
**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): June 7, 2023

ACHIEVE LIFE SCIENCES, INC.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

033-80623
(Commission
File Number)

95-4343413
(IRS Employer
Identification No.)

**22722 29th Drive SE, Suite 100
Bothell, WA**

98021

**1040 West Georgia, Suite 1030
Vancouver, B.C., Canada**
(Address of Principal Executive Offices)

V6E 4H1
(Zip Code)

Registrant's Telephone Number, Including Area Code: (604) 210-2217

N/A

(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 (see General Instruction A.2. below):

- 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	Name of exchange on which registered
Common Stock, par value \$0.001 per share	ACHV	The NASDAQ Capital Market

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 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

As noted below, on June 7, 2023, the stockholders of Achieve Life Sciences, Inc. (the “Company”) approved an amendment to the Company’s Second Amended and Restated Certificate of Incorporation to permit the exculpation of officers as permitted pursuant to recent amendments to the Delaware General Corporation Law. On June 8, 2023, the Company filed the Third Amended and Restated Certificate of Incorporation with the Delaware Secretary of State to effect such amendment. A copy of the Third Amended and Restated Certificate of Incorporation is filed as Exhibit 3.1 to this report.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The Annual Meeting of Stockholders of the Company was held on June 7, 2023. The following is a brief description of each matter voted upon and the certified voting results.

- (1) Election of eight directors to serve until the Company’s next annual meeting or until the directors’ successors are duly elected and qualified:

	For	Withhold	Broker Non-Votes
John Bencich	8,969,977	472,789	4,581,301
Stuart Duty	9,328,630	114,136	4,581,301
Vaughn Himes	9,328,424	114,342	4,581,301
Cindy Jacobs	8,918,432	524,334	4,581,301
Thomas B. King	9,330,635	112,131	4,581,301
Bridget Martell	8,926,207	516,559	4,581,301
Thomas Sellig	9,331,568	111,198	4,581,301
Richard Stewart	8,808,167	634,599	4,581,301

Pursuant to the foregoing votes, the nominees listed above were elected as directors to serve on the Company’s board of directors.

- (2) Ratification of the appointment of PricewaterhouseCoopers LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2023:

For	Against	Abstain	Broker Non-votes
13,913,542	92,933	17,592	—

Pursuant to the foregoing votes, the appointment of PricewaterhouseCoopers LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2023, was ratified.

- (3) Approval of an amendment and restatement of the Company’s Second Amended and Restated Certificate of Incorporation to permit the exculpation of officers as permitted pursuant to recent amendments to the Delaware General Corporation Law:

For	Against	Abstain	Broker Non-votes
9,243,103	162,071	37,592	4,581,301

Pursuant to the foregoing votes, the amendment and restatement of the Company’s Second Amended and Restated Certificate of Incorporation is approved.

(4) Approval, by a non-binding advisory vote, of the compensation paid by the Company to its named executive officers:

For	Against	Abstain	Broker Non-votes
8,705,275	554,973	182,518	4,581,301

Pursuant to the foregoing non-binding advisory votes, the compensation paid by the Company to its named executive offices is approved.

(5) Approval, by a non-binding advisory vote, of whether future non-binding advisory votes to approve the compensation paid by the Company to its named executive officers should be held every one, two or three years:

1 Year	2 Years	3 Years	Abstain
1,968,627	327,350	7,119,074	27,715

Pursuant to the foregoing non-binding advisory votes, the stockholders approved the frequency for future advisory votes on compensation paid by the Company to its named executive officers of every three years. Consistent with the recommendation of the Company's Board of Directors and the outcome of the stockholder vote regarding this proposal, the Company's Board of Directors determined to hold an advisory vote once every three years to approve the compensation paid by the Company to its named executive officers.

(6) Approval of the Company's 2023 Non-Employee Director Equity Incentive Plan:

For	Against	Abstain	Broker Non-votes
8,373,952	897,609	171,205	4,581,301

Pursuant to the foregoing votes, the Company's 2023 Non-Employee Director Equity Incentive Plan is approved.

Item 9.01. Financial Statements and Exhibits.

Exhibit Number	Exhibit Title or Description
3.1	Third Amended and Restated Certificate of Incorporation, filed June 8, 2023.
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 caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: June 9, 2023

ACHIEVE LIFE SCIENCES, INC.

/s/ John Bencich

John Bencich

Chief Executive Officer (Principal Executive and Financial Officer)

**THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
ACHIEVE LIFE SCIENCES, INC.**

Achieve Life Sciences, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), certifies that:

1. The name of the Corporation is Achieve Life Sciences, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of Delaware on March 22, 1995 under the name Sonus Pharmaceuticals, Inc.
2. This Third Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the stockholders of the Corporation at a meeting in accordance with Section 211 of the General Corporation Law of the State of Delaware.
3. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Achieve Life Sciences, Inc. has caused this Third Amended and Restated Certificate of Incorporation to be signed by the undersigned, and the undersigned has executed this certificate and does affirm the foregoing as true under penalty of perjury this 8th day of June, 2023.

/s/ John Bencich

John Bencich
President and Chief Executive Officer

EXHIBIT A
THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ACHIEVE LIFE SCIENCES, INC.

ARTICLE I — NAME

The name of this Corporation is Achieve Life Sciences, Inc.

ARTICLE II — REGISTERED OFFICE AND AGENT

The address of registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III — PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended from time to time.

ARTICLE IV — AUTHORIZED CAPITAL

The Corporation is authorized to issue two classes of stock to be designated respectively, "Common Stock" and "Preferred Stock." The total number of shares of all classes of stock which the Corporation shall have authority to issue is 155,000,000, of which (i) 150,000,000 shares shall be designated Common Stock and shall have a par value of \$0.001 per share; and (ii) 5,000,000 shares shall be designated Preferred Stock and shall have a par value of \$0.001 per share. The Board of Directors is authorized, subject to limitations prescribed by law, to provide for the issuance of the shares of Preferred Stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- (a) The number of shares constituting that series and the distinctive designation of that series;
- (b) The dividend rate on the shares of that series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- (c) Whether that series shall have voting rights, in addition to the voting rights provided by law and, if so, the terms of such voting rights;
- (d) Whether that series shall have conversion privileges and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;
- (e) Whether or not the shares of that series shall be redeemable and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;
- (f) Whether that series shall have a sinking fund for the redemption or purchase of shares of that series and, if so, the terms and amount of such sinking fund; and
- (g) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series.

ARTICLE V — BOARD OF DIRECTORS AND MEETINGS OF STOCKHOLDERS

Section 1. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors and elections of directors need not be by written ballot unless otherwise provided in the Bylaws. The number of directors of the Corporation shall be fixed from time to time by the Board of Directors either by a resolution or Bylaw adopted by the affirmative vote of a majority of the entire Board of Directors.

Section 2. Meetings of the stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the Delaware Statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or by the Bylaws of the Corporation.

ARTICLE VI — LIMITATION OF DIRECTORS' LIABILITY

No director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such a director or officer as a director or officer, respectively, except to the extent provided by applicable law (i) for any breach of the director's or officer'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) pursuant to Section 174 of the Delaware General Corporation Law, as the same exists or hereafter may be amended, in the case of directors only, (iv) for any transaction from which such director or officer derived an improper personal benefit, or (v) for any action by or in the right of the Corporation, in the case of officers only. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors and officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended. No amendment to or repeal of this Article VI shall apply to or have any effect on the liability or alleged liability of any director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

ARTICLE VII — INDEMNIFICATION OF OFFICERS AND DIRECTORS

This Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a director or officer of this Corporation or while a director or officer is or was serving at the request of this Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided; however, that the foregoing shall not require this Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification rights arising under any by-law, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Article VII shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Any repeal or modification of the foregoing provisions of this Article VII shall not adversely affect any right or protection of a director or officer of this corporation with respect to any acts or omissions of such director or officer occurring prior to such repeal or modification.

ARTICLE VIII — AMENDMENT OF BYLAWS

In furtherance and not in limitation of the power conferred upon the Board of Directors by law, the Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time Bylaws of this corporation, subject to the right of the stockholders entitled to vote with respect thereto to alter and repeal Bylaws made by the Board of Directors.

ARTICLE IX — ACTION BY MEETINGS

Stockholders of the Corporation may not take action by written consent in lieu of a meeting. Any action contemplated by the stockholders must be taken at a duly called annual or special meeting.

ARTICLE X — AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Second Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE XI — PERPETUAL EXISTENCE

The Corporation is to have perpetual existence.