

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): May 13, 2022

**Aquestive Therapeutics, Inc.**

(Exact name of Registrant as specified in its charter)

Delaware  
(State or Other Jurisdiction  
of Incorporation or Organization)

001-38599  
(Commission  
File Number)

82-3827296  
(I.R.S. Employer  
Identification No.)

30 Technology Drive  
Warren, NJ 07059  
(908) 941-1900

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Not Applicable  
(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))

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).

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 \$0.001 per share	AQST	Nasdaq Global Market

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 May 13, 2022, Aquestive Therapeutics, Inc. (the “Company”) entered into (i) the Fifth Supplemental Indenture (the “Fifth Supplemental Indenture”), by and among the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as Trustee (the “Trustee”) and collateral agent thereunder, to the Indenture, dated as of July 15, 2019 (the “Base Indenture” and, as supplemented by the First Supplemental Indenture, Second Supplemental Indenture, Third Supplemental Indenture, and Fourth Supplemental Indenture, the “Indenture”), by and between the Company and the Trustee and (ii) Amendment No. 2 (the “Purchase Agreement Amendment”), by and among the Company and the Purchasers signatory thereto, to that certain Purchase Agreement, dated as of November 3, 2020, by and among the Company and the Purchasers signatory thereto (as amended, the “Purchase Agreement”). The Fifth Supplemental Indenture and the Purchase Agreement Amendment extend the period of time in which the Company may elect to issue the First Additional Securities and Second Additional Securities (each as defined in the Indenture) from June 30, 2022 to March 31, 2023 and provides that the First Additional Securities Triggering Event (as defined in the Indenture) shall be the full approval of Libervant by the U.S Food and Drug Administration for sale in the United States, which full approval shall include market access, and that the Holders (as defined in the Indenture) shall have the right, but not the obligation, to purchase the First Additional Securities and Second Additional Securities, as applicable.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of the Registrant.**

The information required by this Item 2.03 relating to the First Additional Securities, Second Additional Securities and the Indenture is set forth under Item 1.01 of this Current Report on Form 8-K and is incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
<a href="#">4.1</a>	Fifth Supplemental Indenture, dated May 13, 2022, among Aquestive Therapeutics, Inc., as Issuer, any Guarantor that becomes party thereto and U.S. Bank Trust Company, National Association, as Trustee and Collateral Agent
<a href="#">10.1</a>	Amendment No. 2 to the Purchase Agreement, dated as of May 13, 2022, by and among the Aquestive Therapeutics, Inc. and the Purchasers signatory thereto

**SIGNATURE**

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.

Dated: May 17, 2022

Aquestive Therapeutics, Inc.

By: /s/ A. Ernest Toth, Jr.

Name: A. Ernest Toth, Jr.

Title: Chief Financial Officer

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**FIFTH SUPPLEMENTAL INDENTURE**

This Fifth Supplemental Indenture, made as of May 13, 2022 (the “Supplemental Indenture”), to that certain Indenture dated as of July 15, 2019 (as such indenture has been supplemented and amended by the First Supplemental Indenture, dated as of November 3, 2020, by the Second Supplemental Indenture, dated as of November 19, 2020, by the Third Supplemental Indenture, dated as of August 6, 2021, and by the Fourth Supplemental Indenture, dated as of October 6, 2021, the “Existing Indenture” and the Existing Indenture, as it may from time to time be supplemented or amended by one or more additional indentures supplemental thereto entered into pursuant to the applicable provisions thereof, being hereinafter called the “Indenture”) among Aquestive Therapeutics, Inc., a Delaware corporation with an address at 30 Technology Drive, Warren, New Jersey 07059 (the “Issuer”), any Guarantor that becomes party thereto pursuant to Section 4.10 of the Existing Indenture, and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as trustee (the “Trustee”) and as collateral agent (the “Collateral Agent”).

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee the Existing Indenture, providing for the issuance of an aggregate principal amount of up to \$104.0 million of 12.5% Senior Secured Notes due 2025;

WHEREAS, the Issuer proposes to amend the Existing Indenture (the “Proposed Amendments”), which amendments, pursuant to Section 9.02 of the Indenture, must be approved by the written consent of Holders of a majority in principal amount of the outstanding Notes voting as a single class (collectively, the “Required Holders”);

WHEREAS, the Issuer has received and delivered to the Trustee and to the Collateral Agent the consent of the Required Holders to the Proposed Amendments (the “Holder Consent”);

WHEREAS, the Issuer has been authorized by a resolution of its board of directors to enter into this Supplemental Indenture;

WHEREAS, all other acts and proceedings required by law, by the Existing Indenture and by the certificate of incorporation and bylaws of the Issuer to make this Supplemental Indenture a valid and binding agreement for the purposes expressed herein, in accordance with its terms, have been duly done and performed;

WHEREAS, pursuant to Section 9.02, the Trustee and the Collateral Agent are authorized to execute and deliver this Supplemental Indenture; and

WHEREAS, following the execution of this Supplemental Indenture, the terms hereof will become operative on the date hereof.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

That, for and in consideration of the premises herein contained and in order to effect the Proposed Amendments contained herein, pursuant to Section 9.02 of the Existing Indenture, the Issuer agrees with the Trustee and the Collateral Agent as follows:

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Amendment of Existing Indenture

Section 1.01. Amendment of Existing Indenture. This Supplemental Indenture amends the Existing Indenture as provided for herein.

Section 1.02. Amendment of Section 1.01. Pursuant to Section 9.02 of the Existing Indenture:

(a) the definition of the “First Additional Securities Triggering Event” in Section 1.01 of the Existing Indenture is hereby amended and restated in its entirety as follows:

“First Additional Securities Triggering Event” means the full approval of Libervant by the FDA for sale in the United States, which full approval shall include market access.

(b) Section 1.01 of the Existing Indenture is hereby amended by inserting the following defined term in appropriate alphabetical order:

“October 2020 Purchase Agreements” means those certain purchase agreements between the Company and the purchasers listed on Schedule 1 thereto, dated as of November 3, 2020.

Section 1.03. Amendment of Section 2.01. Pursuant to Section 9.02 of the Existing Indenture, Sections 2.01(c) and (d) of the Existing Indenture are hereby amended by deleting all references therein to “June 30, 2022” and replacing them with “March 31, 2023”.

Section 1.04. Amendment of Section 4.19. Pursuant to Section 9.02 of the Existing Indenture, Section 4.19 of the Existing Indenture are hereby amended:

(a) by deleting the text “the right to purchase an aggregate amount” and replacing it with the text “the right, but not the obligation, to purchase an aggregate amount”;

(b) by deleting the text “the right to purchase such remaining First Additional Securities or Second Additional Securities, as applicable” and replacing it with the text “the right, but not the obligation, to purchase such remaining First Additional Securities or Second Additional Securities, as applicable”;

(c) by deleting all references therein to “First Additional Notes” and replacing them with “First Additional Securities”;

(d) by deleting all references therein to “Second Additional Notes” and replacing them with “Second Additional Securities”; and

(e) by deleting the text “elect to exercise the Right of First Offer described above and” from the third paragraph thereof.

Miscellaneous Provisions

Section 2.01. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended and supplemented hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder shall be bound hereby.

Section 2.02. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recitals hereto are used herein as therein defined, except that the term “Holders” in this Supplemental Indenture shall refer to the term “Holders” as defined in the Indenture and the Trustee and the Collateral Agent acting on behalf of and for the benefit of such Holders. The words “herein”, “hereof” and “hereby” and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

Section 2.03. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 2.04. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction thereof.

Section 2.05. Effectiveness. The provisions of this Supplemental Indenture will take effect immediately upon execution thereof by the parties hereto.

Section 2.06. Governing Law. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

Section 2.07. No Representation; Recitals. Neither the Trustee nor the Collateral Agent makes any representation as to the validity or sufficiency of this Supplemental Indenture. The recitals to this Supplemental Indenture are made solely by the Issuer and shall not be attributable to the Trustee or the Collateral Agent.

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture to be duly executed as of the date first written above.

**AQUESTIVE THERAPEUTICS, INC.**

By: /s/ Keith Kendall

Name: Keith Kendall  
Title: President & CEO

*Signature Page to the Fifth Supplemental Indenture*

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**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Trustee**

By: /s/ Alison D.B. Nadeau

Name: Alison D.B. Nadeau

Title: Vice President

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Collateral Agent**

By: /s/ Alison D.B. Nadeau

Name: Alison D.B. Nadeau

Title: Vice President

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## AMENDMENT NO. 2 TO PURCHASE AGREEMENT

AMENDMENT NO. 2 TO PURCHASE AGREEMENT, dated as of May 13, 2022 (this “**Amendment**”), among AQUESTIVE THERAPEUTICS, INC., a Delaware corporation (the “**Company**”) and the Purchasers signatory hereto.

## WITNESSETH:

WHEREAS, on November 3, 2020, the Company entered into the Purchase Agreement, (the “**Original Purchase Agreement**”) with the Purchasers listed on Schedule 1 thereto (the “**Purchasers**”), as amended by that certain Amendment No. 1 to the Original Purchase Agreement, dated August 6, 2021 (the “**First Amendment**” and, together with the Original Purchase Agreement, the “**Existing Purchase Agreement**”); and

WHEREAS, the Company has requested that the Purchasers amend the Existing Purchase Agreement and the Purchasers agree, subject to the terms and conditions set forth herein, to so amend the Existing Purchase Agreement, as more specifically set forth herein (the Existing Purchase Agreement, as amended by this Amendment, and as the same may be amended, restated, modified and/or supplemented from time to time being referred to as the “**Purchase Agreement**”);

NOW, THEREFORE, in consideration of the agreements herein contained, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

**ARTICLE 1. AMENDMENTS.** Effective as of the date hereof, the Existing Purchase Agreement shall be amended in the manner set forth below.

(a) **Section 3.3.** Section 3.3 of the Existing Purchase Agreement is hereby amended by:

- (i) replacing each reference to “June 30, 2022” in Sections 3.3(a), 3.3(e) and 3.3(f) with “March 31, 2023”;
  - (ii) deleting the text “the Purchaser agrees, at the election of the Issuer in its sole discretion and” from Section 3.3(a) and replacing it with the text “the Purchaser shall have the right, but not the obligation,”;
  - (iii) deleting the text “to acquire the principal amount” from Section 3.3(a) and replacing it with the text “to acquire up to the principal amount”;
  - (iv) deleting the text “If the Issuer elects to issue” from Section 3.3(a) and replacing it with the text “If the Purchaser elects to purchase”;
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Section 3.3(e); and

(v) inserting the text “of the Indenture” immediately following the text “in accordance with Section 2.01(c)” in

(vi) deleting the text “(as defined in the Indenture) from Section 3.3(f) and replacing it with the text “(as described in Section 4.19 of the Indenture)”.

(b) **Schedule 1.** Schedule 1 of the Existing Purchase Agreement is hereby amended by replacing each reference to “Principal Amount of First Additional Notes committed to by the Purchaser” with “Principal Amount of First Additional Notes available for purchase by the Purchaser”.

**ARTICLE 2. MISCELLANEOUS.**

2.1 **Counterparts.** This Amendment may be executed in counterparts and by different parties hereto in 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 one and the same instrument. A photocopied, facsimile or pdf signature shall be deemed to be the functional equivalent of a manually executed original for all purposes.

2.2 **Ratification.** Except as set forth in Article 1, no amendment is intended hereby. The Existing Purchase Agreement, as amended by this Amendment, and the other agreements, documents and instruments delivered in connection with the Existing Purchase Agreement (and/or in connection with this Amendment) are, and shall continue to be, in full force and effect, and each of the parties hereto hereby confirms, approves and ratifies in all respects the Existing Purchase Agreement, as amended by this Amendment, and each of the other agreements, documents and instruments delivered in connection with the Existing Purchase Agreement (and/or in connection with this Amendment).

2.3 **WAIVER OF JURY TRIAL.** WITHOUT LIMITING IN ANY WAY SECTION 12.1 OF THE PURCHASE AGREEMENT, EACH PURCHASER AND THE ISSUER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AMENDMENT.

2.4 **GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. The parties hereto hereby submit to the non-exclusive jurisdiction of the U.S. federal and state courts of competent jurisdiction in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Purchase Agreement or the transactions contemplated hereby.

2.5 **References.** From and after the effective date of this Amendment, each reference in the Purchase Agreement to “this Agreement”, “hereof”, “hereunder” or words of like import, and all references to the Purchase Agreement in any and all agreements, instruments, certificates and other documents relating to the Purchase Agreement, shall be deemed to mean the Purchase Agreement as modified and amended by this Amendment and as the same may be further amended, modified or supplemented in accordance with the terms thereof.

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[Signature pages follow]

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IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed by their respective, duly authorized officers as of the date first above written.

AQUESTIVE THERAPEUTICS, INC.

By: /s/Keith Kendall

Name: Keith Kendall

Title: President & CEO

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*[Signature Page to Amendment No. 2]*

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**MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP**

**By: MADRYN HEALTH ADVISORS, LP, its General Partner**

**By: MADRYN HEALTH ADVISORS GP, LLC, its General Partner**

By: /s/ Avinash Amin

Name: Avinash Amin

Title: Member

**MADRYN HEALTH PARTNERS, LP**

**By: MADRYN HEALTH ADVISORS, LP, its General Partner**

**By: MADRYN HEALTH ADVISORS GP, LLC, its General Partner**

By: /s/ Avinash Amin

Name: Avinash Amin

Title: Member

**FFI FUND LTD.**

By: /s/ John N. Spinney, Jr.

Name: John N. Spinney, Jr.

Title: Authorized Signatory

**OLIFANT FUND, LTD.**

By: /s/ John N. Spinney, Jr.

Name: John N. Spinney, Jr.

Title: Authorized Signatory

**FYI LTD.**

By: /s/ John N. Spinney, Jr.

Name: John N. Spinney, Jr.

Title: Authorized Signatory

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**MORGAN STANLEY & CO. LLC**

By: /s/ Brian McGowan

Name: Brian McGowan

Title: Authorized Signatory

*[Signature Page to Amendment No. 2]*

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