

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

Achaogen, Inc.

CIK: **1301501** | IRS No.: **680533693** | State of Incorporation: **DE** | Fiscal Year End: **1231**
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Mailing Address

1 TOWER PLACE
SUITE 300
SOUTH SAN FRANCISCO CA
94080

Business Address

1 TOWER PLACE
SUITE 300
SOUTH SAN FRANCISCO CA
94080
650-800-3636

**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): July 17, 2019

ACHAOGEN, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-36323

(Commission
File Number)

68-0533693

(IRS Employer
Identification Number)

**548 Market Street #70987
San Francisco, CA 94104**

(Address of principal executive offices, including Zip Code)

Registrant's telephone number, including area code: (650) 800-3636

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	AKAO	None

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 April 15, 2019, Achaogen, Inc. (the ‘Company’) filed a voluntary petition for bankruptcy protection under Chapter 11 of Title 11 of the United States Bankruptcy Code. The filing was made in the United States Bankruptcy Court for the District of Delaware (Case No. 19-10844).

As previously disclosed, on June 20, 2019, the Company entered into an asset purchase agreement (the ‘Plazomicin Agreement’) with Cipla USA Inc. (‘Cipla’), pursuant to which Cipla agreed to acquire the Company’s worldwide rights, excluding Greater China, to ZEMDRI® (plazomicin) and certain related Company assets and liabilities for a purchase price consisting of \$4,650,000 in upfront cash upon closing of the transaction, subject to certain adjustments at closing related to cure amounts for assumed contracts, plus certain post-closing consideration.

On July 17, 2019, the Company and Cipla entered into an amendment to the Plazomicin Agreement (the ‘Amendment’) effective as of June 28, 2019. The Amendment, among other things: (a) revised the definition of Hovione Release, (b) added certain IT and computer equipment to the definition of Purchased Assets and updates the purchase price payable at closing to \$4,800,000; (c) revised the Outside Date to July 19, 2019 and (d) updated the intellectual property schedules. Other than as expressly modified pursuant to the Amendment, the Plazomicin Agreement (previously filed as Exhibit 2.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on June 26, 2019) remains in full force and effect.

The foregoing description of the Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Amendment attached as Exhibit 2.1 to this Current Report on Form 8-K, which is incorporated herein by reference.

Item 8.01 Other Events

Cautionary Statements Regarding Trading in the Company’s Securities

The Company’s securityholders are cautioned that trading in the Company’s securities is highly speculative and poses substantial risks during the pendency of the Chapter 11 case. Trading prices for the Company’s securities may bear little or no relationship to the actual recovery, if any, by holders thereof in the Company’s Chapter 11 case. Accordingly, the Company urges extreme caution with respect to existing and future investments in its securities.

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K contains certain statements that are, or may be deemed to be, “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act. Statements including words such as “estimate,” “plan,” “project,” “forecast,” “intend,” “expect,” “anticipate,” “believe,” “seek,” “target” or similar expressions are forward-looking statements. These statements reflect the Company’s current views, expectations and beliefs concerning future events. In addition, any statements related to the Company’s plans to sell all of its assets pursuant to Chapter 11 of the U.S. Bankruptcy Code; the Company’s intention to continue operations during the Chapter 11 case; the Company’s belief that the sale process will be in the best interest of the Company and its stakeholders; the continued uninterrupted access to the Company’s product during the Chapter 11 proceedings; and other statements regarding the Company’s strategy and future operations, performance and prospects are forward-looking statements. Such plans, expectations and statements are as to future events and are not to be viewed as facts, and reflect various assumptions of management of the Company and are subject to significant business, financial, economic, operating, competitive, litigation and other risks and uncertainties and contingencies (many of which are difficult to predict and beyond the control of the Company) that could cause actual results to differ materially from the statements included herein, including, without limitation: the potential adverse impact of the Chapter 11 filings on the Company’s liquidity and results of operations; changes in the Company’s ability to meet its financial obligations during the Chapter 11 process and to maintain contracts that are critical to its operations; the outcome and timing of the Chapter 11 process and the proposed auction and asset sale; the effect of the Chapter 11 filings and proposed asset sale on the Company’s relationships with vendors, regulatory authorities, employees and other third parties; possible proceedings that may be brought by third parties in connection with the Chapter 11 process or the proposed asset sale; uncertainty regarding obtaining bankruptcy court approval of a sale of the Company’s assets or other conditions to the proposed asset sale; and the timing or amount of any distributions, if any, to the Company’s stakeholders. The inclusion of

forward-looking statements should not be regarded as a representation by Achaogen that any of its plans will be achieved. Investors should note that many factors, including those more fully described in the Company's filings with the Commission (including, but not limited to, its Annual Report on Form 10-K for the year ended December 31, 2018 filed on April 1, 2019 and other filings with the Commission), could affect the Company's future financial results and could cause actual results to differ materially from those expressed in forward-looking statements, such as those contained in this Current Report on Form 8-K. The forward-looking statements in this Current Report on Form 8-K is qualified by risk factors identified by the Company. These risk factors, individually or in the aggregate, could cause our actual results to differ materially from expected and historical results. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The Company assumes no obligation to publicly update any forward-looking statements, whether as a result of new information, future developments or otherwise.

Additional Information Regarding the Chapter 11 Case

Additional information about the Chapter 11 case and structured sale process is available through the Company's claims agent Kurtzman Carson Consultants LLC at www.kccllc.net/achaogen. Information contained on, or that can be accessed through, such web site or the Court's web site is not part of this Current Report.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit Number	Description
2.1	<u>Amendment No. 1 to the Asset Purchase Agreement dated as of June 20, 2019, by and between Achaogen, Inc. and Cipla USA Inc</u> (Schedules and exhibits have been omitted from this exhibit pursuant to Item 601(b)(2) of Regulation S-K and are not filed herewith. The registrant hereby agrees to furnish a copy of any omitted schedule or exhibits to the U.S. Securities and Exchange Commission upon request)

SIGNATURES

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.

ACHAOGEN, INC.

Date: July 23, 2019

By: /s/ Blake Wise

Blake Wise
Chief Executive Officer

**AMENDMENT NO. 1 TO
ASSET PURCHASE AGREEMENT
(Plazomicin)**

This Amendment No. 1 (this “Amendment”) to the Asset Purchase Agreement dated as of June 20, 2019, by and between Achaogen, Inc., a Delaware corporation (the “Seller”), and Cipla USA Inc., a Delaware corporation (the “Purchaser”), is made as of June 28, 2019. Purchaser and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

WHEREAS, Purchaser and Seller wish to amend the Asset Purchase Agreement in the manner set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in the Asset Purchase Agreement and this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and intending to be legally bound hereby, the Parties hereby agree as follows:

Section 1. Amendments to the Asset Purchase Agreement.

- (a) The definition of “Hovione Release” in Section 1.1 is hereby amended and restated to read as follows:
- ““Hovione Release” means (a) the written, unconditional release by Hovione, its Affiliates and Subsidiaries, and all of their respective current and former officers, directors, principals, employees, members, managers, advisors, attorneys, financial advisors, investment bankers, or agents, of all of their Claims, including all Claims arising from or in connection with the Hovione Agreement, the rejection by the Seller of the Hovione Agreement, and the Business, against the Seller, its estate, Affiliates and Subsidiaries, and all of their respective current and former officers, directors, principals, employees, members, managers, advisors, attorneys, financial advisors, investment bankers, or agents, in form and substance satisfactory to the Seller; or (b) a substantially similar release of all Claims arising from or in connection with the Hovione Agreement that goes into effect under the Sale Order as a result of the effectiveness of the New Hovione Agreement. The language set forth in Exhibit D to this Agreement shall be deemed sufficient for the Hovione Release if included in the Sale Order.”
- (b) Section 2.1(b) is hereby amended and restated to read as follows:
- Equipment. The IT and computer equipment set forth on Schedule 2.1(b) hereto.
- (c) The amount “\$4,650,000” set forth in Section 2.5(a) is hereby deleted and replaced with “4,800,000”.

Exhibit 2.1

- (d) The date “June 28, 2019” set forth in Section 2.8 is hereby deleted and replaced with “July 18, 2019”.
- (e) Section 5.9(b)(i) is hereby amended and restated to read as follows:
“(i)cause the Bankruptcy Court to enter the Sale Order by no later than 11:59 p.m. prevailing Eastern time on July 18, 2019, subject to the second sentence of Section 10.2; and”
- (f) Section 5.9(b)(ii) is hereby amended and restated to read as follows:
“(ii) consummate the Closing as promptly as practicable after entry of the Sale Order, but in no event later than 11:59 p.m. prevailing Pacific time on or before July 19, 2019 (the “Outside Date”).”
- (g) The last sentence of Section 5.11(a) is hereby deleted in its entirety.
- (h) Section 6.2(f) is hereby amended and restated to read as follows:
“Hovione Release. The Hovione Release must have been granted by Hovione or gone into effect under the Sale Order.”
- (i) A new Section 5.17(h) is hereby added as follows:
“(h) At the cost and expense of the Purchaser, promptly after the Closing, the Seller shall extract and otherwise cause all Purchased Assets that are stored or maintained by Box, Inc. to be transferred to the Purchaser or its designees.”
- (j) The references to “Section 5.13” in the first and second sentences of Section 7.2(d) are hereby replaced with “Section 5.12”.
- (k) The third sentence of Section 10.5 is hereby amended and restated to read as follows:
“The Purchaser may designate one or more Affiliates, including any special purpose entities that may be organized by the Purchaser for such purpose, to take title to or hold on behalf of the Purchaser, the Purchased Assets or any portion thereof and operate the business going forward, and upon written notice to the Seller of any such designation by the Purchaser, the Seller, at the cost and expense of the Purchaser, agrees to and/or cause its Affiliates to (as the case may be) provide all such assistance as may be reasonably required by the Purchaser in this regard and execute and deliver all instruments of transfer with respect to the Purchased Assets directly to, and in the name of, the Purchaser’s designees.”
- (l) Exhibit D attached to this Amendment is hereby added to the Asset Purchase Agreement and the Table of Contents thereof.

Exhibit 2.1

- (m) Schedule 2.1(b) attached to this Amendment is hereby added to the Asset Purchase Agreement and the Table of Contents thereof.
- (n) Schedule 2.1(c) of the Asset Purchase Agreement is hereby amended and restated in its entirety with Schedule 2.1(c) attached to this Amendment.

Section 2. Limited Amendment. Except as specifically provided in this Amendment and as the context of this Amendment otherwise may require to give effect to the intent and purposes of this Amendment, the Asset Purchase Agreement shall remain in full force and effect. This Amendment is limited precisely as drafted and shall not constitute a modification, acceptance or waiver of any other provision of the Asset Purchase Agreement.

Section 3. Facsimile Signature; Counterparts. Facsimile or electronic transmission in portable document format of any signed original document or retransmission of any signed facsimile or electronic transmission in portable document format will be deemed the same as delivery of an original. This Amendment may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute but one and the same agreement. Until and unless each Party to this Amendment has received a counterpart hereof signed by the other Parties, this Amendment shall have no effect and no Party to this Amendment shall have any obligation or right hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 4. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISIONS WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Exhibit 2.1

The Parties have executed and delivered this Amendment on the last date set forth in the preamble hereto.

SELLER:

ACHAOGEN, INC.

By: /s/ Blake Wise
Name: Blake Wise
Title: CEO

The Parties have executed and delivered this Amendment on the last date set forth in the preamble hereto.

PURCHASER:

CIPLA USA INC.

By: /s/Nikhil Lalwani_____
Name: Nikhil Lalwani
Title: CEO – Cipla USA