

AGILE THERAPEUTICS INC
Form 8-K
January 23, 2019

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

January 23, 2019

Date of report (Date of earliest event reported)

Agile Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36464
(Commission
File Number)

23-2936302
(IRS Employer
Identification No.)

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101 Poor Farm Road
Princeton, New Jersey
(Address of principal executive offices)

08540
(Zip Code)

Registrant's telephone number, including area code **(609) 683-1880**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K 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)).

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 1.01 Entry Into a Material Definitive Agreement.

On January 23, 2019, Agile Therapeutics, Inc. (the Company) entered into a Common Stock Sales Agreement (the Sales Agreement) with H.C. Wainwright & Co., LLC (Wainwright) with respect to an at the market offering program, under which the Company may, from time to time in its sole discretion, issue and sell through or to Wainwright, acting as agent or principal, up to \$10.0 million of shares of the Company's common stock, par value \$0.0001 per share (the Placement Shares). The issuance and sale, if any, of the Placement Shares by the Company under the Sales Agreement will be made pursuant to a prospectus supplement to the Company's registration statement on Form S-3, originally filed with the Securities and Exchange Commission (the SEC) on November 2, 2018, and declared effective by the SEC on November 14, 2018.

Pursuant to the Sales Agreement, Wainwright may sell the Placement Shares by any method permitted by law deemed to be an at the market offering as defined in Rule 415 of the Securities Act of 1933, as amended (the Securities Act). Wainwright will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the Placement Shares from time to time, based upon instructions from the Company (including any price or size limits or other customary parameters or conditions the Company may impose).

The Company will pay Wainwright a commission of 3.0% of the gross sales proceeds of any Placement Shares sold through Wainwright, acting as agent, under the Sales Agreement. In addition, pursuant to the terms of the Sales Agreement, the Company has agreed to reimburse Wainwright for the documented fees and costs of its legal counsel reasonably incurred in connection with (i) entering into the transactions contemplated by the Sales Agreement in an amount not to exceed \$50,000 in the aggregate and (ii) Wainwright's ongoing diligence, drafting and other filing requirements arising from the transactions contemplated by the Sales Agreement in an amount not to exceed \$2,500 in the aggregate per calendar quarter.

The Company is not obligated to make any sales of Placement Shares under the Sales Agreement. The offering of Placement Shares pursuant to the Sales Agreement will terminate upon the earlier to occur of (i) the issuance and sale, through Wainwright, of all Placement Shares subject to the Sales Agreement and (ii) termination of the Sales Agreement in accordance with its terms.

The Sales Agreement contains representations, warranties and covenants that are customary for transactions of this type. In addition, the Company has agreed to indemnify Wainwright against certain liabilities, including liabilities under the Securities Act and the Securities Exchange Act of 1934, as amended.

The foregoing description of the Sales Agreement is not complete and is qualified in its entirety by reference to the full text of the Sales Agreement, a copy of which is filed herewith as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The legal opinion of Morgan, Lewis & Bockius LLP as to the legality of the Placement Shares is being filed as Exhibit 5.1 to this Current Report on Form 8-K.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the securities discussed herein, nor shall there be any offer, solicitation or sale of the securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

| Exhibit No. | Description |
|--------------------|---|
| 1.1 | <u>Common Stock Sales Agreement dated January 23, 2019 by and between Agile Therapeutics, Inc. and H.C. Wainwright & Co., LLC</u> |
| 5.1 | <u>Opinion of Morgan, Lewis & Bockius LLP</u> |
| 23.1 | <u>Consent of Morgan, Lewis & Bockius LLP (contained in Exhibit 5.1)</u> |

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.

Agile Therapeutics, Inc.

Dated: January 23, 2019

By: /s/ Alfred Altomari
Name: Alfred Altomari
Title: Chairman and Chief Executive Officer