
**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**

Date of Report (Date of earliest event reported): **February 29, 2024**

Eagle Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-36306
(Commission File Number)

20-8179278
(IRS Employer Identification No.)

50 Tice Boulevard, Suite 315
Woodcliff Lake, NJ
(Address of principal executive offices)

07677
(Zip Code)

Registrant's telephone number, including area code: **(201) 326-5300**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations 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
Common Stock (par value \$0.001 per share)

Trading Symbol
EGRX

Name of each exchange on which registered
The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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 February 29, 2024 (the “Amendment Date”), Eagle Pharmaceuticals, Inc. (the “Company”), entered into a Second Amendment to Third Amended and Restated Credit Agreement (the “Second Amendment Agreement”) with JPMorgan Chase Bank, N.A., as administrative agent (the “Agent”), and the lenders party thereto (the “Lenders”), which amends the terms of (i) the Company’s Third Amended and Restated Credit Agreement, dated as of November 1, 2022 (the “Original Credit Agreement”) and (ii) the Limited Waiver and First Amendment to Third Amended and Restated Credit Agreement, dated as of January 12, 2024 (the “First Amendment Agreement”). The Original Credit Agreement as amended by the First Amendment Agreement is referred to herein as the “Credit Agreement,” and the Credit Agreement as amended by the Second Amendment Agreement is referred to herein as the “Amended Credit Agreement.”

As previously disclosed in the Company’s Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission (the “SEC”) on January 16, 2024, incorporated by reference herein, the Company, the Agent and the Lenders entered into the First Amendment Agreement, which provided a waiver of defaults and events of default that occurred and were continuing under Original Credit Agreement at such time.

Pursuant to the Credit Agreement and the First Amendment, (i) the Company is required to deliver to the Agent and the Lenders, by not later than March 30, 2024, annual audited financial statements for the fiscal year ended December 31, 2024, reported on by the Company’s independent public accountant (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated subsidiaries in accordance with GAAP (the “Annual Financial Statement Requirement”), (ii) the Company is required to deliver to the Agent and the Lenders, by not later than February 29, 2024, (a) restated quarterly financial statements for the fiscal quarter ended June 30, 2023 and (b) quarterly financial statements for the fiscal quarter ended September 30, 2023, in each case with respect to this clause (ii), certified by one of its officers as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated subsidiaries in accordance with GAAP for the respective quarter (this clause (ii), the “Quarterly Financial Statement Requirement” and together with the Annual Financial Statement Requirement, the “Financial Statement Requirement”) and (iii) until the Quarterly Financial Statement Requirement has been satisfied, (a) availability under the Credit Agreement is reduced from \$100 million to \$50 million, (b) the Company is not permitted to utilize any negative covenant flexibility that is based on a pro forma compliance with any of the Fixed Charge Coverage Ratio, Senior Secured Net Leverage Ratio and/or the Total Net Leverage Ratio test (each as defined in the Credit Agreement), which restricts the Company’s flexibility to, among other things, incur certain additional indebtedness, complete certain corporate transactions, including certain acquisitions and dispositions, or make certain additional restricted payments and (c) compliance with the minimum liquidity covenant is waived (the restrictions described in this clause (iii), the “Temporary Restrictions”).

Pursuant to the terms of the Second Amendment Agreement, (i) the delivery deadline with respect to each Financial Statement Requirement has been extended to May 13, 2024 and (ii) the Temporary Restrictions have been revised to continue until the Company has satisfied the Annual Financial Statement Requirement in addition to the Quarterly Financial Statement Requirement.

Pursuant to the terms of the Amended Credit Agreement, failure to timely satisfy the Financial Statement Requirement will result in an event of default. During the continuance of an event of default, the Agent may, with the consent of the required lenders, and shall, at the request of the required lenders, by notice to the Company, terminate undrawn commitments, declare the loans then outstanding to be due and payable in full and/or exercise other remedies available to it, among other things. In addition, the Company’s obligations under the Amended Credit Agreement are secured by a pledge of substantially all of the Company’s assets. If the Company is unable to pay its obligations, the Agent on behalf of the lenders could proceed to protect and enforce their rights under the Amended Credit Agreement, including by foreclosure on the assets securing the Company’s obligations under the Amended Credit Agreement. The foregoing would materially and adversely affect the Company’s business and financial condition. There can be no assurance that the Company will be able to satisfy the Financial Statement Requirement on the required timing or at all, or comply with the terms of the Second Amendment Agreement and the Amended Credit Agreement.

The foregoing descriptions of the Second Amendment Agreement, the First Amendment Agreement and the Original Credit Agreement are not intended to be complete and are qualified in their entirety by reference to the full text of the Second Amendment Agreement, the First Amendment Agreement and the Original Credit Agreement, which are filed as Exhibit 10.1 to this Current Report on Form 8-K, Exhibit 10.1 to the Company’s Current Report on Form 8-K filed on January 16, 2024, and Exhibit 10.1 to the Company’s Current Report on Form 8-K filed on November 3, 2022, respectively.

Forward-Looking Statements

This current report on Form 8-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, as amended, and other securities law. Forward-looking statements are statements that are not historical facts. Words and phrases such as “anticipated,” “forward,” “will,” “would,” “could,” “may,” “intend,” “remain,” “potential,” “prepare,” “expected,” “believe,” “plan,” “seek,” “continue,” “estimate,” “and similar expressions are intended to identify forward-looking statements. These statements include, but are not limited to, statements with respect to: the Company’s expectations with respect to the Amended Credit Agreement and the Second Amendment Agreement and its ability to satisfy the Financial Statement Requirement on the required timing or at all, and otherwise comply with the Amended Credit Agreement and the Second Amendment Agreement, the potential actions that the Agent on behalf of the lenders could take to protect and enforce their rights under the Amended Credit Agreement, and the expected filing of an amendment to the Company’s Form 10-Q for the quarter ended June 30, 2023, a Form 10-Q for the quarter ended September 30, 2023 and a Form 10-K for the year ended December 31, 2023. All of such statements are subject to certain risks and uncertainties, many of which are difficult to predict and generally beyond the Company’s control, that could cause actual results to differ materially from those expressed in, or implied or projected by, the forward-looking information and statements. Such risks and uncertainties include, but are not limited to: the completion of the review and preparation of the Company’s financial statements and internal control over financial reporting and disclosure controls and procedures and the timing thereof; the discovery of additional information; further delays in the Company’s financial reporting, including as a result of unanticipated factors; the Company’s ability to comply with its obligations under its credit agreement; the possibility that the Company will be unable to regain compliance with, or thereafter continue to comply with, the Nasdaq Listing Rules, or experience violations of additional Nasdaq Listing Rules; the possibility that the Nasdaq may delist the Company’s securities; the Company’s ability to remediate material weaknesses in its internal control over financial reporting; the Company’s ability to recruit and hire a new Chief Executive Officer; the ability of the Company to realize the anticipated benefits of its plan designed to improve operational efficiencies and realign its sales and marketing expenditures and the potential impacts thereof; the impacts of the post- COVID-19 environment and geopolitical factors such as the conflicts between Russia and Ukraine and Gaza and Israel; delay in or failure to obtain regulatory approval of the Company’s or its partners’ product candidates and successful compliance with Federal Drug Administration, European Medicines Agency and other governmental regulations applicable to product approvals; changes in the regulatory environment; the uncertainties and timing of the regulatory approval process; whether the Company can successfully market and commercialize its products; the success of the Company’s relationships with its partners; the outcome of litigation; the strength and enforceability of the Company’s intellectual property rights or the rights of third parties; competition from other pharmaceutical and biotechnology companies and competition from generic entrants into the market; unexpected safety or efficacy data observed during clinical trials; clinical trial site activation or enrollment rates that are lower than expected; the risks inherent in drug development and in conducting clinical trials; risks inherent in estimates or judgments relating to the Company’s critical accounting policies, or any of the Company’s estimates or projections, which may prove to be inaccurate; unanticipated factors in addition to the foregoing that may impact the Company’s financial and business projections and guidance and may cause the Company’s actual results and outcomes to materially differ from its estimates, projections and guidance; and those risks and uncertainties identified in the “Risk Factors” sections of the Company’s Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 23, 2023, the Company’s Quarterly Reports on Form 10-Q for the quarter ended March 31, 2023, filed with the SEC on May 9, 2023, and for the quarter ended June 30, 2023, filed with the SEC on August 8, 2023, and its other subsequent filings with the SEC. Readers are cautioned not to place undue reliance on these forward-looking statements. All forward-looking statements contained in this current report on Form 8-K speak only as of the date on which they were made. Except to the extent required by law, the Company undertakes no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they were made.

Item 9.01 Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
<u>10.1</u>	<u>Second Amendment to Third Amended and Restated Credit Agreement, among Eagle Pharmaceuticals, Inc., as borrower, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

Dated: March 1, 2024

EAGLE PHARMACEUTICALS, INC.

By: /s/ Brian Cahill
Brian Cahill
Chief Financial Officer

SECOND AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") is made as of February 29, 2024 by and among Eagle Pharmaceuticals, Inc., a Delaware corporation (the "Borrower"), the financial institutions listed on the signature pages hereto and JPMorgan Chase Bank, N.A., as Administrative Agent (the "Administrative Agent"), in connection with that certain Third Amended and Restated Credit Agreement, dated as of November 1, 2022, by and among the Borrower, the Lenders and the Administrative Agent (as further amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Credit Agreement.

WHEREAS, the Borrower, the Lenders party thereto and the Administrative Agent have entered into that certain Limited Waiver and First Amendment to Third Amended and Restated Credit Agreement, dated as of January 12, 2024 (the "First Amendment").

WHEREAS, the Borrower has requested that the requisite Lenders and the Administrative Agent agree to make certain amendments to the Credit Agreement and the First Amendment.

WHEREAS, the Borrower, the Lenders party hereto and the Administrative Agent have so agreed on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Lenders party hereto and the Administrative Agent hereby agree as follows:

1. Amendments to the Credit Agreement and First Amendment.

(a) Effective as of the date hereof, the Credit Agreement is hereby amended as follows:

(i) Section 5.01(a) of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(a) (x) with respect to the fiscal year of the Borrower ended December 31, 2023, no later than May 13, 2024 and (y) within ninety (90) days after the end of each other fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by BDO USA, LLP or other independent public accountants of recognized national standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;”

(ii) Section 5.01(b) of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(b) (i) (x) with respect to the fiscal quarter of the Borrower ended September 30, 2023, no later than May 13, 2024 and (y) with respect to each other of the first three fiscal quarters of each fiscal year of the Borrower, within forty-five (45) days after the end of each such fiscal quarter, its consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; and

(ii) no later than May 13, 2024, a restatement of the financial statements previously delivered pursuant to Section 5.01(b) of this Agreement for the fiscal quarter ended June 30, 2023, certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, for the avoidance of doubt, accompanied by a certificate satisfying the requirements of Section 5.01(c) for such fiscal quarter;”

(b) Effective as of the date hereof, the introductory portion of the first sentence of Section 2(b) of the First Amendment (preceding clauses (i) through (iii) of such Section 2(b)) is hereby deleted in its entirety and replaced with the following:

“(b) From and after the date hereof until the date on which the Borrower delivers (i) (x) all financial reporting materials required by Section 5.01(b) of the Credit Agreement and (y) the certificate required by Section 5.01(c) of the Credit Agreement, in each case with respect to the fiscal quarters of the Borrower ended June 30, 2023 and September 30, 2023 and (ii) (x) all financial reporting materials required by Section 5.01(a) of the Credit Agreement and (y) the certificate required by Section 5.01(c) of the Credit Agreement, in each case with respect to the fiscal year of the Borrower ended December 31, 2023 (such date, the “Updated Financials Delivery Date”).”

2. Conditions of Effectiveness. The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent:

(a) The Administrative Agent shall have received counterparts of this Agreement duly executed by the Borrower, the Required Lenders and the Administrative Agent, and the Consent and Reaffirmation attached hereto as Annex I duly executed by each Subsidiary Guarantor (the “Reaffirmation”).

(b) The Administrative Agent shall have received payment of fees (if any) and its reasonable and documented out-of-pocket expenses in connection with this Agreement.

3. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants as follows:

(a) This Agreement and the Credit Agreement and First Amendment (each as amended hereby) constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) As of the date hereof, after giving effect to the terms of this Agreement, (i) the representations and warranties of the Borrower set forth in the Credit Agreement and the First Amendment (each as amended hereby) are true and correct in all material respects (or, if qualified by materiality or “Material Adverse Effect”, in all respects) as of the date hereof, except in the case of any such representation and warranty that expressly relates to an earlier date, in which case such representation and warranty was true and correct in all material respects (or, if qualified by materiality or “Material Adverse Effect”, in all respects) as of such earlier date and (ii) no Default or Event of Default has occurred and is continuing.

4. Reference to and Effect on the Credit Agreement and First Amendment.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement or the First Amendment in the Credit Agreement, the First Amendment or any other Loan Document shall mean and be a reference to the Credit Agreement or the First Amendment, respectively, as amended hereby.

(b) The Credit Agreement, the First Amendment and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed. The Borrower (i) agrees that, except as specifically provided herein, this Agreement and the transactions contemplated hereby shall not limit or diminish the obligations of the Borrower arising under or pursuant to the Credit Agreement, the First Amendment or the other Loan Documents to which it is a party and acknowledges that the limitations and pricing set forth in Sections 2(b) and 2(c), respectively, of the First Amendment remain in full force and effect, (ii) reaffirms its obligations under the Credit Agreement, the First Amendment the Security Agreement and each and every other Loan Document to which it is a party and (iii) reaffirms all Liens on the Collateral which have been granted by it in favor of the Administrative Agent (for itself and the other Secured Parties) pursuant to any of the Loan Documents and all filings made with any Governmental Authority in connection with such Liens. Without in any way limiting the foregoing, this Agreement shall not constitute a novation of the Loan Documents or any Obligations or Secured Obligations.

(c) Except with respect to the subject matter hereof, the execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders (including in connection with any Default or Event of Default), nor constitute a waiver of any provision of the Credit Agreement, the First Amendment or any other documents, instruments and agreements executed and/or delivered in connection therewith (or any Default or Event of Default thereunder).

(d) This Agreement and the Reaffirmation are Loan Documents.

5. Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York.

6. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

7. Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. For the avoidance of doubt, the provisions of Section 9.06(b) of the Credit Agreement apply to this Amendment.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

EAGLE PHARMACEUTICALS, INC.,
as the Borrower

By: /s/ Brian Cahill

Name: Brian Cahill

Title: Chief Financial Officer

Signature Page to Second Amendment to
Third Amended and Restated Credit Agreement
Eagle Pharmaceuticals, Inc.

JPMORGAN CHASE BANK, N.A.,
individually as a Lender and as Administrative Agent

By: /s/ David Hyman
Name: David Hyman
Title: Authorized Signer

Signature Page to Second Amendment to
Third Amended and Restated Credit Agreement
Eagle Pharmaceuticals, Inc.

CITIZENS BANK, N.A.,
as a Lender

By: /s/ Benjamin Sileo
Name: Benjamin Sileo
Title: VP

Signature Page to Second Amendment to
Third Amended and Restated Credit Agreement
Eagle Pharmaceuticals, Inc.

FIFTH THIRD BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Andy Reidell
Name: Andy Reidell
Title: Executive Director

Signature Page to Second Amendment to
Third Amended and Restated Credit Agreement
Eagle Pharmaceuticals, Inc.

FIRST NATIONAL BANK OF PENNSYLVANIA,
as a Lender

By: /s/ Dave Diez

Name: Dave Diez

Title: Managing Director of Debt Capital Markets

Signature Page to Second Amendment to
Third Amended and Restated Credit Agreement
Eagle Pharmaceuticals, Inc.

BARCLAYS BANK PLC,
as a Lender

By: /s/ Warren Veech III
Name: Warren Veech III
Title: Vice President

Signature Page to Second Amendment to
Third Amended and Restated Credit Agreement
Eagle Pharmaceuticals, Inc.

ANNEX I

CONSENT AND REAFFIRMATION

Each of the undersigned hereby acknowledges receipt of a copy of the foregoing Second Amendment, dated as of the date hereof, in connection with the Third Amended and Restated Credit Agreement, dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified, the "Credit Agreement") by and among Eagle Pharmaceuticals, Inc., a Delaware corporation (the "Borrower"), the financial institutions from time to time party thereto (the "Lenders") and JPMorgan Chase Bank, N.A., as Administrative Agent (the "Administrative Agent") (the "Amendment"). Capitalized terms used in this Consent and Reaffirmation and not defined herein shall have the meanings given to them in the Credit Agreement. Without in any way establishing a course of dealing by the Administrative Agent or any Lender, each of the undersigned (a) consents to the Amendment and reaffirms the terms and conditions of the Credit Agreement and any other Loan Document executed by it and acknowledges and agrees that such Credit Agreement and each and every such Loan Document executed by the undersigned in connection with the Credit Agreement remains in full force and effect and is hereby reaffirmed, ratified and confirmed, (b) reaffirms its obligations under the each and every Loan Document to which it is a party (including, without limitation, each applicable Collateral Document) and (c) reaffirms all Liens on the Collateral which have been granted by it in favor of the Administrative Agent (for itself and the other Secured Parties) pursuant to any of the Loan Documents and any filings made with a Governmental Authority in connection therewith. All references to the Credit Agreement contained in the above-referenced documents shall be a reference to the Credit Agreement as so modified by the Amendment.

Dated: February 29, 2024

[Signature Page Follows]

Annex I

EAGLE BIOLOGICS, INC.

By: /s/ Brian Cahill
Name: Brian Cahill
Title: Chief Financial Officer

EAGLE RESEARCH LABS LIMITED

By: /s/ Brian Cahill
Name: Brian Cahill
Title: Director

ACACIA PHARMA INC.

By: /s/ Ryan Debski
Name: Ryan Debski
Title: Secretary

ACACIA PHARMA GROUP LIMITED

By: /s/ Ryan Debski
Name: Ryan Debski
Title: Director

ACACIA PHARMA LIMITED

By: /s/ Ryan Debski
Name: Ryan Debski
Title: Director

ACACIA PHARMA IRELAND LIMITED

By: /s/ Ryan Debski
Name: Ryan Debski
Title: Director

Signature Page to Consent and Reaffirmation
Second Amendment to Third Amended and Restated Credit Agreement
Eagle Pharmaceuticals, Inc.
