

AMGEN INC
Form S-8
May 21, 2009

As filed with the Securities and Exchange Commission on May 20, 2009

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AMGEN INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

95-3540776
(I.R.S. Employer Identification No.)

One Amgen Center Drive

Thousand Oaks, California 91320-1799

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(805) 447-1000

(Address of principal executive offices, including zip code)

Amgen Inc. 2009 Equity Incentive Plan

(Full title of the plan)

David J. Scott, Esq.
Senior Vice President, General Counsel
and Secretary
One Amgen Center Drive
Thousand Oaks, California 91320-1799
(805) 447-1000

Copy to:
Charles K. Ruck
Latham & Watkins LLP
650 Town Center Drive, Suite 2000
Costa Mesa, California 92626
(714) 540-1235

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

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

| | | | |
|-------------------------|-------------------------------------|---------------------------|--------------------------|
| Large Accelerated filer | <input checked="" type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-Accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to Be Registered | Amount To Be Registered (1) | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee |
|---|------------------------------------|--|--|-----------------------------------|
| Common Stock, par value \$0.0001 per share | 100,000,000 | \$48.03 | \$4,803,000,000 | \$268,008 |

- (1) In accordance with Rule 416(a) of the Securities Act of 1933, as amended, this registration statement will also cover any additional shares of Common Stock which become issuable under the Plan by reason of any stock dividend, stock split, recapitalization or similar transaction.
- (2) Estimated solely for the purposes of calculating the registration fee under Rule 457(h) and (c) under the Securities Act of 1933, as amended (the Securities Act), and is based on the average of the high and low sales prices of a share of our Common Stock, as reported on the NASDAQ Global Select Market on May 15, 2009.

INTRODUCTION

This Registration Statement on Form S-8 is filed by Amgen Inc. (referred to herein as our, we or us) relating to 100,000,000 shares of our common stock, \$0.0001 par value per share (Common Stock), issuable to our eligible employees, directors and consultants under the Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

We are not filing with or including in this Form S-8 the information called for in Part I of Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the Commission).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Commission allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this Registration Statement, and information that we file later with the Commission will automatically update and supersede this information. We incorporate by reference the following documents we have filed, or may file, with the Commission:

- (a) Our Annual Report on Form 10-K for the year ended December 31, 2008;
- (b) Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2009;
- (c) Our Current Report on Form 8-K filed as of January 16, 2009, February 10, 2009, March 9, 2009 and May 8, 2009; and
- (d) Description of our Common Stock in the Registration Statements on Form 8-A filed with the Commission on September 7, 1983 and April 1, 1993, including any amendment or report filed for the purpose of updating that description.

In addition, this registration statement will incorporate by reference all documents we file under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) after the date of this Registration Statement and before the filing of a post-effective amendment stating that all securities offered have been sold or deregistering all securities then remaining unsold. All those documents will be considered a part of this Registration Statement from the respective dates we file them. A Current Report on Form 8-K furnished to the Commission will not be incorporated by reference into this Registration Statement. Any statement in a document incorporated or deemed to be incorporated by reference in this Registration Statement will be deemed to be modified or superseded to the extent that a statement contained in this Registration Statement or in any other later filed document that also is or is deemed to be incorporated by reference modifies or supersedes the statement. Any statement modified or superseded will not be deemed, except as modified or superseded, to be a part of this Registration Statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

The consolidated financial statements of Amgen Inc. (Amgen) appearing in the Amgen Inc. Annual Report (Form 10-K) for the year ended December 31, 2008 (including the schedule appearing therein) have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and

auditing.

Item 6. Indemnification of Directors and Officers

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") empowers a corporation to indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was

serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a present or former director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. Section 145 also provides that expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal or administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition thereof, subject to certain conditions. The indemnification and advancement of expenses provided by or granted pursuant to Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled under the certificate of incorporation, bylaws, agreement vote of stockholders or disinterested directors or otherwise. Unless otherwise provided when authorized or ratified, the indemnification and advancement of expenses provided by or granted under Section 145 shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person's heirs, executors and administrators. Under its bylaws, Amgen is required to indemnify its directors and officers to the full extent permitted by the DGCL, except that Amgen is not required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against Amgen or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by Amgen's board of directors, (iii) such indemnification is provided by Amgen in its sole discretion, or (iv) such indemnification is otherwise required under the bylaws. In addition, subject to certain limitations, Amgen is required to the fullest extent not prohibited by applicable law to advance expenses to any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another enterprise, in connection any threatened or pending action, suit or proceeding prior to the final disposition thereof upon receipt of any undertaking by or on behalf of such person to repay the advanced amounts if it should be determined ultimately that such person is not entitled to be indemnified under the bylaws or otherwise.

Under Section 145, the corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145. Amgen provides liability insurance for its directors and officers which provides for coverage against loss from claims made against directors and officers in their capacity as such, including liabilities under the Securities Act.

Section 102(b)(7) of the DGCL provides that a corporation's certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (relating to liability of directors for unlawful payments of dividends or unlawful stock purchases or redemptions), or (iv) for any transaction from which the director derived an improper personal benefit. Article SIXTH of Amgen's Restated Certificate of Incorporation, as amended, limits the liability of directors to the fullest extent permitted by Section 102(b)(7).

Item 7. Exemption From Registration Claimed

Not applicable.

Item 8. Exhibits

See Index to Exhibits below.

Item 9. Undertakings

(a) We hereby undertake:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");
- (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to that information in the registration statement.

Provided, however, that:

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant in accordance with Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement; and

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-3 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) We hereby undertake that, for purposes of determining any liability under the Securities Act, each filing of our annual report under Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report under Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement will be deemed to be a new registration statement relating to the offered securities, and the offering of securities at that time will be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such

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indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted

by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

In accordance with the requirements of the Securities Act of 1933, the registrant, Amgen Inc., 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 and authorized the officers whose signatures appear below to sign this Registration Statement on its behalf by, in the City of Thousand Oaks, State of California, on May 20, 2009.

AMGEN INC.

By: /s/ Kevin W. Sharer
Kevin W. Sharer
Chairman of the Board, Chief Executive
Officer and President

POWER OF ATTORNEY

Each person whose signature appears below hereby authorizes and appoints Kevin W. Sharer, Robert A. Bradway and David J. Scott as attorneys-in-fact and agents, each acting alone, with full powers of substitution to sign on his behalf, individually and in the capacities stated below, and to file any and all amendments, including post-effective amendments, to this registration statement and other documents in connection with the registration statement, with the Securities and Exchange Commission, granting to those attorneys-in-fact and agents full power and authority to perform any other act on behalf of the undersigned required to be done.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|---|--------------|
| /s/ Kevin W. Sharer Kevin W. Sharer | Chairman of the Board, Chief Executive Officer and President, and Director (Principal Executive Officer) | May 20, 2009 |
| /s/ Robert A. Bradway Robert A. Bradway | Executive Vice President and Chief Financial Officer (Principal Financial Officer) | May 20, 2009 |
| /s/ Michael A. Kelly Michael A. Kelly | Vice President, Finance and Chief Accounting Officer (Principal Accounting Officer) | May 20, 2009 |
| /s/ David Baltimore David Baltimore | Director | May 20, 2009 |
| /s/ Frank J. Biondi, Jr. Frank J. Biondi, Jr. | Director | May 20, 2009 |
| /s/ François de Carbonnel François de Carbonnel | Director | May 20, 2009 |
| /s/ Jerry D. Choate Jerry D. Choate | Director | May 20, 2009 |
| /s/ Vance D. Coffman Vance D. Coffman | Director | May 20, 2009 |
| /s/ Frederick W. Gluck Frederick W. Gluck | Director | May 20, 2009 |
| /s/ Frank C. Herring Frank C. Herring | Director | May 20, 2009 |
| /s/ Gilbert S. Omenn Gilbert S. Omenn | Director | May 20, 2009 |
| /s/ Judith C. Pelham Judith C. Pelham | Director | May 20, 2009 |
| /s/ J. Paul Reason J. Paul Reason | Director | May 20, 2009 |
| /s/ Leonard D. Schaeffer Leonard D. Schaeffer | Director | May 20, 2009 |

INDEX TO EXHIBITS

| Exhibit No. | Description of Exhibit |
|--------------------|---|
| 4.1 | Form of stock certificate for the common stock, par value \$.0001 of Amgen Inc. (Filed as an exhibit to Form 10-Q for the quarter ended March 31, 1997 on May 13, 1997 and incorporated herein by reference.) |
| 5.1+ | Opinion of Latham & Watkins LLP. |
| 23.1+ | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. |
| 23.2+ | Consent of Latham & Watkins LLP. (Included in Exhibit 5.1.) |
| 24.1+ | Power of Attorney. (Included in signature pages.) |
| 99.1 | Amgen Inc. 2009 Equity Incentive Plan. (Filed as Appendix A to the Proxy Statement for the 2009 Annual Meeting of Stockholders and incorporated herein by reference.) |

+ Filed herewith.