

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

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

AFFIMED N.V.

(Exact name of registrant as specified in its charter)

The Netherlands
(State or other jurisdiction of
incorporation or organization)

Not Applicable
(I.R.S. Employer
Identification No.)

**Technologiepark,
Im Neuenheimer Feld 582
69120 Heidelberg, Germany**
(Address of Principal Executive Offices)

69120
(Zip Code)

Affimed N.V. Equity Incentive Plan 2014
(Full title of the plan)

**Affimed Inc.
1209 Orange Street
Wilmington, Delaware 19801**
(Name and address of agent for service)

(212) 450-4000
(Telephone number, including area code, of agent for service)

Copy to:

**Sophia Hudson, P.C.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
(212) 446-4750**

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

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

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 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

Affimed N.V. (the “Registrant”) is filing this Registration Statement on Form S-8 (this “Registration Statement”) to register an additional 21,500,000 shares of its common stock, par value €0.01 per share, that may be issued and sold under the Affimed N.V. Equity Incentive Plan 2014. This Registration Statement is submitted in accordance with General Instruction E to Form S-8 regarding registration of additional securities, and pursuant to that instruction, the contents of the Registration Statement on Form S-8 (File No. 333-198812) filed with the Securities and Exchange Commission (the “SEC”) on September 18, 2014 are incorporated herein by reference.

Part I

The documents containing the information specified in Item 1 and Item 2 of Part I of Form S-8 will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act of 1933 (the “Act”). In accordance with the rules and regulations of the SEC and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Act.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation by Reference

The following documents are incorporated hereby reference:

- (a) [The Registrant’s Annual Report on Form 20-F filed with the SEC on March 23, 2023 which contains the Registrant’s audited financial statements for the latest fiscal year for which such statements have been filed;](#)
- (b) [The Registrant’s Current Report on Form 6-K filed with the SEC on January 9, 2023 \(other than Exhibit 99.1\); and](#)
- (c) [The description of the Registrant’s common shares contained in Exhibit 2 to its Annual Report on Form 20-F for the fiscal year ended December 31, 2022 filed with the SEC on March 23, 2023.](#)

Item 8. Exhibits.

| Exhibit Number | Description |
|----------------|--|
| 4.1 | Articles of Association of Affimed N.V. (English Translation) (incorporated by reference to Exhibit 1.1 of the Affimed N.V. Form 20-F filed with the Commission on April 15, 2021) |
| 5.1* | Opinion of De Brauw Blackstone Westbroek N.V. |
| 23.1* | Consent of KPMG AG Wirtschaftsprüfungsgesellschaft, independent registered public accounting firm |
| 23.2* | Consent of De Brauw Blackstone Westbroek N.V. (included in the opinion filed as Exhibit 5.1) |
| 24.1* | Power of Attorney (included on the signature page hereto) |
| 99.1+ | Affimed N.V. Equity Incentive Plan 2014 (incorporated by reference to Exhibit 99.1 of the Affimed N.V. Form S-8 filed with the Commission on September 18, 2014) |
| 107* | Filing Fee Table |

* Filed herewith.

+ Indicates management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Heidelberg, Germany, on March 23, 2023.

AFFIMED N.V.

By: /s/ Adi Hoess
Name: Adi Hoess
Title: Chief Executive Officer

By: /s/ Angus Smith
Name: Angus Smith
Title: Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Adi Hoess and Angus Smith and each of them, individually, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead in any and all capacities, in connection with this registration statement, including to sign in the name and on behalf of the undersigned, this registration statement and any and all amendments thereto, including post-effective amendments and registrations filed pursuant to Rule 462 under the U.S. Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the U.S. Securities and Exchange Commission, granting unto such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons on March 23, 2023 in the capacities indicated:

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|----------------|
| <u>/s/ Adi Hoess</u> Adi Hoess | Chief Executive Officer (Principal Executive Officer) | March 23, 2023 |
| <u>/s/ Angus Smith</u> Angus Smith | Chief Financial Officer (principal financial officer and principal accounting officer); Authorized Representative in the United States | March 23, 2023 |
| <u>/s/ Thomas Hecht</u> Thomas Hecht | Supervisory Director | March 23, 2023 |
| <u>/s/ Bernhard Ehmer</u> Bernhard Ehmer | Supervisory Director | March 23, 2023 |

| | | |
|---|----------------------|----------------|
| <hr/> <i>/s/ Ulrich M. Grau</i> Ulrich M. Grau | Supervisory Director | March 23, 2023 |
| <hr/> <i>/s/ Annalisa Jenkins</i> Annalisa Jenkins | Supervisory Director | March 23, 2023 |
| <hr/> <i>/s/ Uta Kemmerich-Keil</i> Uta Kemmerich-Keil | Supervisory Director | March 23, 2023 |
| <hr/> <i>/s/ Mathieu Simon</i> Mathieu Simon | Supervisory Director | March 23, 2023 |
| <hr/> <i>/s/ Harry Welten</i> Harry Welten | Supervisory Director | March 23, 2023 |

Advocaten
Notarissen
Belastingadviseurs

DE BRAUW
BLACKSTONE
WESTBROEK

To Affimed N.V. (the “**Issuer**”)
Im Neuenheimer Feld 582 0
D-69120 Heidelberg

Claude Debussylaan 80
P.O. Box 75084
1070 AB Amsterdam
T +31 20 577 1771
F +31 20 577 1775

Date 23 March 2023

G.N. Smeenk
E gaby.smeenk@debrauw.com
T +31 20 577 1446
F +31 20 577 1775

Our ref. K328304/1/03/mb

Re: Registration with the US Securities and Exchange Commission

Dear Sir/Madam,

**Registration with the US Securities and Exchange Commission of
ordinary shares in the capital of the Issuer**

1 INTRODUCTION

De Brauw Blackstone Westbroek N.V. (“**De Brauw**”, “**we**”, “**us**” and “**our**”, as applicable) acts as Dutch legal adviser to the Issuer in connection with the Registration.

Certain terms used in this opinion are defined in **Annex 1 (Definitions)**.

2 DUTCH LAW

This opinion (including all terms used in it) is to be construed in accordance with Dutch law. It is limited to Dutch law and the law of the European Union, to the extent directly applicable in the Netherlands, in effect on the date of this opinion.

3 SCOPE OF INQUIRY

We have examined, and relied upon the accuracy of the factual statements in, the following documents:

- (a) A copy of:
 - (i) the Registration Statement; and

De Brauw Blackstone Westbroek N.V., Amsterdam, is registered with the Trade Register in the Netherlands under no. 27171912.

All services and other work are carried out under an agreement of instruction (“overeenkomst van opdracht”) with De Brauw Blackstone Westbroek N.V. The agreement is subject to the General Conditions, which have been filed with the register of the District Court in Amsterdam and contain a limitation of liability.

Client account notaries ING Bank IBAN NL83INGB0693213876 BIC INGBNL2A.

- (ii) the 2014 Equity Incentive Plan.
- (b) A copy of:
 - (iii) (A) the Issuer's deed of incorporation, (B) the Deed of Conversion and the Articles of Association I, (C) the Deed of Amendment I and the Articles of Association II, (D) the Deed of Amendment II and the Articles of Association III and (E) the Deed of Amendment III and the Articles of Association IV, each as provided to us by the Chamber of Commerce (*Kamer van Koophandel*);
 - (iv) the Board Regulations;
 - (v) the Trade Register Extract; and
 - (vi) the Shareholders Register.
- (c) A copy of the Corporate Resolutions.

In addition, we have obtained the following confirmations on the date of this opinion:

 - (d) Confirmation by telephone from the Chamber of Commerce that the Trade Register Extract is up to date.
 - (e) Confirmation through https://www.eeas.europa.eu/eeas/european-union-sanctions_en and <https://www.rijksoverheid.nl/documenten/rapporten/2015/08/27/nationale-terrorisraelijst> that the Issuer is not included on any Sanctions List.
 - (f) Confirmation through <https://insolventies.rechtspraak.nl> and www.rechtspraak.nl, derived from the segment for EU registrations of the Central Insolvency Register, in each case that the Issuer is not registered as being subject to Insolvency Proceedings.

We have not examined any document, and do not express an opinion on, or on any reference to, any document other than the documents referred to in this paragraph 3. My examination has been limited to the text of the documents and we have not investigated the meaning and effect of any document (or part of it) governed by a law other than Dutch law under that other law.

4 ASSUMPTIONS

We have made the following assumptions:

- (a)
 - (i) Each copy document conforms to the original and each original is genuine and complete.
 - (ii) Each signature is the genuine signature of the individual concerned.
 - (iii) Each confirmation referred to in paragraph 3 is true.
 - (iv) The Registration Statement has been or will have been filed with the SEC in the form referred to in this opinion.
- (b) The Board Regulations remain in force without modification.
- (c) Each Corporate Resolution:
 - (i) has been validly passed and remains in full force and effect without modification; and
 - (ii) complies with the requirements of reasonableness and fairness (*redelijkheid en billijkheid*).
- (d)
 - (i) At the time of each grant of a Stock Option or Stock Award, the 2014 Equity Incentive Plan remained and remains in full force and effect without modification; and
 - (ii) the aggregate number of (A) Shares that have been issued or delivered and (B) Shares that will be issued or delivered, each time under the 2014 Equity Incentive Plan, will not exceed the maximum number permitted under the 2014 Equity Incentive Plan.
- (e)
 - (i) Each Stock Option and each Stock Award has been or will have been validly granted, accepted and (in the case of a Stock Option) exercised in accordance with the 2014 Equity Incentive Plan;
 - (ii) each Stock Option is and will be valid, binding on and enforceable against, each party; and

- (iii) the grant of each Stock Option and each Stock Award has been or will have been validly authorised.
- (f)
 - (i) The issue by the Issuer of the Registration Shares (or of any rights to acquire Registration Shares) will have been validly authorised; and
 - (ii) any pre-emption rights in respect of the issue of the Registration Shares (or of any rights to acquire Registration Shares) will have been observed or validly excluded;
all in accordance with the Issuer's articles of association at the time of authorisation or of observance or exclusion.
- (g) The Issuer's authorised share capital at the time of issue of any Registration Share will be sufficient to allow for the issue.
- (h) The Registration Shares will have been:
 - (i) issued in the form and manner prescribed by the Issuer's articles of association at the time of issue; and
 - (ii) otherwise offered, issued and accepted by their subscribers in accordance with all applicable laws (including, for the avoidance of doubt, Dutch law).
- (i) The nominal amount of the Registration Shares and any agreed share premium will have been validly paid.

5 OPINION

Based on the documents and investigations referred to and assumptions made in paragraphs 3 and 4, and subject to the qualifications in paragraph 6 and to any matters not disclosed to me (including force (*bedreiging*), fraud (*bedrog*), undue influence (*misbruik van omstandigheden*) or a mistake (*dwaling*) in connection with the issue of the Registration Shares), we are of the following opinion:

- (a) When issued, the Registration Shares will have been validly issued and will be fully paid and nonassessable.¹

¹ In this opinion, "nonassessable" – which term has no equivalent in Dutch – means, in relation to a share, that the issuer of the share has no right to require the holder of the share to pay to the issuer any amount (in addition to the amount required for the share to be fully paid) solely as a result of his shareholdership.

6 QUALIFICATIONS

This opinion is subject to the following qualifications

- (a) This opinion is subject to any limitations arising from (a) rules relating to bankruptcy, suspension of payments or Preventive Restructuring Processes, (b) rules relating to foreign (i) insolvency proceedings (including foreign Insolvency Proceedings), (ii) arrangement or compromise of obligations or (iii) preventive restructuring frameworks, (c) any other collective judicial or administrative proceeding in any jurisdiction pursuant to a law relating to insolvency, (d) other rules regulating conflicts between rights of creditors, or (e) intervention and other measures in relation to financial enterprises or their affiliated entities.
- (b)
 - (i) An extract from the Trade Register does not provide conclusive evidence that the facts set out in it are correct. However, under the 2007 Trade Register Act (*Handelsregisterwet 2007*), subject to limited exceptions, a legal entity or partnership cannot invoke the incorrectness or incompleteness of its Trade Register registration against third parties who were unaware of the incorrectness or incompleteness.
 - (ii) A confirmation from an Insolvency Register does not provide conclusive evidence that an entity is not subject to Insolvency Proceedings.

7 RELIANCE

- (a) This opinion is an exhibit to the Registration Statement and may be relied upon for the purpose of the Registration and not for any other purpose. It may not be supplied, and its contents or existence may not be disclosed, to any person other than as an Exhibit to (and therefore together with) the Registration Statement.
- (b) Each person accepting this opinion agrees, in so accepting, that:
 - (i) only De Brauw (and not any other person) will have any liability in connection with this opinion;
 - (ii) the agreement in this paragraph 7 and all liability and other matters relating to this opinion will be governed exclusively by Dutch law and the Dutch courts will have exclusive jurisdiction to settle any dispute relating to them; and

(iii) this opinion may be signed with an Electronic Signature. This has the same effect as if signed with a handwritten signature.

(c) The Issuer may:

(i) file this opinion as an exhibit to the Registration Statement; and

(ii) refer to De Brauw giving this opinion under the heading “Legal Matters” in the prospectus included in the Registration Statement.

The previous sentence is no admittance from us that we are in the category of persons whose consent for the filing and reference as set out in that sentence is required under article 7 of the Securities Act or any rules or regulations of the SEC promulgated under it.

Yours faithfully,
De Brauw Blackstone Westbroek N.V.

/s/ Gaby Smeenk

Annex 1 – Definitions

In this opinion:

“**2014 Equity Incentive Plan**” means the Issuer’s 2014 Equity Incentive Plan, effective as of 17 September 2014.

“**Articles of Association I**” means the Issuer’s articles of association as included in the Deed of Conversion and in force until the coming into force of the Articles of Association II.

“**Articles of Association II**” means the Issuer’s articles of association as included in the Deed of Amendment I and in force until the coming into force of the Articles of Association III.

“**Articles of Association III**” means the Issuer’s articles of association as included in the Deed of Amendment II and in force until the coming into force of the Articles of Association IV.

“**Articles of Association IV**” means the Issuer’s articles of association as included in the Deed of Amendment III and in force on the date of signing of this opinion.

“**Board Regulations**” means each of:

- (a) the Issuer’s rules governing its management board, dated 17 September 2014; and
- (b) the Issuer’s rules governing its supervisory board, dated 15 December 2020.

“**Corporate Resolution**” means each of the Shareholders’ Resolutions, each of the Managing Board Resolutions and each of the Supervisory Board Resolutions.

“**De Brauw**” means De Brauw Blackstone Westbroek N.V. and “**we**”, “**us**” and “**our**” are to be construed accordingly.

“**Deed of Amendment I**” means the deed of amendment of the Articles of Association I dated 20 June 2017.

“**Deed of Amendment II**” means the deed of amendment of the Articles of Association II dated 19 June 2018.

“**Deed of Amendment III**” means the deed of amendment of the Articles of Association III dated 4 August 2020.

“**Deed of Conversion**” means the deed of conversion and amendment of the articles of association (*akte van omzetting en statutenwijziging Affimed Therapeutics B.V. (na omzetting en statutenwijziging genaamd: Affimed N.V.)*) dated 17 September 2014 providing for the conversion of the Issuer into a public limited liability company and amendment of its articles of association.

“**Dutch law**” means the law directly applicable in the Netherlands.

“**eIDAS Regulation**” means the Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing directive 1999/93/EC.

“**Electronic Signature**” means any electronic signature (*elektronische handtekening*), any advanced electronic signature (*geavanceerde elektronische handtekening*) and any qualified electronic signature (*elektronische gekwalificeerde handtekening*) within the meaning of Article 3 of the eIDAS Regulation and Article 3:15a of the Dutch Civil Code.

“**Issuer**” means Affimed N.V., a public company with limited liability with corporate seat Amsterdam, Trade Register number 60673389.

“**Insolvency Proceedings**” means insolvency proceedings as defined in Article 2(a) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

“**Managing Board Resolution**” means each of a written resolution by the Issuer’s managing board dated:

- (a) 12 September 2014 to propose to the Issuer’s general meeting to approve the 2014 Equity Incentive Plan; and
- (b) 17 September 2014, to approve, ratify and confirm its resolution adopted on 12 September 2014.

“**Registration**” means the registration of the Registration Shares with the SEC under the Securities Act.

“**Registration Shares**” means Shares to be issued by the Issuer pursuant to the 2014 Equity Incentive Plan, upon the exercise of Stock Options or in the form of Stock Awards and as registered with the SEC pursuant to the Registration.

“**Registration Statement**” means the registration statement on form S-8 in relation to the Registration to be filed with the SEC on the date of this opinion (excluding any documents incorporated by reference in it and any exhibits to it).

“**Sanctions List**” means each of:

- (a) each list referred to in:
 - (i) Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism;
 - (ii) Article 2 of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da’esh) and Al-Qaida organisations, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan; or
 - (iii) Article (1)(1) of the Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism; and
- (b) the national terrorism list (*nationale terrorismelijst*) of persons and organisations designated under the Sanction Regulation Terrorism 2007-11 (*Sanctieregeling terrorisme 2007-11*).

“**Shareholder Resolution**” means:

- (a) the written resolution of the Issuer’s general meeting of shareholders dated 12 September 2014, to approve, under the condition precedent of the execution of the Deed of Conversion, the adoption of the 2014 Equity Incentive Plan by the Issuer’s management board; and
- (b) as evidenced by a declaration dated 25 June 2019 of the chairman of the Issuer’s general meeting held on 25 June 2019, the resolutions adopted at such meeting to authorise the Issuer’s management board, for a period of five years and subject to the approval of the Issuer’s supervisory board, to:
 - (i) issue Shares and/or grant rights to subscribe for Shares, up to the maximum number of Shares that can be issued under the authorised share capital of the Issuer as per the date of adoption of such resolution; and
 - (ii) restrict or exclude the pre-emptive rights in respect thereof.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**Shares**” means the ordinary shares (*gewone aandelen*), nominal capital of EUR 0.01, in the Issuer’s capital.

“**Shareholders Register**” means the Issuer’s shareholders register.

“**Stock Award**” means any issue of Shares pursuant to the 2014 Equity Incentive Plan other than as a result of the exercise of any Stock Option.

“**Stock Option**” means an option representing the right to purchase a Share, granted pursuant to the 2014 Equity Incentive Plan.

“**Supervisory Board Resolution**” means each of a written resolution by the Issuer’s supervisory board dated:

- (a) 12 September 2014, to propose to the General Meeting to approve the 2014 Equity Incentive Plan; and
- (b) 17 September 2014, to approve, ratify and confirm its resolutions adopted on 12 September 2014.

“**the Netherlands**” means the part of the Kingdom of the Netherlands located in Europe.

“**Trade Register Extract**” means a Trade Register extract relating to the Issuer provided by the Chamber of Commerce and dated 22 March 2023.

Consent of Independent Registered Public Accounting Firm

We consent to the use of our reports dated March 23, 2023, with respect to the consolidated financial statements of Affimed N.V., and the effectiveness of internal control over financial reporting, incorporated herein by reference.

/s/ KPMG AG Wirtschaftsprüfungsgesellschaft

Mannheim, Germany

March 23, 2023

Calculation Of Filing Fee Tables

Form S-8
(Form Type)

Affimed N.V.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

| Security Type | Security Class Title | Fee Calculation Rule | Amount Registered(1) | Proposed Maximum Offering Price Per Share | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|-------------------------------|---|-----------------------------|----------------------|---|----------------------------------|--------------|----------------------------|
| Equity | Common stock, €0.01 par value per share | Rule 457(c) and Rule 457(h) | 21,500,000(2) | \$0.76(3) | \$16,340,000 | \$0.00011020 | \$1,800.67 |
| Total Offering Amounts | | | | | \$16,340,000 | | \$1,800.67 |
| Total Fee Offsets | | | | | | | — |
| Net Fee Due | | | | | | | \$1,800.67 |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement on Form S-8 (the “Registration Statement”) shall also cover any additional shares of the Registrant’s common stock, €0.01 par value per share (the “Common Stock”) that becomes issuable under the Affimed N.V. Equity Incentive Plan 2014 (the “Plan”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of the Registrant’s outstanding shares of Common Stock.
- (2) This Registration Statement covers 21,500,000 additional shares of the Registrant’s Common Stock, which are issuable pursuant to the Plan.
- (3) Estimated in accordance with Rule 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee on the basis of \$0.76, the average of the high and low prices of the Registrant’s Common Stock as reported on The Nasdaq Global Select Market on March 22, 2023, which date is within five business days prior to the filing of this registration statement.