

**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): April 21, 2023

**Amphastar Pharmaceuticals, Inc.**  
(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation)

**001-36509**  
(Commission File Number)

**33-0702205**  
(IRS Employer Identification  
Number)

**11570 6th Street**  
**Rancho Cucamonga, California**  
(Address of Principal Executive Offices)

**91730**  
(Zip Code)

Registrant's telephone number, including area code: **(909) 980-9484**

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, par value \$0.0001 per share	AMPH	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 (§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.**

### *Asset Purchase Agreement and Debt Financing*

On April 21, 2023, Amphastar Pharmaceuticals, Inc., a Delaware corporation (“Amphastar” or the “Company”), entered into an Asset Purchase Agreement (the “Purchase Agreement”) with Eli Lilly and Company, an Indiana corporation (“Lilly”), pursuant to which Amphastar’s wholly owned subsidiary, Amphastar Medication Co., LLC, a Delaware limited liability company (“Amphastar Medication”), has agreed to acquire Lilly’s BAQSIMI<sup>®</sup> glucagon nasal powder (“BAQSIMI<sup>®</sup>”) and related assets (the “Transferred Assets”) and assume certain liabilities (the “Assumed Liabilities”) for a purchase price of \$500 million in cash payable at the closing of the transaction (the “Acquisition”). In addition, Amphastar will pay Lilly a \$125 million guaranteed payment on the first anniversary after the consummation of the transactions contemplated by the Purchase Agreement (the “Closing”). Amphastar may also be required to pay additional contingent consideration of up to \$450 million to Lilly based on the achievement of certain milestones. Amphastar agreed to guarantee all obligations of Amphastar Medication under the Purchase Agreement.

The Board of Directors of Amphastar has approved the Purchase Agreement and the transactions contemplated thereby.

The Purchase Agreement provides that the contingent consideration that may become payable to Lilly would be achieved as follows: (i) a one-time payment of \$100 million each if Amphastar achieves annual net sales of \$175 million or more of BAQSIMI<sup>®</sup> and certain related products (the “Milestone Products”) in any one year during the first five (5) years after the Closing; (ii) up to two (2) payments of \$100 million each if Amphastar achieves annual net sales of \$200 million or more of Milestone Products in any one year during the first five years after the Closing; and (iii) a one-time payment of \$150 million if Amphastar achieves total cumulative net sales of \$950 million or more of the Milestone Products for the first five (5) years after the Closing. In addition, the Assumed Liabilities will include an assumption of certain earnout obligations of Lilly, which would require Amphastar to pay up to an aggregate of \$125 million based on the achievement of annual net sales milestones of \$350 million, \$400 million and \$600 million.

The Purchase Agreement includes customary representations, warranties and covenants, including certain covenants, among other things, that (i) Lilly will, prior to the Closing, conduct the development, manufacture, and commercialization of BAQSIMI<sup>®</sup> (the “Business”) in the ordinary course of business consistent with past practice, (ii) each party will, prior to the Closing, use reasonable best efforts to obtain required regulatory approvals for the Closing and (iii) Lilly will assist in transitioning certain third-party arrangements for the Business to Amphastar.

The Closing is subject to customary conditions, including, among other things, the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and other closing conditions, such as the accuracy of representations and warranties (subject to certain materiality qualifiers), material performance of covenants and no occurrence of a material adverse effect. The Purchase Agreement contains indemnification rights for each of Amphastar and Lilly for breaches of representations, warranties, and covenants, as well as certain other matters, subject to customary deductibles, caps and other limitations.

The Purchase Agreement contains certain customary termination rights in favor of Amphastar and Lilly, including a right to terminate the Purchase Agreement if the Acquisition is not consummated by October 21, 2023. If the Purchase Agreement is terminated under certain circumstances involving a failure to obtain certain regulatory approvals for the Acquisition, Amphastar will be obligated to pay Lilly a termination fee equal to \$5 million in cash.

The foregoing description of the Purchase Agreement and the transactions contemplated thereby does not purport to be a complete description of the rights and obligations of the parties thereunder, and is qualified in its entirety by reference to the copy of the Purchase Agreement that will be filed as an exhibit to Amphastar’s Quarterly Report on Form 10-Q to be filed with the Securities and Exchange Commission (the “SEC”) for the fiscal quarter ending June 30, 2023, and is incorporated herein by reference.

Amphastar plans to finance the Acquisition with approximately \$500 million of new debt. In connection with the Purchase Agreement, Amphastar entered into a debt commitment letter (the “Commitment Letter”), dated as of April 21, 2023, with Wells Fargo Bank, National Association (“Wells Fargo Bank”), Capital One, National Association (“Capital One”), JPMorgan Chase Bank, N.A. (together with any of its affiliates through which it may be acting, “JPMorgan”), East West Bank (“East West Bank”), Cathay Bank (“Cathay”), Fifth Third Bank, National Association (“Fifth Third”), and CIBC Bank USA (“CIBC”) and, collectively with Wells Fargo Bank, Capital One, JPMorgan, East West Bank, Cathay and Fifth Third, the “Commitment Parties”) pursuant to which the Commitment Parties have committed to provide a senior secured term loan facility in an aggregate principal amount of \$500 million and a senior secured revolving credit facility in an aggregate principal amount of \$150 million (collectively, the “Debt Financing”). The Debt Financing is available (i) to finance the Acquisition, (ii) to refinance certain of Amphastar’s existing third-party

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indebtedness, and (iii) to pay fees and expenses incurred in connection therewith. Under the terms of the Commitment Letter, Wells Fargo Securities, LLC, Capital One, JPMorgan, East West Bank, Cathay and Fifth Third will act as joint lead arrangers and joint bookrunners in connection with the Debt Financing. The funding of the Debt Financing provided for in the Commitment Letter is contingent on the satisfaction of customary conditions, including, among other things, (i) the execution and delivery of definitive documentation in accordance with the terms sets forth in the Commitment Letter and (ii) the consummation of the Acquisition in accordance with the terms of the Purchase Agreement. The definitive documentation governing the Debt Financing has not been finalized, and, accordingly, the actual terms may differ from the description of such terms in the Commitment Letter. The foregoing description of the Commitment Letter and the transactions contemplated thereby does not purport to be a complete description of the rights and obligations of the parties thereunder, and is qualified in its entirety by reference to the copy of the Commitment Letter that will be filed as an exhibit to Amphastar's Quarterly Report on Form 10-Q to be filed with the SEC for the fiscal quarter ending June 30, 2023, and is incorporated herein by reference..

#### *Intellectual Property License Agreement*

In connection with the Closing, pursuant to the Purchase Agreement, Amphastar is expected to enter into an Intellectual Property License Agreement with Lilly, pursuant to which Lilly will grant a license to Amphastar under certain intellectual property rights and technology owned by Lilly and Amphastar will grant a license back to Lilly under certain intellectual property rights and technology transferred to the Company pursuant to the Purchase Agreement.

#### *Manufacturing Services Agreement*

In connection with the Closing, pursuant to the Purchase Agreement, Amphastar is expected to enter into a Manufacturing Services Agreement with Lilly, pursuant to which Lilly will, for an agreed period of time, provide certain manufacturing, packaging, labeling and supply services for BAQSIMI<sup>®</sup> directly or through third-party contractors to Amphastar in connection with Amphastar's operation of the Business.

#### *Transition Services Agreement*

In connection with the Closing, pursuant to the Purchase Agreement, Amphastar is expected to enter into a Transition Services Agreement with Lilly, pursuant to which Lilly will, for an agreed period of time, provide certain services to Amphastar in connection with its operation of the Business to support the transition of the Business to Amphastar.

### **Item 2.03      Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

The information contained in Item 1.01 above is incorporated herein by reference.

### **Item 8.01      Other Events**

On April 24, 2023, the Company issued a press release announcing the Acquisition.

A copy of the press release being filed herewith as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

### **Item 9.01.      Financial Statements and Exhibits**

#### **(d) Exhibits**

Exhibit No.	Description
99.1	<a href="#">Press Release, dated April 24, 2023 of Amphastar Pharmaceuticals, Inc.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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**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.

Date: April 24, 2023

AMPHASTAR PHARMACEUTICALS, INC.

By: /S/WILLIAM J. PETERS

William J. Peters  
Chief Financial Officer, Executive Vice President and  
Treasurer

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April 24, 2023

**For Release:** April 24, 2023 @ 6:45 a.m. ET  
**Refer to:** Jordan Bishop; jordan.bishop@lilly.com; 317-473-5712 (Lilly Media)  
Joe Fletcher; jfletcher@lilly.com; 317-296-2884 (Lilly Investors)  
Dan Dischner; DanD@amphastar.com; 909-942-4153 (Amphastar Media)  
Bill Peters; [BillP@amphastar.com](mailto:BillP@amphastar.com); 909-476-3416 (Amphastar Investors)

### **Lilly to Divest BAQSIMI to Amphastar**

*Lilly focused on delivering the Company's unprecedented pipeline of next-generation medicines to help patients*

*Amphastar is the ideal company to continue Lilly's mission to help more people benefit from BAQSIMI*

INDIANAPOLIS and RANCHO CUCAMONGA, Calif., April 24, 2023 – In an effort to continue expanding the availability of BAQSIMI® to patients, Eli Lilly and Company (NYSE: LLY) and Amphastar Pharmaceuticals, Inc. (NASDAQ: AMPH) have entered into a definitive agreement for Lilly to divest BAQSIMI worldwide to Amphastar, a global pharmaceutical company focused on developing, manufacturing, and marketing injectable, intranasal, and inhalation products including experience with a glucagon product. BAQSIMI is the first and only nasally administered glucagon for the treatment of severe hypoglycemia in people with diabetes.

Amphastar expects to provide dedicated commercial investment for BAQSIMI with the goal of enabling more people on insulin to be prepared with a glucagon rescue treatment for severe hypoglycemia.

“Our portfolio of therapies continues to make life better for people with diabetes, and we will continue this important mission while also increasing our focus on advancing our pipeline of potential breakthrough treatments,” said Mike Mason, executive vice president and president, Lilly Diabetes and Obesity. “BAQSIMI’s positive impact has been felt by people with diabetes around the globe and we’re working closely with Amphastar to facilitate a successful transition and consistent patient experience.”

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Lilly launched BAQSIMI in 2019 as an option to quickly render aid in rescue situations for people with diabetes who take insulin and it is currently available in 27 international markets. Worldwide sales for BAQSIMI totaled \$139.3 million in 2022.

Jack Zhang, Ph.D., Amphastar’s president and CEO, commented: “The acquisition of BAQSIMI will integrate our core strategic vision of strengthening our proprietary products profile in addition to enhancing our diabetes portfolio offering. We are optimistic about BAQSIMI’s growth potential as it is the first and only commercial intra-nasal glucagon demonstrated to treat low blood sugar emergencies.”

### **Terms of the Agreement**

Pursuant to the terms of the agreement, Amphastar will pay Lilly \$500 million in cash at closing and an additional \$125 million in cash upon the one-year anniversary of closing. Lilly is also eligible to receive sales-based milestone payments of up to \$450 million in aggregate.

The transaction has been approved by the boards of directors of both companies. The transaction is not subject to any financing conditions and is expected to close in the second or third quarter of 2023, subject to the satisfaction of customary closing conditions.

Each of Lilly and Amphastar will determine their applicable accounting treatment for this transaction according to Generally Accepted Accounting Principles (GAAP) upon closing. This transaction will thereafter be reflected in each company’s respective financial results and financial guidance.

Kirkland & Ellis LLP and Covington & Burling LLP are acting as legal counsel and J.P. Morgan Securities LLC is acting as financial advisor to Lilly. Wilson, Sonsini, Goodrich & Rosati, P.C. is acting as legal counsel and Jefferies LLC is acting as financial advisor to Amphastar.

Wells Fargo Bank, N.A., Capital One N.A., J.P. Morgan Chase Bank, N.A., Fifth Third Bank, N.A., East West Bank, Cathay Bank and CIBC Bank USA have provided a debt financing commitment to Amphastar for new senior secured credit facilities in connection with the transaction. Proceeds of Amphastar’s senior credit facilities will be used together with cash on hand to fund a portion of the purchase price payable at closing.

## Indication and Safety Summary

BAQSIMI® (BAK-see-mee) is used to treat very low blood sugar (severe hypoglycemia) in people with diabetes ages 4 years and above.

It is not known if BAQSIMI is safe and effective in children under 4 years of age.

**Warnings** - Do not use BAQSIMI if:

- you have a tumor in the gland on top of your kidneys (adrenal gland) called pheochromocytoma.
- you have a tumor in your pancreas called insulinoma.
- you are allergic to glucagon, or any other ingredient in BAQSIMI.

**BAQSIMI may cause serious side effects, including:**

**High blood pressure.** BAQSIMI can cause high blood pressure in certain people with tumors in their adrenal glands.

**Low blood sugar.** BAQSIMI can cause certain people with tumors in their pancreas to have low blood sugar.

**Serious allergic reaction.** Call your doctor or **get medical help right away** if you have a serious allergic reaction including:

- rash
- difficulty breathing
- low blood pressure

### Common side effects

**The most common side effects of BAQSIMI include:**

- nausea
- vomiting
- headache
- runny nose
- discomfort in your nose

- stuffy nose
- redness in your eyes
- itchy nose, throat, and eyes
- watery eyes

These are not all the possible side effects of BAQSIMI. For more information, ask your doctor.

Call your doctor for medical advice about side effects. **You are encouraged to report side effects of prescription drugs to the FDA. Visit [www.fda.gov/medwatch](http://www.fda.gov/medwatch) or call 1-800-FDA-1088.**

### **Before using**

Before getting BAQSIMI, tell your health care provider about all your medical conditions, including if you:

- have a tumor in your pancreas.
- have not had food or water for a long time (prolonged fasting or starvation).
- are pregnant or plan to become pregnant.
- are breastfeeding or plan to breastfeed. It is not known if BAQSIMI passes into your breast milk. You and your doctor should decide if you can use BAQSIMI while breastfeeding.

Tell your doctor about all the medicines you take, including prescription and over-the-counter medicines, vitamins, and herbal supplements.

### **How to use**

Read the detailed Instructions for Use that comes with BAQSIMI.

- Use BAQSIMI exactly how your doctor tells you to use it.
- Make sure your caregiver knows where you keep your BAQSIMI and how to use BAQSIMI the right way **before you need their help.**
- Your doctor will tell you how and when to use BAQSIMI.
- BAQSIMI contains only 1 dose of medicine and **cannot** be reused.
- BAQSIMI should be given in one side of your nose (nostril) but does not need to be inhaled.
- BAQSIMI will work even if you have a cold or are taking cold medicine.
- After giving BAQSIMI, the caregiver should call for emergency medical help right away.
- If the person does not respond after 15 minutes, another dose may be given, if available.
- Tell your doctor each time you use BAQSIMI.
- Store BAQSIMI at temperatures up to 86°F (30°C).



- Keep BAQSIMI in the shrink-wrapped tube until you are ready to use it.

**Keep BAQSIMI and all medicines out of the reach of children.**

**Learn more**

BAQSIMI is a prescription medicine. For more information, call 1-800-545-5979 or go to [www.baqsimi.com](http://www.baqsimi.com).

This summary provides basic information about BAQSIMI but does not include all information known about this medicine. Read the information that comes with your prescription each time your prescription is filled. This information does not take the place of talking with your doctor. Be sure to talk to your doctor or other healthcare provider about BAQSIMI and how to take it. Your doctor is the best person to help you decide if BAQSIMI is right for you.

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BAQSIMI® is currently a registered trademark owned or licensed by Eli Lilly and Company, its subsidiaries, or affiliates.

**About Amphastar**

Amphastar is a bio-pharmaceutical company focusing primarily on developing, manufacturing, marketing and selling technically-challenging generic and proprietary injectable, inhalation and intranasal products. Additionally, Amphastar sells insulin API products. Most of Amphastar's finished products are used in hospital or urgent care clinical settings and are primarily contracted and distributed through group purchasing organizations and drug wholesalers. More information and resources are available at Amphastar's website at [www.amphastar.com](http://www.amphastar.com).

Amphastar's logo and other trademarks or service marks of Amphastar, including, but not limited to Amphastar®, Primatene MIST®, Amphadase®, and Cortrosyn®, are the property of Amphastar.

**About Lilly**

Lilly unites caring with discovery to create medicines that make life better for people around the world. We've been pioneering life-changing discoveries for nearly 150 years, and today our medicines help more than 47 million people across the globe. Harnessing the power of biotechnology, chemistry

and genetic medicine, our scientists are urgently advancing new discoveries to solve some of the world's most significant health challenges, redefining diabetes care, treating obesity and curtailing its most devastating long-term effects, advancing the fight against Alzheimer's disease, providing solutions to some of the most debilitating immune system disorders, and transforming the most difficult-to-treat cancers into manageable diseases. With each step toward a healthier world, we're motivated by one thing: making life better for millions more people. That includes delivering innovative clinical trials that reflect the diversity of our world and working to ensure our medicines are accessible and affordable. To learn more, visit Lilly.com and Lilly.com/newsroom or follow us on Facebook, Instagram and LinkedIn. C-LLY

**Amphastar Cautionary Statement Regarding Forward-Looking Statements**

All statements in this press release that are not historical are forward-looking statements, including, among other things, statements relating to Amphastar's expectations regarding its acquisition of BAQSIMI, the prospective benefits of the proposed acquisition, potential contingent consideration amounts and terms, debt commitments related to the acquisition, and the anticipated occurrence, manner and timing of the proposed acquisition, and the benefits of BAQSIMI. These statements are not facts but rather are based on Amphastar's current beliefs and expectations. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties, and assumptions that are difficult or impossible to predict and, in some cases, beyond Amphastar's control, including with respect to consummating the proposed acquisition, drug research, development and commercialization, Amphastar's evaluation of the accounting treatment of the potential acquisition and its potential impact on its financial results and financial guidance, the effects of the proposed acquisition on Amphastar's business, results of operations and stock price, transaction costs, and any legal proceedings that may be instituted related to the proposed acquisition. Actual results may differ materially from those in the forward-looking statements as a result of a number of factors, including those described in Amphastar's filings with the Securities and Exchange Commission ("SEC"), including in Amphastar's Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 1, 2023. Among other things, there can be no guarantee that the proposed acquisition will be completed in the anticipated timeframe or at all, that the conditions required to complete the proposed acquisition will be met, that the debt commitments will be sufficient, that any event, change or other circumstance that could give rise to the termination of the definitive agreement for the proposed acquisition will not occur, that all or any of the contingent consideration will become payable on the terms described herein or at all or that Amphastar can reliably predict the impact of the proposed acquisition on its financial results or financial guidance. You can locate these and Amphastar's other reports filed with the SEC through Amphastar's website at <http://ir.amphastar.com> and on the SEC's website at [www.sec.gov](http://www.sec.gov). The forward-looking statements in this release speak only as of the date of the release. Amphastar undertakes no obligation to revise or update information or any forward-looking statements in this press release or the conference call referenced above to reflect events or circumstances in the future, even if new information becomes available or if subsequent events cause Amphastar's expectations to change. Any forward-looking statements relating to Lilly and the impact of the proposed divestiture on Lilly's business are additionally subject to the Lilly Cautionary Statement Regarding Forward-Looking Statements.

**Lilly Cautionary Statement Regarding Forward-Looking Statements**

This press release contains forward-looking statements regarding Lilly's divestiture of BAQSIMI, regarding prospective benefits of the proposed divestiture, regarding potential contingent consideration amounts and terms, regarding the anticipated occurrence, manner and timing of the proposed divestiture, and regarding the accounting treatment of the potential divestiture under GAAP and its potential impact on Lilly's financial results and financial guidance. All statements other than statements of historical fact are statements that could be deemed forward-looking statements. Lilly's forward-looking statements reflect Lilly's current beliefs and expectations; however, these statements involve inherent risks and uncertainties, including with respect to consummating the proposed divestiture, drug research,

development and commercialization, Lilly's evaluation of the accounting treatment of the potential divestiture and its potential impact on its financial results and financial guidance, the effects of the proposed divestiture on Lilly's business, results of operations and stock price, transaction costs, and any legal proceedings that may be instituted related to the proposed divestiture. Actual results could differ materially due to various factors, risks and uncertainties. Among other things, there can be no guarantee that the proposed divestiture will be completed in the anticipated timeframe or at all, that the conditions required to complete the proposed divestiture will be met, that any event, change or other circumstance that could give rise to the termination of the definitive agreement for the proposed divestiture will not occur, that all or any of the contingent consideration will become payable on the terms described herein or at all or that Lilly can reliably predict the impact of the proposed divestiture on its financial results or financial guidance. For further discussion of these and other risks and uncertainties, see Lilly's most recent Form 10-K and Form 10-Q filings with the SEC. Except as required by law, Lilly does not undertake any duty to update forward-looking statements to reflect events after the date of this press release. Any forward-looking statements relating to Amphastar and the impact of the proposed divestiture on Amphastar's business are additionally subject to the Amphastar Cautionary Statement Regarding Forward-Looking Statements.

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