

AMICUS THERAPEUTICS INC
Form 10-K/A
March 03, 2017

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2016

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 001-33497

Amicus Therapeutics, Inc.

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(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

71-0869350
(IRS Employer
Identification No.)

1 Cedar Brook Drive, Cranbury, NJ 08512

(Address of principal executive offices)

Telephone: **(609) 662-2000**

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Name of each exchange on which registered |
|--|--|
| Common Stock, par value \$0.01 per share | The NASDAQ Stock Market LLC |

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§22.405) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer
**(Do not check if a smaller reporting
company)**

Smaller Reporting Company

Indicate by check mark if the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the 99,320,855 shares of voting common equity held by non-affiliates of the registrant, computed by reference to the closing price as reported on The NASDAQ Global Market, as of the last business day of the registrant's most recently completed second fiscal quarter (June 30, 2016) was approximately \$542,291,868. Shares of voting and non-voting stock held by executive officers, directors and holders of more than 10% of the outstanding stock have been excluded from this calculation because such persons or institutions may be deemed affiliates. This determination of affiliate status is not a conclusive determination for other purposes.

As of February 15, 2017, there were 142,741,036 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE: Portions of the Proxy Statement for the registrant's 2016 Annual Meeting of Stockholders which is to be filed subsequent to the date hereof are incorporated by reference into Part III of this Annual Report on Form 10-K.

EXPLANATORY NOTE

Amicus Therapeutics, Inc. (the Company) is filing this Amendment No. 1 (Amendment No. 1) to its Annual Report on Form 10-K for the fiscal year ended December 31, 2016, which was originally filed with the Securities and Exchange Commission (SEC) on March 1, 2017 (the Original Annual Report), for the sole purpose of correcting the number of shares of common stock outstanding as of February 15, 2017 which was reported on the cover page of the Original Annual Report.

This Amendment No. 1 on Form 10-K/A continues to speak as of the date of the filing of the Original Annual Report, and the Company has not changed the financial statements nor updated the disclosures contained therein to reflect any events that occurred at a later date.

PART IV**Item 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULE**(a) **1. Consolidated Financial Statements**

The Consolidated Financial Statements are filed as part of this report.

2. Consolidated Financial Statement Schedules

All schedules are omitted because they are not required or because the required information is included in the Consolidated Financial Statements or notes thereto.

3. Exhibits The exhibits listed in the accompanying Exhibit Index are filed as part of this Amendment No. 1 to Annual Report on Form 10-K.

| Exhibit No. | Filed Exhibit Description | Form | Incorporated by Reference to SEC Filing Date | SEC Filing Exhibit No. | Filed with this Form 10-K |
|--------------------|---|-------------|---|-------------------------------|----------------------------------|
| 2.1 | Agreement and Plan of Merger, dated November 19, 2013, by and among Amicus Therapeutics, Inc., CB Acquisition Corp., Callidus BioPharma, Inc., and Cuong Do | Form 8-K | 2/12/2014 | 2.1 | |
| +2.2 | Agreement and Plan of Merger, dated August 30, 2015, by and among the Registrant, Titan Merger Sub Corp. and Scioderm, Inc. | Form 8-K | 9/3/15 | 2.1 | |
| 2.3 | Amendment to Agreement and Plan of Merger, dated September 30, 2015, by and among the Registrant, Titan Merger Sub Corp. and Scioderm, Inc. | Form 8-K | 9/30/15 | 2.2 | |
| +2.4 | Agreement and Plan of Merger, dated July 5, 2016, by and among MiaMed, Inc., the Registrant and Minervas Merger Sub, Inc. | Form 8-K | 7/6/16 | 2.1 | |
| 3.1 | | Form 10-K | 2/28/12 | 3.1 | |

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Restated Certificate of
Incorporation of the Registrant.

| | | | | |
|-----|---|-----------------------|-----------|-----|
| 3.2 | Restated By-laws of the Registrant. | S-1/A (333-141700) | 4/27/07 | 3.4 |
| 3.3 | Certificate of Amendment to the Registrant's Restated Certificate of Incorporation, as amended. | Form 8-K | 6/10/2015 | 3.1 |

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| Exhibit No. | Filed Exhibit Description | Form | Incorporated by Reference to SEC Filing Date | SEC Filing Exhibit No. | Filed with this Form 10-K |
|-------------|--|-----------------------|--|------------------------|---------------------------|
| 4.1 | Specimen Stock Certificate evidencing shares of common stock | S-1 (333-141700) | 3/30/07 | 4.1 | |
| 4.2 | Third Amended and Restated Investor Rights Agreement, dated as of September 13, 2006, as amended | S-1 (333-141700) | 3/30/07 | 4.3 | |
| 4.3 | Form of Warrant issued on November 20, 2013 | Form 8-K | 11/21/13 | 10.2 | |
| 4.4 | Form of Warrant, issued on October 1, 2015 | Form 8-K | 10/1/15 | 4.1 | |
| 4.5 | Form of Warrant to Purchase Common Stock | Form 8-K | 2/22/16 | 4.1 | |
| 4.6 | Form of Warrant to Purchase Common Stock | Form 8-K | 7/1/16 | 4.1 | |
| 4.7 | Form of Indenture | Form S-3ASR | 4/29/16 | 4.7 | |
| 4.8 | Indenture, dated December 21, 2016, by and between the Registrant and Wilmington Trust, National Association | Form 8-K | 12/21/16 | 4.1 | |
| *10.1 | 2002 Equity Incentive Plan, as amended, and forms of option agreements thereunder | S-1/A (333-141700) | 4/27/07 | 10.1 | |
| +10.2 | Amended and Restated License Agreement, dated October, 31, 2008, by and between the Registrant and Mount Sinai School of Medicine of New York University | Form 10-K | 2/6/09 | 10.3 | |
| +10.3 | License Agreement, dated as of June 26, 2003, by and between the Registrant and University of Maryland, Baltimore County, as amended | S-1 (333-141700) | 3/30/07 | 10.4 | |
| +10.4 | Exclusive License Agreement, dated as of June 8, 2005, by and between the Registrant and Novo Nordisk, A/S | S-1 (333-141700) | 3/30/07 | 10.5 | |
| *10.5 | Letter Agreement, dated as of December 19, 2005, by and between the Registrant and David Lockhart, Ph.D. | S-1 (333-141700) | 3/30/07 | 10.10 | |
| 10.6 | Form of Director and Officer Indemnification Agreement | S-1 (333-141700) | 3/30/07 | 10.17 | |

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| Exhibit No. | Filed Exhibit Description | Form | Incorporated by Reference to SEC Filing Date | SEC Filing Exhibit No. | Filed with this Form 10-K |
|-------------|---|-----------------------|--|------------------------|---------------------------|
| *10.7 | Amended and Restated 2007 Director Option Plan and form of option agreement | Form 8-K | 6/18/10 | 10.2 | |
| *10.8 | 2007 Employee Stock Purchase Plan | S-1/A (333-141700) | 5/17/07 | 10.24 | |
| *10.11 | Management Bonus Program Summary | Form 8-K | 6/9/16 | 10.1 | |
| *10.12 | Letter Agreement, dated as of May 10, 2010 by and between the Registrant and Ken Valenzano | Form 10-K | 3/4/11 | 10.32 | |
| *10.14 | Letter Agreement, dated as of January 3, 2011 by and between the Registrant and Enrique Dilone | Form 10-K | 3/4/11 | 10.34 | |
| 10.15 | Lease Agreement dated August 16, 2011 between the Registrant and Cedar Brook 3 Corporate Center, L.P. | Form 8-K | 8/16/11 | 10.1 | |
| 10.17 | Second Amendment to Lease Agreement dated as of May 16, 2013 by and between the Registrant and A/G Touchstone, TP, LLC. | Form 8-K | 5/22/13 | 10.1 | |
| *10.18 | Letter Agreement, dated as of June 5, 2013 by and between the Registrant and Jeffrey P. Castelli | Form 10-Q | 8/7/13 | 10.6 | |
| *10.19 | Letter Agreement, dated as of June 5, 2013 by and between the Registrant and Jayne Gershkowitz | Form 10-Q | 8/7/13 | 10.7 | |
| 10.20 | Securities Purchase Agreement, dated November 20, 2013 by and among the Company and the purchasers identified therein | Form 8-K | 11/20/13 | 10.1 | |
| 10.21 | Credit and Security Agreement, by and between MidCap Funding III, LLC, as administrative agent, the Lenders listed in the Credit Facility Schedule thereto, the Registrant, and Callidus Biopharma, Inc., dated as of December 27, 2013 | Form 8-K | 12/30/13 | 10.1 | |

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| +10.23 | Second Restated Agreement, dated November 19, 2013 by and between the Registrant and Glaxo Group Limited | Form 10-K | 3/3/14 | 10.46 | |
| *10.24 | Amicus Therapeutics, Inc. Cash Deferral Plan | Form 8-K | 7/2/14 | 10.1 | |
| 10.25 | Amendment No.1 to the Amicus Therapeutics, Inc. Cash Deferral Plan | Form 8-K | 10/16/14 | 10.1 | |
| *10.26 | Employment Agreement dated April 23, 2014, between the Registrant and John F. Crowley | Form 8-K | 4/25/14 | 10.1 | |
| *10.27 | Employment Agreement dated April 23, 2014, between the Registrant and William D. Baird, III | Form 8-K | 4/25/14 | 10.2 | |
| *10.28 | Employment Agreement dated April 23, 2014, between the Registrant and Bradley L. Campbell | Form 8-K | 4/25/14 | 10.3 | |
| *10.29 | Employment Agreement dated April 23, 2014, between the Registrant and Jay Barth, M.D. | Form 10-Q | 5/5/14 | 10.6 | |
| *10.30 | Letter Agreement dated April 24, 2014, between the Registrant and Julie Yu | Form 10-Q | 5/5/14 | 10.7 | |
| *10.31 | Letter Agreement dated April 30, 2014, between the Registrant and Daphne Quimi | Form 10-Q | 5/5/14 | 10.8 | |
| *10.32 | Amended and Restated 2007 Equity Incentive Plan | Form 8-K | 6/13/16 | 10.1 | |
| *10.33 | Amicus Therapeutics, Inc. Cash Deferral Plan | Form 8-K | 10/28/16 | 10.1 | |
| *10.34 | Employment Agreement dated December 17, 2015 between the Registrant and Hung Do | Form 10-K | 2/29/16 | 10.37 | |
| *10.35 | Employment Agreement dated December 17, 2015 between the Registrant and Dipal Doshi | Form 10-K | 2/29/16 | 10.38 | |
| *10.36 | Amendment No. 1 to the Amicus Therapeutics, Inc. Cash Deferral Plan | Form 8-K | 10/16/14 | 10.1 | |

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|--------------------|---|-------------|---|-------------------------------|----------------------------------|
| 10.37 | First Amendment to Credit and Security Agreement by and between MidCap Funding III, LLC, as administrative agent, the Lenders listed in the Credit Facility Schedule thereto, the Registrant, and Callidus Biopharma, Inc., dated as of April 27, 2015. | Form 8-K | 4/28/15 | 10.1 | |
| 10.38 | Note and Warrant Purchase Agreement by and among the Registrant and the purchasers identified on the signature pages thereto, dated October 1, 2015 | Form 8-K | 10/1/15 | 10.1 | |
| 10.39 | First Amendment to Lease, dated September 9, 2015, by and between Cedar Brook 3 Corporate Center, L.P. and the Registrant | Form 8-K | 9/14/15 | 10.1 | |
| 10.40 | Sales Agreement, dated February 26, 2016, by and between the Registrant and Cowen and Company, LLC | Form 8-K | 2/26/16 | 10.1 | |
| *10.41 | Retention Bonus Letter, dated March 10, 2016, by and between the Registrant and Jay Barth, M.D. | Form 8-K | 3/15/16 | 10.1 | |
| 10.42 | Note and Warrant Purchase Agreement by and among the Registrant and the purchasers identified on the signature pages thereto, dated February 19, 2016. | Form 8-K | 2/22/16 | 10.1 | |

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| 10.43 | Joinder to and Amendment of Note and Warrant Purchase Agreement by and among Amicus Therapeutics, Inc., Amicus Therapeutics UK Limited, Amicus Therapeutics International Holding LTD and the purchasers identified on the signature pages thereto, dated as of June 30, 2016 | Form 8-K | 7/1/16 | 10.1 | |
| *10.44 | Amendment No. 1 to the Amended and Restated Amicus Therapeutics, Inc. 2007 Equity Incentive Plan | Form 8-K | 7/29/16 | 10.1 | |
| *10.45 | Secondment Letter, dated August 22, 2016 by and between the Registrant and Bradley Campbell | Form 8-K | 8/23/16 | 10.1 | |
| 10.46 | Base Capped Call Transaction, dated December 15, 2016, by and between the Registrant and Goldman, Sachs & Co. | Form 8-K | 12/21/16 | 10.1 | |
| 10.47 | Base Capped Call Transaction, dated December 15, 2016, by and between the Registrant and JPMorgan Chase Bank, National Association | Form 8-K | 12/21/16 | 10.2 | |
| 10.48 | Base Capped Call Transaction, dated December 15, 2016, by and between the Registrant and Royal Bank of Canada | Form 8-K | 12/21/16 | 10.3 | |
| 10.49 | Additional Capped Call Transaction, dated December 19, 2016, by and between the Registrant and Goldman, Sachs & Co. | Form 8-K | 12/21/16 | 10.4 | |
| 10.50 | Additional Capped Call Transaction, dated December 19, 2016, by and between the Registrant and JPMorgan Chase Bank, National Association | Form 8-K | 12/21/16 | 10.5 | |

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| 10.51 | Additional Capped Call Transaction, dated December 19, 2016, by and between the Registrant and Royal Bank of Canada | Form 8-K | 12/21/16 | 10.6 | |
| 10.52 | Note Purchase Agreement, dated December 15, 2016, by and among the Registrant, Amicus Therapeutics International Holding LTD and P Redmile Ltd. | Form 8-K | 12/21/16 | 10.7 | |
| 10.53 | Note Purchase Agreement, dated December 15, 2016, by and among the Registrant, Amicus Therapeutics International Holding LTD and Redmile Capital Offshore Fund, Ltd. | Form 8-K | 12/21/16 | 10.8 | |
| 10.54 | Note Purchase Agreement, dated December 15, 2016, by among the Registrant, Amicus Therapeutics International Holding LTD and Redmile Capital Offshore Fund II, Ltd. | Form 8-K | 12/21/16 | 10.9 | |
| 10.55 | Note Purchase Agreement, dated December 15, 2016, by and among the Registrant, Amicus Therapeutics International Holding LTD and Redmile Special Opportunities Fund, Ltd. | Form 8-K | 12/21/16 | 10.10 | |
| 10.56 | Note Purchase Agreement, dated December 15, 2016, by and among the Registrant, Amicus Therapeutics International Holding LTD and Redmile Capital Fund, LP | Form 8-K | 12/21/16 | 10.11 | |
| 10.57 | Note Purchase Agreement, dated December 15, 2016, by and between Amicus Therapeutics International Holding LTD and GCM Grosvenor Special Opportunities Master Fund, Ltd. | Form 8-K | 12/21/16 | 10.12 | |

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| *10.58 | Form of Performance-Based Restricted Stock Unit Award Agreement under the Amended and Restated 2007 Equity Incentive Plan | Form 8-K | 12/30/16 | 10.1 | |
| 21 | List of Subsidiaries | Form 10-K | 3/1/17 | | |
| 23.1 | Consent of Independent Registered Public Accounting Firm. | Form 10-K | 3/1/17 | | |
| 31.1 | Certification of Principal Executive Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934. | | | | X |
| 31.2 | Certification of Principal Financial Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934. | | | | X |
| 32.1 | Certificate of Principal Executive Officer pursuant to 18 U.S.C. Section 1350 and Section 906 of the Sarbanes-Oxley Act of 2002. | | | | X |
| 32.2 | Certificate of Principal Financial Officer pursuant to 18 U.S.C. Section 1350 and Section 906 of the Sarbanes-Oxley Act of 2002. | | | | X |
| 101 | The following financial information from this Annual Report on Form 10-K for the year ended December 31, 2016, formatted in XBRL (Extensible Business Reporting Language) and filed electronically herewith: (i) the Consolidated Balance Sheets; (ii) the Consolidated Statements of Operations; (iii) the Consolidated Statements of Comprehensive Loss; (iv) the Consolidated Statements of Cash Flows; (v) and the Notes to the Consolidated Financial Statements. | Form 10-K | | | X |

+ Confidential treatment has been granted as to certain portions of the document, which portions have been omitted and filed separately with the Securities and Exchange Commission.

* Indicates management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

AMICUS THERAPEUTICS, INC.

Date: March 3, 2017

By:

/s/ John F. Crowley
John F. Crowley
Chairman and Chief Executive Officer
(Principal Executive Officer)

Exhibit Index

| Exhibit No. | Exhibit Description |
|--------------------|--|
| 31.1 | Certification of Principal Executive Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934. |
| 31.2 | Certification of Principal Financial Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934. |
| 32.1 | Certificate of Principal Executive Officer pursuant to 18 U.S.C. Section 1350 and Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.2 | Certificate of Principal Financial Officer pursuant to 18 U.S.C. Section 1350 and Section 906 of the Sarbanes-Oxley Act of 2002. |