

**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**

February 9, 2024

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.)

500 College Road East, Suite 310
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 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 Act:

Title of Each Class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.0001 per share	AGRX	The 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 1.01. Entry into a Material Definitive Agreement.

As previously disclosed, on February 10, 2020, Agile Therapeutics, Inc., (the “Company”) entered into a Credit Agreement and Guaranty with Perceptive Credit Holdings III, LP, a related party (“Perceptive”), for a senior secured term loan credit facility of up to \$35.0 million (as amended from time to time, the “Perceptive Credit Agreement”).

On February 9, 2024, the Company and Perceptive entered into an eighth amendment to the Perceptive Credit Agreement (the “Eighth Amendment”). The Eighth Amendment extends the maturity date of the Perceptive Credit Agreement from February 10, 2024 until March 11, 2024 (the “Maturity Date”). As previously disclosed, beginning on December 1, 2023, the Company has been making monthly payments of \$150,000 on the outstanding loan balance. Such payments will continue until the Maturity Date, at which time all remaining principal amount outstanding is due.

The foregoing description of the Eighth Amendment does not purport to be complete and is qualified in its entirety by reference to the Eighth Amendment, a copy of which is filed as Exhibit 10.1 to this Form 8-K and is incorporated herein by reference.

Item 2.02. Results of Operations and Financial Condition.

On February 15, 2024, the Company issued a press release disclosing its preliminary expectations for the net revenue and operating expenses (“OPEX”) for the year ended December 31, 2023 and receipt of the Second Extension Notice (as defined and further discussed in Item 8.01 of this Form 8-K). The Company expects net revenue for the 12 months ended December 31, 2023 to be in the range of \$20 to \$21 million. The Company also expects OPEX for the 12 months ended December 31, 2023 to be in the range of \$30 to \$31.5 million compared to \$56.6 million for the full year ended December 31, 2022. Management has recommended to the Board of Directors of the Company that the Company not pay performance bonuses for the 2023 fiscal year. As a result, the Company plans to reverse an accrual of approximately \$2.1 million.

The Company is furnishing a copy of the press release, which is attached hereto as Exhibit 99.1. Because the Company’s financial statements for the year ended December 31, 2023 have not yet been finalized, these preliminary statements regarding the Company’s net revenue and OPEX are subject to change, and the Company’s actual net revenue and OPEX may differ materially from these preliminary estimates. Accordingly, you should not place undue reliance on these preliminary estimates.

In accordance with General Instruction B.2 of Form 8-K, the information included in this Item 2.02, including Exhibit 99.1 hereto, shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any filing made by the Company under the Exchange Act or the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing.

Item 8.01. Other Events.

As disclosed above, on February 15, 2024, the Company issued a press release announcing that on February 13, 2024, it received a letter (the “Second Extension Notice”) from the Hearings Panel (the “Panel”) of The Nasdaq Stock Market (“Nasdaq”) notifying the Company that it had been granted an additional period, or until March 25, 2024, to regain compliance with the minimum stockholders’ equity requirement for continued listing on the Nasdaq Capital Market set forth in Nasdaq Listing Rule 5550(b)(1) (the “Rule”) requiring companies listed on the Nasdaq Capital Market to maintain stockholder’s equity of at least \$2,500,000.

As previously disclosed, on March 27, 2023 the Company received a letter from the Nasdaq Listing Qualifications Department (the “Staff”) indicating that it was not in compliance with the Rule. On June 2, 2023, based on the Staff’s review of the materials submitted by the Company, the Staff granted the Company’s request for an extension until September 25, 2023 to comply with the Rule. On September 27, 2023, the Company received a notice from the Staff advising the Company that the Staff had determined that the Company did not meet the terms of the extension and that unless the Company requests an appeal, the Staff would proceed with delisting. The Company submitted a hearing request to the Panel, which stayed the delisting, and the hearing was held on November 30, 2023. On December 5, 2023, the Company received a letter from the Nasdaq Panel (the “First

Extension Notice”) notifying the Company that it had been granted an additional period, or until February 16, 2024, to regain compliance with the Rule.

The Company’s common stock will continue to trade on the Nasdaq Capital Market under the symbol “AGRX” at least pending the completion of the period of time granted to demonstrate compliance with the Rule. There can be no assurance that the Company will be able to regain compliance with the applicable Nasdaq listing requirements. If the Company’s common stock is delisted, it could be more difficult to buy or sell the Company’s common stock or to obtain accurate quotations, and the price of the Company’s common stock could suffer a material decline. Delisting could also impair the Company’s ability to raise capital. If trading in the Company’s common stock is suspended on the Nasdaq Capital Market or the Company’s common stock is delisted by Nasdaq, it could negatively impact the Company as it would likely reduce the liquidity and market price of the Company’s common stock, reduce the number of investors willing to hold or acquire the Company’s common stock, negatively impact the Company’s ability to access equity markets and obtain financing, and impair the Company’s ability to provide equity incentives.

Forward-Looking Statements

Certain information contained in this Current Report on Form 8-K includes “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We may in some cases use terms such as “predicts,” “believes,” “potential,” “continue,” “anticipates,” “estimates,” “expects,” “plans,” “intends,” “may,” “could,” “might,” “likely,” “will,” “should” or other words that convey uncertainty of the future events or outcomes to identify these forward-looking statements. Our forward-looking statements are based on current beliefs and expectations of our management team that involve risks, potential changes in circumstances, assumptions, and uncertainties, including statements regarding our financial condition, our ability to repay our debt to Perceptive, our expected net revenue and expected operating expenses for fiscal year 2023, and our ability to regain compliance with Nasdaq continued listing requirements and continue trading on the Nasdaq Capital Market. Any or all of the forward-looking statements may turn out to be wrong or be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties. These forward-looking statements are subject to risks and uncertainties including risks related to our ability to raise enough capital to fund our operations in the near term and long term, including our ability to obtain funding through public or private equity offerings, debt financings or other sources, on terms acceptable to us or at all, our ability to come into and maintain compliance with the Nasdaq Capital Market listing requirements, the potential de-listing of our shares on the Nasdaq Capital Market, our ability to continue to commercialize and grow Twirla and the other risks set forth in our filings with the U.S. Securities and Exchange Commission, including our Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q. For all these reasons, actual results and developments could be materially different from those expressed in or implied by our forward-looking statements. You are cautioned not to place undue reliance on these forward-looking statements, which are made only as of the date of this Current Report on Form 8-K. We undertake no obligation to publicly update such forward-looking statements to reflect subsequent events or circumstances.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

Exhibit Number	Description
10.1	Eighth Amendment to Credit Agreement and Guaranty, by and among Agile Therapeutics, Inc., the guarantors from time to time party thereto, the lenders from time to time party thereto and Perceptive Credit Holdings III, LP, dated as of February 9, 2024.
99.1	Press Release dated February 15, 2024.
104	Cover Page Interactive Data File (Embedded within the Inline XBRL Document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Agile Therapeutics, Inc.

Dated: February 15, 2024

By: /s/ Alfred Altomari

Name: Alfred Altomari

Title: Chairperson and Chief Executive Officer

EIGHTH AMENDMENT TO CREDIT AGREEMENT AND GUARANTY

This Eighth Amendment to Credit Agreement and Guaranty, dated as of February 9, 2024 (this “Eighth Amendment”), is entered into by and among, AGILE THERAPEUTICS, INC., a Delaware corporation (the “Borrower”), the Lenders party hereto (each a “Lender” and collectively, the “Lenders”) and PERCEPTIVE CREDIT HOLDINGS III, LP, a Delaware limited partnership, as a lender and as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the “Administrative Agent”).

RECITALS

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to that certain Credit Agreement and Guaranty, dated as of February 10, 2020 (as amended by that certain Waiver and First Amendment to Credit Agreement and Guaranty dated as of February 26, 2021, that certain Waiver and Second Amendment to Credit Agreement and Guaranty dated as of January 7, 2022, that certain Waiver and Third Amendment to Credit Agreement and Guaranty dated as of March 10, 2022, that certain Fourth Amendment to Credit Agreement and Guaranty dated as of May 11, 2022, that certain Fifth Amendment to Credit Agreement and Guaranty dated July 25, 2022, that certain Waiver and Sixth Amendment to Credit Agreement and Guaranty dated March 21, 2023, and that certain Seventh Amendment to Credit Agreement and Guaranty dated October 30, 2023, the “Existing Credit Agreement”; the Existing Credit Agreement, as amended by this Eighth Amendment, the “Credit Agreement”);

WHEREAS, the Borrower has requested that the Administrative Agent and the Lenders agree to amend certain provisions of the Existing Credit Agreement; and

WHEREAS, Administrative Agent and the Lenders are willing to make such amendments to the Existing Credit Agreement, in accordance with and subject to the terms and conditions of this Eighth Amendment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and the agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. *Certain Definitions.* Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Existing Credit Agreement.

ARTICLE II
AMENDMENT

Section 2.1. *Amendments to Credit Agreement.* Upon satisfaction of the conditions set forth in Article III hereof, the Borrower, the Guarantors, the Lenders and the Administrative Agent hereby agree that:

(a) Section 1.01 (Certain Defined Terms) of the Existing Credit Agreement is hereby amended by amending and restating the definition of “Stated Maturity Date” in Section 1.01 to read as follows:

“*Stated Maturity Date*” means March 11, 2024.

ARTICLE III
EFFECTIVENESS

Section 3.1. *Effectiveness.* The effectiveness of this Eighth Amendment is subject to the Administrative Agent’s receipt of a copy of this Eighth Amendment duly executed by each Obligor and Lender party hereto (such date, the “*Eighth Amendment Effective Date*”).

ARTICLE IV
MISCELLANEOUS

Section 4.1. *Reference to and Effect on the Loan Documents.*

(a) This Eighth Amendment constitutes a Loan Document. On and after the date hereof, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to the “Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement after giving effect to this Eighth Amendment.

(b) Except as specifically set forth in this Eighth Amendment, the Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

Section 4.2. *Headings.* The headings in this Eighth Amendment are included for convenience of reference only and will not affect in any way the meaning or interpretation of this Eighth Amendment.

Section 4.3. *Governing Law.* This Eighth Amendment, and all questions concerning the construction, validity, enforcement and interpretation of the Eighth Amendment shall be governed by and construed and enforced in accordance with the internal laws of the State of New York.

Section 4.4. *Counterparts.* This Eighth Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Eighth Amendment. Delivery of an executed counterpart of this Eighth

Amendment by facsimile, DocuSign or a scanned copy by electronic mail shall be equally as effective as delivery of an original executed counterpart of this Eighth Amendment.

Section 4.5. Severability. If any term or other provision of this Eighth Amendment is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Eighth Amendment will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Eighth Amendment so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 4.6. Binding Effect. This Eighth Amendment will be binding upon and inure to the benefit of and is enforceable by the respective successors and permitted assigns of the parties hereto.

Section 4.7. Incorporation of Sections 13.10 and 13.11 of the Credit Agreement. The provisions set forth in Sections 13.10 (Jurisdiction, Service of Process and Venue) and 13.11 (Waiver of Jury Trial) of the Credit Agreement shall apply to this Eighth Amendment in all respects.

[Remainder of page intentionally left blank; signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have caused this Eighth Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

BORROWER:

AGILE THERAPEUTICS, INC.

By: /s/ Al Altomari

Name: Al Altomari

Title: CEO

ADMINISTRATIVE AGENT AND LENDERS:

PERCEPTIVE CREDIT HOLDINGS II, LP

By: Perceptive Credit Opportunities GP, LLC, its
general partner

By: /s/ Sandeep Dixit_____

Name: Sandeep Dixit

Title: Chief Credit Officer

By: /s/ Sam Chawla_____

Name: Sam Chawla

Title: Portfolio Manager

Agile Therapeutics Announces Extension Granted by Nasdaq Hearings Panel to Regain Compliance with the Stockholders' Equity Continued Listing Requirement & Provides Performance Update

Company Granted Extension by Nasdaq Hearings Panel to Regain Compliance with the Stockholders' Equity Continued Listing Requirement Until March 25, 2024

Net Revenue for Full Year 2023 Expected to be in the Range of \$20 to \$21 Million, an Increase of 84% to 93% Compared to Full Year 2022

GAAP Operating Expenses for Full Year 2023 Expected to be in the Range of \$30 to \$31.5 Million, a Decrease of 47% to 44% Compared to Full Year 2022

PRINCETON, N.J., February 15, 2024 (GLOBE NEWSWIRE) – Agile Therapeutics, Inc., (Nasdaq: AGRX), a women's healthcare company, today announced it has been granted an extension by Nasdaq to regain compliance with the stockholders' equity requirement for continued listing and provided performance update for full year 2023.

Company Granted Extension by Nasdaq Hearings Panel to Regain Compliance with the Stockholders' Equity Continued Listing Requirement

On February 13, 2024, the Company received a letter from the Hearings Panel ("Panel") of The Nasdaq Stock Market ("Nasdaq") notifying the Company that it has been granted an additional period, or until March 25, 2024, to regain compliance with the minimum stockholders' equity requirement for continued listing on the Nasdaq Capital Market set forth in Nasdaq Listing Rule 5550(b)(1) requiring companies listed on the Nasdaq Capital Market to maintain stockholder's equity of at least \$2,500,000. The Company had previously presented its plan to the Panel and is continuing to proceed with initiatives to regain compliance within the extension granted.

Expected Full Year 2023 Performance Update (Unaudited)

The Company also announced its preliminary expectations for net revenue and operating expenses for the full year 2023.

- Full year 2023 net revenue is expected to be in the range of \$20 to \$21 million compared to \$10.9 million for the full year 2022, representing an increase of 84% to 93%.
- Full year 2023 GAAP operating expenses ("OPEX") are expected to be in the range of \$30 to \$31.5 million compared to \$56.6 million for the full year 2022, representing a decrease of 47% to 44%. Management has recommended to the Board of Directors, that the Company not pay performance bonuses for the 2023 fiscal year. As a result, the Company plans to reverse an accrual of approximately \$2.1 million.

The preliminary results and estimates in this press release are based on management's initial review of our operations for the fiscal year ended December 31, 2023, and are subject to revision based upon our quarter-end and year-end closing procedures and the completion of the external audit of our year-end financial statements.

About Agile Therapeutics, Inc.

Agile Therapeutics is a women's healthcare company dedicated to fulfilling the unmet health needs of today's women. Our product and product candidates are designed to provide women with contraceptive options that offer freedom from taking a daily pill, without committing to a longer-acting method. Our initial product, Twirla[®], (levonorgestrel and ethinyl estradiol), a transdermal system, is a non-daily prescription contraceptive. Twirla is based on our proprietary transdermal patch technology, called Skinfusion[®], which is designed to allow drug delivery through the skin. For more information, please visit the company website at www.agiletherapeutics.com. The Company may occasionally disseminate material, nonpublic information on the Company's website [and LinkedIn](#) account.

Forward-Looking Statements

Certain information contained in this press release includes "forward-looking statements", within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We may, in some cases use terms such as "predicts," "believes," "potential," "continue," "anticipates," "estimates," "expects," "plans," "intends," "may," "could," "might," "likely," "will," "should" or other words that convey uncertainty of the future events or outcomes to identify these forward-looking statements. Our forward-looking statements are based on current beliefs and expectations of our management team that involve risks, potential changes in circumstances, assumptions, and uncertainties, including statements regarding our financial condition, our ability to repay our debt to Perceptive, our expected net revenue and expected operating expenses for fiscal year 2023, and our ability to regain compliance with Nasdaq continued listing requirements and continue trading on the Nasdaq Capital Market. Any or all of the forward-looking statements may turn out to be wrong or be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties. These forward-looking statements are subject to risks and uncertainties including risks related to our ability to raise enough capital to fund our operations in the near term and long term, including our ability to obtain funding through public or private equity offerings, debt financings or other sources, on terms acceptable to us or at all, our ability to come into and maintain compliance with the Nasdaq Capital Market listing requirements, the potential de-listing of our shares on the Nasdaq Capital Market, our ability to continue to commercialize and grow Twirla the other risks set forth in our filings with the U.S. Securities and Exchange Commission, including For a more detailed description of the risks and uncertainties that could cause actual results to differ from those expressed in these forward-looking statements, as well as risks relating to our business in general, please refer to our Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q. You are cautioned not to place undue reliance on these forward-looking statements, which are made only as of the date of this press release. We undertake no obligation to publicly update such forward-looking statements to reflect subsequent events or circumstance.

Contact:

Matt Riley
Head of Investor Relations & Corporate Communications
mriley@agiletherapeutics.com
