

AGENUS INC  
Form S-8  
August 03, 2012

As filed with the Securities and Exchange Commission on August 3, 2012

REGISTRATION NO. 333

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form S-8**  
**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**Agenus Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**06-1562417**  
(I.R.S. Employer  
Identification No.)

**3 Forbes Road, Lexington, MA 02421**

(Address of principal executive offices, including zip code)

**AGENUS INC. DIRECTORS DEFERRED COMPENSATION PLAN**

(Full title of the plan)

**Garo H. Armen, Ph.D**

**Agenus Inc.**

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3 Forbes Road

Lexington, MA 02421

781-674-4400

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

*Please send copies of all communications to:*

William B. Asher, Jr.

Choate, Hall & Stewart LLP

Two International Place

Boston, MA 02110

(617) 248-5000

(617) 248-4000 (facsimile)

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

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered</b>	<b>Proposed maximum offering price per share(1)</b>	<b>Proposed maximum aggregate offering price(1)</b>	<b>Amount of registration fee</b>
Common Stock, \$0.01 par value per share	100,000 shares(2)	\$4.92	\$492,000	\$56.38

- (1) Pursuant to Rules 457(c) and 457(h)(1) under the Securities Act of 1933, the proposed maximum offering price per share and the proposed maximum aggregate offering price for the shares have been calculated solely for the purpose of computing the registration fee on the basis of the average high and low prices of the Common Stock as reported on the NASDAQ Capital Market on August 1, 2012.
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, this registration statement also covers such additional shares of Common Stock as may be issued to prevent dilution from stock splits, stock dividends and similar transactions. In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Agenus Inc. Directors' Deferred Compensation Plan.



Explanatory Note

The Registrant hereby increases the number of shares of the Registrant's Common Stock available for future issuance under the Agenus Inc. Directors' Deferred Compensation Plan, as amended (the Plan) by one hundred thousand shares so that a total of two hundred twenty-five thousand shares will be available under the Plan.

Pursuant to Instruction E to Form S-8, the Registrant incorporates by reference into this Registration Statement the contents of its Registration Statements on Form S-8 (File Nos. 333-106072, 333-143807, 333-160088, and 333-176609) filed with the Securities and Exchange Commission on June 12, 2003, June 15, 2007, June 19, 2009, and September 1, 2011, respectively.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents of the Company filed with the Securities and Exchange Commission are incorporated by reference into this Registration Statement:

- a. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed March 6, 2012;
- b. The Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2012, filed May 9, 2012, and the Company's Current Reports on Form 8-K filed on March 2, 2012, March 5, 2012, March 20, 2012, and June 19, 2012; and
- c. The description of the Company's Common Stock included in its registration statement on Form S-1 filed on November 30, 1999, including all amendments and reports amending such description.

In addition, all documents filed by the Company after the initial filing date of this Registration Statement pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, and prior to the filing of a post-effective amendment which indicates that all shares registered have been sold or which registers all shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

You should rely only on information contained or incorporated by reference in this Registration Statement. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

**Item 8.**

See Exhibit Index following the signature page of this registration statement.

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 New York, State of New York, on this 3<sup>rd</sup> day of August, 2012.

Agenus Inc.

By

/s/ Garo H. Armen, Ph.D.  
Garo H. Armen, Ph.D.  
*Chief Executive Officer and*

*Chairman of the Board*

POWER OF ATTORNEY

We, the undersigned officers and directors of Agenus Inc., hereby severally constitute and appoint Garo Armen and Christine M. Klaskin, and each of them singly, our true and lawful attorneys-in-fact, with full power to them in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including any post-effective amendments thereto), 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 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 in the capacities indicated on August 3, 2012:

Signature	Title
/s/ Garo H. Armen, Ph.D.  Garo H. Armen, Ph.D.	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)
/s/ Christine M. Klaskin  Christine M. Klaskin	Vice President, Finance  (Principal Accounting Officer and Principal Financial Officer)
/s/ Brian Corvese  Brian Corvese	Director
/s/ Tom Dechaene  Tom Dechaene	Director
/s/ Wadiah Jordan  Wadiah Jordan	Director
/s/ Shalini Sharp  Shalini Sharp	Director
	Director

Timothy R. Wright

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**EXHIBIT INDEX**

The following is a list of exhibits filed as part of this registration statement.

<i>Exhibit</i>	<i>Description</i>
4.1	Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K filed on June 10, 2002 and incorporated herein by reference.
4.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K filed on June 11, 2007 and incorporated herein by reference.
4.3	Certificate of Ownership and Merger changing the name of the corporation to Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
4.4	Fifth Amended and Restated By-laws of Agenus Inc. Filed as Exhibit 3.2 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
4.5	Form of Common Stock Certificate. Filed as Exhibit 4.1 to Current Report on Form 8-K (File No. 0-29089) filed January 6, 2011 and incorporated herein by reference.
4.6	Certificate of Second Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to Current Report on Form 8-K (File No. 0-29089) filed on September 30, 2011 and incorporated herein by reference.
5.1	Opinion of Choate, Hall & Stewart LLP dated August 3, 2012. Filed herewith.
23.1	Consent of Choate, Hall & Stewart LLP (included in Opinion filed as Exhibit 5.1).
23.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm. Filed herewith.
24.4	Power of Attorney (included on signature page of this registration statement).
99.1	Agenus Inc. Directors' Deferred Compensation Plan, as amended. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on June 11, 2007 and incorporated herein by reference.
99.2	Third Amendment to Directors' Deferred Compensation Plan. Filed as Appendix E to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
99.3	Fourth Amendment to Directors' Deferred Compensation Plan. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on December 14, 2010 and incorporated herein by reference.
99.4	Fifth Amendment to Directors' Deferred Compensation Plan. Filed as Appendix B to our Definitive Proxy Statement on Schedule 14A filed on May 3, 2011 and incorporated herein by reference.
99.5	Sixth Amendment to Directors' Deferred Compensation Plan. Filed as Appendix C to our Definitive Proxy Statement on Schedule 14A filed on April 24, 2012 and incorporated herein by reference.