

AMGEN INC
Form S-8
November 09, 2011

As filed with the Securities and Exchange Commission on November 9, 2011

Registration No. 333-

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 or Other Jurisdiction of

Incorporation or Organization)

95-3540776
(IRS Employer

Identification Number)

One Amgen Center Drive

Thousand Oaks, California 91320-1799

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(Address of Principal Executive Offices including Zip Code)

Amgen Nonqualified Deferred Compensation Plan

(Full Title of the Plan)

David J. Scott, Esq.

Copy to:

Senior Vice President, General Counsel and Secretary

Charles K. Ruck, Esq.

One Amgen Center Drive

Regina Schlatter, Esq.

Thousand Oaks, California 91320-1799

**Latham & Watkins LLP
650 Town Center Drive, Twentieth Floor
Costa Mesa, California 92626-1925
(714) 540-1235**

(805) 447-1000

(Name and 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 or a smaller reporting company in Rule 12-b2 of the Exchange Act.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if smaller reporting company.)

Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(2)
Deferred Compensation Obligations (1)	\$200,000,000	N/A	\$200,000,000	\$22,920

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- (1) The deferred compensation obligations to which this Registration Statement relates (the Deferred Compensation Obligations) arise under the Amgen Nonqualified Deferred Compensation Plan, as Amended and Restated Effective January 1, 2009 (the Plan) and are unsecured obligations of the Registrant to pay deferred compensation in the future in accordance with the terms of the Plan.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) of the Securities Act of 1933, as amended (the Securities Act), the amount of deferred compensation obligations registered is based on an estimate of the amount of compensation that may be deferred under the Plan.

INTRODUCTION

This registration statement on Form S-8 (the "Registration Statement") is filed by Amgen Inc. (referred to herein as "our," "we," "us" or the "Registrant") relating to \$200,000,000 deferred compensation obligations which are unsecured obligations of the Registrant to pay deferred compensation in the future in accordance with the terms of 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:

The Registrant's Annual Report on Form 10-K for the year ended December 31, 2010;

Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2011, June 30, 2011 and September 30, 2011; and

Current Reports on Form 8-K filed on January 25, 2011, March 7, 2011, May 23, 2011, June 30, 2011, October 14, 2011 and November 9, 2011.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold are incorporated by reference in this Registration Statement and are a part hereof from the date of filing such documents. A Current Report on Form 8-K furnished to the Commission will not be incorporated by reference into this registration statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which is also or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities

The following description of our Deferred Compensation Obligations under the Plan is qualified by reference to the Plan.

The \$200,000,000 of Deferred Compensation Obligations being registered under this Registration Statement are offered to a select group of employees of the Registrant or specified subsidiaries and affiliates of the Registrant and to members of our Board of Directors (the "Board"). The Compensation and Management Development Committee (the "Compensation Committee") of the Board selects those employees who are to participate in the Plan from employees who are management or highly compensated. As a condition to participation, each participant enters into a written agreement electing to participate in the Plan and an election form. The Deferred Compensation Obligations are our general unsecured and unfunded obligations to pay deferred compensation in the future in accordance with the terms of the Plan.

The amount of compensation deferred by each participant in the Plan is determined in accordance with the Plan based upon elections by each participant. A participant may elect to defer compensation from either base salary, bonuses or commissions or a combination of base salary, bonuses and commissions and may elect to defer up to a maximum of 50% of such participant's base salary (100% in the case of members of the Board) and 100% of bonuses and commissions earned by completing and submitting an election form to us.

Deferred Compensation Obligations will consist of an amount equal to each participant's account under the Plan, which includes (i) the participant's compensation deferral amounts, plus (ii) any discretionary company contributions, plus or less (iii) amounts credited to or debited from the participant's account based on the deemed investment gains or losses on the measurement fund alternatives selected by the participant (and in which the participant's account is deemed invested) in accordance with and subject to the rules and procedures established from time to time by the Compensation Committee made under the Plan, less (iv) all distributions or withdrawals made to the participant or his or her beneficiary pursuant to the Plan from the participant's account under the Plan. Participants are at all times 100% vested in the amounts that they elect to defer and related earnings and losses on such amounts.

A participant may elect in his or her election form to receive distributions from his or her account under the Plan in lump sum or, for balances in excess of a de minimis amount, in annual installments for up to ten years. For most participants, distributions commence in the first or second year following the participant's termination of employment. The participant also may be eligible to receive scheduled distributions or make unscheduled withdrawals from his or her account while still employed with us and our subsidiaries in accordance with the terms and conditions of the Plan.

The Company established an irrevocable trust contemporaneously with the establishment of the Plan to assist with paying the Deferred Compensation Obligations. We may make contributions to the trust and, under certain circumstances, will be required to make contributions to the trust. The trust does not provide any protection in the event of our bankruptcy.

Except in certain limited circumstances arising upon and after a change of control, the Plan is administered by the Compensation Committee (or a committee or delegates appointed by the Compensation Committee). The Compensation Committee also has the power to make, amend, interpret and enforce all appropriate rules and regulations for the administration of the Plan and to decide or resolve all questions arising under the Plan. The Company, by action of the Board or the Compensation Committee, may terminate the Plan at any time in accordance with the circumstances set forth in the Plan and, by action of the Compensation Committee, may amend the Plan from time to time; provided, however, that no such amendment shall be effective to the extent it reduces or restricts the value of a participant's account under the Plan in existence as of such amendment and no adverse amendment shall be effective upon a change of control without the prior written consent of a majority of the participants.

Item 5. Interests of Named Experts and Counsel

The consolidated financial statements of Amgen Inc. appearing in Amgen Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2010 (including the schedule appearing therein), and the effectiveness of Amgen Inc.'s internal control over financial reporting as of December 31, 2010 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 on page 9.

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes:

(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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the 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 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 such 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 these paragraphs is contained in periodic 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 this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such 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 that remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's Annual Report pursuant to section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of

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such securities at that time shall 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 Securities and Exchange Commission such 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

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant 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 this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Thousand Oaks, State of California, on the 9th day of November 2011.

AMGEN INC.

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

POWER OF ATTORNEY

KNOW ALL MEN AND WOMEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Kevin W. Sharer and David J. Scott, or any of them, his or her attorney-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Registration Statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his or her substitute or substitutes, may do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ KEVIN W. SHARER	Chairman of the Board	November 9, 2011
Kevin W. Sharer	and Chief Executive Officer, and Director (Principal Executive Officer)	
/s/ JONATHAN M. PEACOCK	Executive Vice President	November 9, 2011
Jonathan M. Peacock	and Chief Financial Officer (Principal Financial Officer)	
/s/ THOMAS J.W. DITTRICH	Vice President, Finance	November 9, 2011
Thomas J.W. Dittrich	and Chief Accounting Officer (Principal Accounting Officer)	
/s/ DAVID BALTIMORE	Director	November 9, 2011
David Baltimore		
/s/ FRANK J. BIONDI, JR.	Director	November 9, 2011
Frank J. Biondi, Jr.		

/s/ VANCE D. COFFMAN	Director	November 9, 2011
Vance D. Coffman		
/s/ FRANÇOIS DE CARBONNEL	Director	November 9, 2011
François de Carbonnel		
/s/ REBECCA M. HENDERSON	Director	November 9, 2011
Rebecca M. Henderson		
/s/ FRANK C. HERRINGER	Director	November 9, 2011
Frank C. Herringer		
/s/ GILBERT S. OMENN	Director	November 9, 2011
Gilbert S. Omenn		
/s/ JUDITH C. PELHAM	Director	November 9, 2011
Judith C. Pelham		
/s/ J. PAUL REASON	Director	November 9, 2011
J. Paul Reason		
/s/ LEONARD D. SCHAEFFER	Director	November 9, 2011
Leonard D. Schaeffer		
/s/ RONALD D. SUGAR	Director	November 9, 2011
Ronald D. Sugar		
/s/ ROBERT A. BRADWAY	President and Chief Operating Officer, and	November 9, 2011
Robert A. Bradway	Director	

INDEX TO EXHIBITS

NUMBER	DESCRIPTION
5.1*	Opinion of Latham & Watkins LLP
23.1*	Consent of Independent Registered Public Accounting Firm
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1*	Power of Attorney (included on signature page to Registration Statement)
99.1	Amgen Nonqualified Deferred Compensation Plan, as Amended and Restated Effective January 1, 2009. (Filed as an exhibit 10.21 to the quarterly report on Form 10-Q for the quarterly period ended September 30, 2008 filed with the Commission on November 7, 2008 and incorporated herein by reference.)
99.2	First Amendment to the Amgen Nonqualified Deferred Compensation Plan, as Amended and Restated Effective January 1, 2009. (Filed as an exhibit 10.15 to the quarterly report on Form 10-Q for the quarterly period ended June 30, 2011 filed with the Commission on August 8, 2011 and incorporated herein by reference.)

* Filed herewith.