates or comparable documents of officers and representatives of the Company.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) effectiveness of the Registration Statement with the SEC, (ii) issuance of the Shares in accordance with the terms and conditions of the Plan, and (iii) receipt by the Company of the legal consideration for the Shares as specified in the Plan in an amount no less than the par value of such Shares, the Shares will be validly issued, fully paid and nonassessable.

We express no opinion with respect to the effect of any law other than the Delaware General Corporation Law.

This opinion letter has been prepared in accordance with the customary practice of lawyers who regularly give, and lawyers who regularly advise opinion recipients concerning, opinions of the type contained herein.

This opinion letter deals only with the specified legal issues expressly addressed herein, and you should not infer any opinion that is not explicitly addressed herein from any matter stated in this letter.

We consent to the use of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act and the rules and regulations thereunder. This opinion is rendered to you as of the date hereof and we assume no obligation to advise you or any other person hereafter with regard to any change after the date hereof in the circumstances or the law that may bear on the matters set forth herein even though the changes may affect the legal analysis or legal conclusion or other matters in this letter.

Very truly yours,
/s/ Harter Secrest & Emery LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated March 1, 2021, relating to the consolidated financial statements of Athenex, Inc. and subsidiaries (the “Company”), and the effectiveness of the Company’s internal controls over financial reporting, appearing in the Annual Report on Form 10-K of Athenex, Inc. and subsidiaries for the year ended December 31, 2020.

/s/ Deloitte & Touche LLP

Williamsville, New York
July 27, 2021

Consent of Independent Auditors

We consent to the incorporation by reference in the Registration Statement on Form S-8 of Athenex, Inc. of our report dated July 9, 2021, relating to the consolidated financial statements of Kuur Therapeutics Inc., appearing in the Form 8-K/A of Athenex, Inc. dated May 4, 2021, filed with the Securities and Exchange Commission.

/s/ Moss Adams LLP

Denver, Colorado
July 26, 2021