

As filed with the Securities and Exchange Commission on August 18, 2023

Registration No. 333-

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

AXOGEN, INC.

(Exact name of registrant as specified in its charter)

Minnesota

(State or other jurisdiction of incorporation or organization)

41-1301878

(I.R.S. Employer Identification No.)

13631 Progress Blvd., Suite 400 Alachua, Florida

(Address of Principal Executive Offices)

32615

(Zip Code)

**AXOGEN, INC. AMENDED AND RESTATED
2017 EMPLOYEE STOCK PURCHASE PLAN**

(Full title of the plan)

**Marc Began
General Counsel
Axogen, Inc.
13631 Progress Boulevard, Suite 400
Alachua, Florida 32615
(386) 462-6800**

(Name, address, telephone number, including
area code, of agent for service)

**Jaclyn Liu, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105**

(Copy to)

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. ☐

REGISTRATION OF ADDITIONAL SECURITIES

EXPLANATORY NOTE

Axogen, Inc. (the “Registrant”) has prepared this registration statement (this “Registration Statement”) in accordance with the requirements of Form S-8 under the Securities Act of 1933, as amended, to register: 600,000 additional shares of Common Stock issuable pursuant to the Axogen, Inc. Amended and Restated 2017 Employee Stock Purchase Plan (the “Plan”). The Plan, including the shares of Common Stock available for issuance pursuant thereto, has been previously approved by the Registrant’s shareholders and Registration Statement of the Registrant on Form S-8 relating to the Plan is effective.

INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION STATEMENTS ON FORM S-8

Pursuant to General Instruction E of Form S-8, this Registration Statement hereby incorporates by reference the contents of the registration statement on Form S-8 filed by the Registrant with the Securities and Exchange Commission (the “Commission”) on [December 12, 2017](#) (Registration No. 333-222019), (the “Prior Registration Statement”). Pursuant to the Prior Registration Statement, the Registrant previously registered an aggregate of 600,000 shares of Common Stock under the Plan.

Item 8.

Exhibits

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
4.1	Registration Rights Agreement, dated as of August 26, 2015, between the Company and EW Healthcare Partners L.P., formerly named Essex Woodlands Fund IX, L.P. (incorporated by reference to Exhibit 4.2 to the annual report on Form 10-K filed on February 28, 2018).
5.1	Opinion of Morrison & Foerster LLP †
23.1	Consent of Morrison & Foerster LLP (contained in Exhibit 5.1). †
23.2	Consent of Deloitte & Touche LLP, the Registrant's Independent Registered Public Accounting Firm (filed herewith). †
24.1	Power of Attorney (included on signature page to this Registration Statement).
99.1	Axogen, Inc. Amended and Restated 2017 Employee Stock Purchase Plan (incorporated by reference from Appendix B of the Registrant's Proxy Statement on DEF14A dated July 7, 2023 (No. 001-36046)).
107	Filing Fee Table. †

† Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Alachua, State of Florida, on August 18, 2023.

Axogen, Inc.

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Karen Zaderej, Peter J. Mariani and Marc Began, his or her true and lawful attorney-in-fact, with full power of substitution and resubstitution for him or her and in his or her name, place and stead, in any and all capacities to sign any and all amendments including post-effective amendments to this Registration Statement on Form S-8 (including, without limitation, any additional registration statement filed pursuant to Rule 462 under the Securities Act of 1933), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact or his substitute, each acting alone, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-8 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/ Karen Zaderej</u> Karen Zaderej	Chief Executive Officer, President and Chairman of the Board (Principal Executive Officer)	August 18, 2023
<u>/s/ Peter J. Mariani</u> Peter J. Mariani	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	August 18, 2023
<u>/s/ Amy Wendell</u> Amy Wendell	Director	August 18, 2023
<u>/s/ William Burke</u> William Burke	Director	August 18, 2023
<u>/s/ Gregory Freitag</u> Gregory Freitag	Director	August 18, 2023
<u>/s/ John H. Johnson</u> John H. Johnson	Director	August 18, 2023
<u>/s/ Alan M. Levine</u> Alan M. Levine	Director	August 18, 2023
<u>/s/ Guido J. Neels</u> Guido J. Neels	Director	August 18, 2023
<u>/s/ Dr. Joseph Tyndall</u> Dr. Joseph Tyndall	Director	August 18, 2023

Calculation of Filing Fee Tables
Form S-8

(Form Type)
Axogen, Inc.

(Exact Name of Registrant as Specified in its Charter)
 Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit(3)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.01 par value per share	Other(3)	600,000(2)	\$ 6.0875	\$ 3,652,500	.0001102	\$ 402.51
Total Offering Amounts					\$ 3,652,500		\$ 402.51
Total Fee Offsets							-
Net Fee Due							\$ 402.51

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of common stock, \$0.01 par value (the “Common Stock”) of Axogen, Inc. (the “Registrant”), which become issuable under the Axogen, Inc. Amended and Restated 2017 Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without receipt of consideration which results in an increase in the number of the Registrant’s outstanding shares of Common Stock.
- (2) Represents an additional 600,000 shares of Common Stock of the Registrant issuable under the Axogen Inc. Amended and Restated 2017 Employee Stock Purchase Plan.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) under the Securities Act, based on the average of the high and low sales prices of the Common Stock as reported on The Nasdaq Capital Market on August 15, 2023, which was \$6.0875 per share.

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morrison & foerster llp

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MORRISON & FOERSTER LLP

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FRANCISCO, SHANGHAI, SINGAPORE,
TOKYO, WASHINGTON, D.C.

MORRISON FOERSTER

August 18, 2023

Axogen, Inc.
13631 Progress Boulevard, Suite 400
Alachua, Florida 32615
RE: Axogen, Inc. - Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Axogen, Inc., a Minnesota corporation (the “Company”), in connection with the preparation of a Registration Statement on Form S-8 (the “Registration Statement”) under the Securities Act of 1933, as amended (the “Act”). The Registration Statement relates to the registration of 600,000 shares (the “Shares”) of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), issuable under the Axogen, Inc. Amended and Restated 2017 Employee Stock Purchase Plan (the “Plan”) as referenced in the Registration Statement.

As counsel for the Company, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary for the purposes of rendering this opinion and we are familiar with the proceedings taken and proposed to be taken by the Company in connection with the authorization, issuance and sale of the Shares. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

For the purpose of the opinion rendered below, we have assumed that in connection with the issuance of the Shares under the Plan, the Company will receive consideration in an amount not less than the aggregate par value of the Shares covered by each such issuance.

Based upon the foregoing, we are of the opinion that the Shares, when issued and sold in accordance with the terms set forth in the Plan and pursuant to the agreements that accompany the Plan, will be validly issued, fully paid and nonassessable.

This opinion letter is based as to matters of law solely on the Minnesota Business Corporation Act, as amended. We express no opinion herein as to any other laws, statutes, ordinances, rules, or regulations.

We consent to the use of this opinion as an exhibit to the Registration Statement, and we consent to the reference of our name wherever appearing in the Registration Statement and any amendments thereto. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,
/s/ Morrison & Foerster 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 report dated March 14, 2023, relating to the financial statements of Axogen, Inc. and the effectiveness of Axogen, Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Axogen, Inc. for the year ended December 31, 2022.

/s/ DELOITTE & TOUCHE LLP
Tampa, Florida
August 18, 2023
