
**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 13, 2023

ImmunityBio, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-37507
(Commission
File Number)

43-1979754
(IRS Employer
Identification No.)

**3530 John Hopkins Court
San Diego, California 92121**
(Address of principal executive offices, including zip code)

(844) 696-5235
(Registrant's telephone number, including area code)

Not Applicable
(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(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	IBRX	Nasdaq Global Select 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.

Section 1 – Registrant’s Business and Operations

Item 1.01 Entry into a Material Definitive Agreement.

\$30.0 million Variable-Rate Promissory Note

As previously disclosed in a Form 8-K filed by ImmunityBio, Inc. (the “Company”) on May 11, 2023, on May 9, 2023, the Company’s Executive Chairman and Global Chief Scientific and Medical Officer agreed to provide non-convertible debt financing to the Company in an amount of \$30.0 million on substantially similar terms as prior financings. To that end, on June 13, 2023, the Company executed a \$30.0 million promissory note with Nant Capital, LLC (“Investor”), an entity affiliated with Dr. Patrick Soon-Shiong, our Executive Chairman and Global Chief Scientific and Medical Officer (the “Note”). The Company may request up to three (3) advances of ten million dollars (\$10,000,000) each pursuant to the Note. The principal amount of each advance will bear interest at term secured overnight financing rate (“Term SOFR”) plus 8.0% per annum. The accrued interest on any advance shall be payable quarterly on the last business day of June, September and December. The outstanding principal amount and any accrued and unpaid interest on advances are due on the earlier of (i) December 31, 2023 or (ii) upon the occurrence and during the continuance of an Event of Default (as defined in the Note). We may prepay the outstanding principal amount, together with any accrued interest, on any then-outstanding advances, at any time, in whole or in part, without premium or penalty, and without the prior consent of Investor, upon five (5) days written notice to Investor.

We expect to receive net proceeds of approximately \$29.85 million from this financing, net of a \$150,000 origination fee (0.5%) paid to the Investor, assuming all advances are drawn under the Note, which we intend to use, together with other available funds, to progress our pre-commercialization efforts and clinical development programs, fund other research and development activities, for capital expenditures, and for other general corporate purposes. We may also use a portion of the net proceeds to license intellectual property or to make acquisitions or investments.

The foregoing is only a brief description of the material terms of the Note, and 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 note that is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Section 2 – Financial Information

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

To the extent relevant, the information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Section 5 – Corporate Governance and Management

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

On June 13, 2023, ImmunityBio, Inc. held its Annual Meeting of Stockholders (the “Annual Meeting”). Of the 435,923,104 shares of our common stock, par value \$0.0001 per share (“Common Stock”) outstanding as of April 17, 2023, 374,681,050 shares of Common Stock were represented, either by attending the Annual Meeting virtually or by proxy, constituting (i) a quorum under the company’s bylaws and (ii) approximately 86% of the outstanding shares of Common Stock entitled to vote. The matters voted on at the Annual Meeting and the votes cast with respect to each such matter are set forth below.

- Election of Nine Directors.** The following nominees were re-elected by the holders of our Common Stock to serve as directors for a one year term expiring at the 2024 annual meeting of stockholders based on the following results of voting. Each director’s term continues until the election and qualification of his or her successor, or until his or her earlier retirement, resignation, disqualification, removal, or death.

Nominee	Votes “For”	Votes “Withheld”	“Broker Non-Votes”
Patrick Soon-Shiong, M.D.	334,538,179	6,075,920	34,066,951
Cheryl L. Cohen	339,932,285	681,814	34,066,951
Richard Adcock	339,531,860	1,082,239	34,066,951
Michael D. Blaszyk	339,884,168	729,931	34,066,951
John Owen Brennan	337,964,499	2,649,600	34,066,951
Wesley Clark	338,703,037	1,911,062	34,066,951
Linda Maxwell, M.D.	340,016,716	597,383	34,066,951
Christobel Selecky	339,831,897	782,202	34,066,951
Barry J. Simon, M.D.	337,635,450	2,978,649	34,066,951

- Ratification of Appointment of Independent Registered Public Accounting Firm.** The appointment of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2023 was ratified based on the following results of voting:

Votes “For”	Votes “Against”	Abstentions	“Broker Non-Votes”
374,132,354	270,094	278,602	—

Section 9 – Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Promissory Note between ImmunityBio, Inc. and Nant Capital, LLC dated June 13, 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 duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

IMMUNITYBIO, INC.

Date: June 14, 2023

By: /s/ David C. Sachs

David C. Sachs

Chief Financial Officer

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THIS NOTE MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

IMMUNITYBIO, INC.

PROMISSORY NOTE

\$30,000,000

June 13, 2023

FOR VALUE RECEIVED, ImmunityBio, Inc., a Delaware corporation (the “*Company*”) promises to pay to NANT CAPITAL, LLC or its registered assigns (“*Investor*”), in lawful money of the United States of America, the principal amount of each advance (each, an “*Advance*” and, collectively, the “*Advances*”) made by Investor to the Company pursuant to this Promissory Note (this “*Note*”), in immediately available funds, at the times and in the manner set forth herein, together with interest from the date of each Advance on the unpaid principal balance of each Advance at a rate equal to the Term SOFR Rate (as defined below) plus 8.0% per annum which shall be adjusted to the then current SOFR on each Interest Payment Date, computed on the basis of the actual number of days elapsed and a year of 365 days. All unpaid principal of all Advances under this Note, together with any then unpaid and accrued interest and other amounts payable hereunder, shall be due and payable on the earlier of (i) December 31, 2023 (the “*Maturity Date*”), or (ii) when, upon the occurrence and during the continuance of an Event of Default, such amounts are declared due and payable by Investor or made automatically due and payable, in each case, in accordance with the terms hereof.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. Advances. The Company may request up to three (3) Advances of Ten Million Dollars (\$10,000,000) each pursuant to this Note. The principal amount of each Advance made by Investor to the Company hereunder, the date on which each such Advance is made, the amount of any prepayment or partial prepayment of any such Advance, and the outstanding principal amount of each such Advance, shall be recorded in Schedule A attached hereto. The Company shall be entitled to update Schedule A hereto from time to time to reflect updated information relating to the Advances made by Investor to the Company hereunder and any prepayments or partial prepayments by the Company of the outstanding principal amounts of any such Advances. The information reflected in any such updated version of Schedule A delivered by the Company to Investor shall, in the absence of manifest error, constitute *prima facie* evidence of the accuracy of the information recorded, provided, however, that the failure of the Company to update the information specified in Schedule A in connection with the making by Investor to

the Company of any Advance or the payment or partial prepayment by the Company of any such Advance shall not affect the obligations of the Company hereunder to repay the outstanding principal amount of any such Advance (and any accrued but unpaid interest thereon) in accordance with the terms of this Note.

2. **Payments.**

(a) *Interest.* Accrued interest on each Advance shall be payable quarterly, in arrears, on each Interest Payment Date.

(b) *Voluntary Prepayment.* Upon five business days' prior written notice to Investor, the Company may prepay any of the then-outstanding Advances under this Note in whole or in part, without premium or penalty and without the prior consent of Investor, *provided* that any such prepayment will be applied first to the payment of accrued but unpaid interest on such Advance and second, if the amount of prepayment exceeds the amount of all such interest, to the payment of outstanding principal of the respective Advance.

3. **Events of Default.** The occurrence of any of the following shall constitute an "**Event of Default**" under this Note.

(a) *Failure to Pay.* The Company shall fail to pay the principal of, plus any accrued and unpaid interest on, this Note on the Maturity Date;

(b) *Voluntary Bankruptcy or Insolvency Proceedings.* The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) admit in writing its inability to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any action for the purpose of effecting any of the foregoing; or

(c) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement.

4. **Rights of Investor upon Default.** Upon the occurrence of any Event of Default (other than an Event of Default described in **Section 3(b)** or **3(c)**) and at any time thereafter during the continuance of such Event of Default, Investor may, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. Upon the occurrence of any Event of Default described in **Section 3(b)** or **3(c)**, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment,

demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Investor may exercise any other right, power or remedy otherwise permitted to it by law, either by suit in equity or by action at law, or both.

5. **Representations and Warranties of Investor.** By acceptance of this Note, Investor represents and warrants to the Company that Investor has full legal capacity, power and authority to execute and deliver this Note and to perform its obligations hereunder. This Note constitutes valid and binding obligations of Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

6. **Origination Fee.** In connection with, and upon the funding of each Advance, the Company shall pay to Investor an origination fee of one-half of one percent (0.5%) of each such Advance.

7. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

"CME Term SOFR Administrator" means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

"Event of Default" has the meaning given in **Section 3** hereof.

"Investor" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

"Interest Payment Date" means the last business day of each of June, September and December.

"Interest Period" means, for each Advance (a) the period commencing on the date of such Advance and ending on the first Interest Payment Date immediately following such date and (b) each three-month period thereafter ending on an Interest Payment Date; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period.

"Obligations" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note, including, all interest, fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“**Person**” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

“**Term SOFR Determination Day**” has the meaning assigned to it under the definition of Term SOFR Reference Rate.

“**Term SOFR Rate**” means, for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“**Term SOFR Reference Rate**” means, for any day and time (such day, the “**Term SOFR Determination Day**”), for any tenor comparable to the applicable Interest Period, the rate per annum reasonably determined by the Company as the forward-looking term rate based on SOFR. If by 5:00 p.m. (New York City time) on the fifth (5th) U.S. Government Securities Business Day immediately following any Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator.

“**U.S. Government Securities Business Day**” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

8. **Miscellaneous.**

(a) **Waiver and Amendment.** Any provision of this Note may be amended, waived or modified upon the written consent of the Company and Investor.

(b) **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail (if to Investor) or otherwise delivered by hand, messenger or courier service addressed:

(i) if to Investor, to Investor’s address, facsimile number or electronic mail address as shown in the Company’s records, as may be updated in accordance with the provisions hereof, or, until such holder so furnishes an address, facsimile number or electronic mail address to the Company, then to the address, facsimile number or electronic mail address of the last holder of this Note for which the Company has contact information in its records; or

(ii) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at 3530 John Hopkins Court, San Diego, CA 92121, or at such other current address as the Company shall have furnished to Investor, with a copy (which shall not constitute notice) to Martin J. Waters, Wilson Sonsini Goodrich & Rosati, P.C., 12235 El Camino Real, Suite 200, San Diego, CA 92130-3002.

Each such notice or other communication shall for all purposes of this Note be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent via a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), or (ii) if sent via mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid, or (iii) if sent via facsimile, upon confirmation of facsimile transfer or, if sent via electronic mail, upon confirmation of delivery when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient's next business day. In the event of any conflict between the Company's books and records and this Note or any notice delivered hereunder, the Company's books and records will control absent fraud or error.

(c) *Payment.* Payments shall be made in lawful tender of the United States.

(d) *Default Rate; Usury.* During any period prior to the Maturity Date in which a non-payment by the Company of the interest earned on any Advance has occurred and is continuing, or an Event of Default has occurred and is continuing, the Company shall pay interest on the unpaid principal balance hereof at a rate per annum equal to the rate otherwise applicable hereunder plus two percent (2%) per annum. In the event any interest is paid on any Advance which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of the applicable Advance.

(e) *Waivers.* The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

(f) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California, or of any other state.

(g) *Restriction on Transferability.* This Note and the rights and obligations hereunder may not be assigned by either the Investor or the Company without the prior written consent of the other party.

(h) *Registration.* The Company or its agent will keep books for the registration and registration of transfer of the Note. Subject to this section and any other restrictions on or conditions to transfer set forth in the Note, the Note may be transferred only upon its surrender to the Company for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Prior to registration of any such transfer, the Company shall treat the person in whose name the Note is registered as the owner and holder of the Note for all purposes, including payment of principal and interest, and the Company shall not be affected by notice to the contrary.

(signature page follows)

The Company has caused this Note to be issued as of the date first written above.

IMMUNITYBIO, INC.,
a Delaware corporation

By: /s/ Richard Adcock

Name: Richard Adcock

Title: Chief Executive Officer and
President

(Signature page for Note)

SCHEDULE A
TO PROMISSORY NOTE
ADVANCES

Date of Advance	Original Principal Amount of Advance	Amount and Date(s) of Prepayments of Advance	Outstanding Principal Balance of Advance

Schedule A