

**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 20, 2021

bluebird bio, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-35966
(Commission File Number)

13-3680878
(IRS Employer
Identification No.)

**60 Binney Street,
Cambridge, MA**
(Address of Principal Executive Offices)

02142
(Zip Code)

Registrant's Telephone Number, Including Area Code: (339) 499-9300

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 Instructions 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, \$0.01 par value per share	BLUE	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 8.01 Other Events.

On February 1, 2021, bluebird bio, Inc. (the “Company”) and certain of its current and former directors entered into a settlement agreement with a stockholder of the Company to resolve a lawsuit brought derivatively on behalf of the Company in the Delaware Court of Chancery (the “Court”) challenging the compensation paid to the Company’s non-employee directors between 2015 and 2018 (the “Derivative Action”). Pursuant to the terms of the settlement agreement, the Company has implemented or agreed to implement and maintain certain changes to its director compensation policies and practices. The settlement also provides for a release of claims related to the allegations in the Derivative Action with no admission of any wrongdoing. As part of the settlement, the Company will be responsible for the payment of attorney’s fees. The Court must approve the settlement of the Derivative Action. Assuming that the settlement terms are approved, as a result of the settlement, all of the claims asserted in the Derivative Action will be dismissed. As required by the Court, a copy of the Notice of Pendency of Settlement of Action is included as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
99.1	Notice of Pendency of Settlement of Action
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.

Date: April 20, 2021

bluebird bio, Inc.

By: /s/ Jason F. Cole
Jason F. Cole
Chief Operating and Legal Officer

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FRANCISCO DOS RAMOS ALVARADO, derivatively on behalf
of BLUEBIRD BIO, INC.,

Plaintiff,

C.A. No.: 2020-0237-AGB

DANIEL S. LYNCH, NICK LESCHLY, JOHN O. AGWUNOBI,
M.D., WENDY L. DIXON, Ph.D., DOUGLAS A. MELTON,
Ph.D., DAVID P. SCHENKEIN, M.D., WILLIAM R. SELLERS,
M.D., and MARK VACHON,

Defendants,

-and-

BLUEBIRD BIO, INC., a Delaware corporation,

Nominal Defendant.

NOTICE OF PENDENCY OF SETTLEMENT OF ACTION

**TO: ALL CURRENT STOCKHOLDERS OF BLUEBIRD BIO, INC.,
(TRADING SYMBOL: BLUE)**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS AND ADEQUACY OF THE PROPOSED SETTLEMENT, OR PURSUING THE RELEASED CLAIMS DEFINED HEREIN.

IF YOU DO NOT OBJECT TO THE PROPOSED SETTLEMENT, OR THE AGREED TO ATTORNEYS' FEE AND EXPENSE AMOUNT DESCRIBED IN THIS NOTICE, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION.

I. WHY ARE YOU RECEIVING THIS NOTICE?

The purpose of this Notice is to inform you of (i) a lawsuit (the "Derivative Action") in the Court of Chancery of the State of Delaware (the "Court") brought on behalf of bluebird bio, Inc. ("bluebird" or the "Company"); (ii) a proposal to settle the Derivative Action as provided in a Stipulation of Compromise and Settlement which sets forth the terms and conditions of the proposed settlement of this Action (the "Stipulation"); and (iii) your right, among other things, to

attend and participate in a hearing to be held on June 4, 2021 at 11 a.m., via the Zoom video conferencing platform (the “Settlement Hearing”). This Notice describes the rights you may have under the Stipulation and what steps you may, but are not required to, take concerning the proposed Settlement. If the Court approves the Stipulation, the parties will ask the Court to approve an Order and Final Judgment (the “Final Judgment”) that would end the Derivative Action. Stockholders wishing to attend the Settlement Hearing may obtain Zoom access information by contacting Plaintiff’s counsel prior to the Settlement Hearing date by email at jnorton@nflp.com or by telephone at (212) 619-5400.

II. BACKGROUND TO THE DERIVATIVE ACTION AND SETTLEMENT

THE FOLLOWING DESCRIPTION DOES NOT CONSTITUTE FINDINGS OF ANY COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF ANY COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

Plaintiff Francisco Dos Ramos Alvarado (“Plaintiff”) is a current stockholder of bluebird. Nominal Defendant bluebird is a Delaware Corporation with its headquarters in Cambridge, Massachusetts, focused on gene therapy. Daniel S. Lynch, Nick Leschly, John O. Agwunobi, M.D., Wendy L. Dixon, Ph.D., Douglas A. Melton, Ph.D., David Schenkein, M.D., William R. Sellers, M.D., and Mark Vachon (collectively, the “Individual Defendants” and together with bluebird, “Defendants”) are all current or former members of bluebird’s Board of Directors (the “Board”).

On March 30, 2020, Plaintiff commenced the Derivative Action in the Court by filing a Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Unjust Enrichment, and Waste of Corporate Assets (the “Complaint”) asserting claims against the Individual Defendants in connection with bluebird’s compensation of non-employee directors pursuant to bluebird’s non-employee director compensation policy. Specifically, the Complaint alleges that in 2015, 2016, 2017, and 2018, bluebird paid excessive compensation to its non-employee directors relative to the compensation paid to non-employee directors at bluebird’s alleged peer companies. The Complaint contends that the Individual Defendants breached their fiduciary duties and wasted corporate assets by awarding or receiving the alleged excessive compensation during those years, and further contends that the non-employee Individual Defendants were unjustly enriched through their receipt of the alleged excessive compensation. The Individual Defendants deny all of the wrongdoing alleged in the Complaint, including that the compensation paid to bluebird’s non-employee directors in 2015 through 2018 was excessive.

Beginning in November 2020, the parties began engaging in arm’s-length negotiations concerning a possible settlement of the Derivative Action, which included significant informal discovery and the exchange of relevant information. On February 1, 2021, the parties reached an agreement to settle all of the claims in the Derivative Action upon the terms and subject to the conditions set forth in the Stipulation (the “Settlement”).

THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF PLAINTIFF’S CLAIMS OR THE DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT

THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW BY THE INDIVIDUAL DEFENDANTS OR THAT RECOVERY COULD BE HAD IN ANY AMOUNT IF THE ACTION WAS NOT SETTLED.

III. WHAT ARE THE TERMS OF THE SETTLEMENT?

To settle the Derivative Action, Defendants have implemented or shall implement and maintain the following Corporate Governance Reforms:

- bluebird will modify its non-employee director compensation policy (the “Policy”) to provide that that the mean average of the total value of (1) cash retainers, and (2) the reported value of equity compensation provided to incumbent non-employee directors under the Policy will not exceed the 75th percentile of the mean average of the total value of (1) cash and (2) the reported value of equity compensation for non-employee directors at the Company’s then-applicable peer group (“Peer Group”) as such Peer Group is approved by the Compensation Committee of the Board (the “Compensation Committee”);
- The Policy will remain in place until at least the date of the annual meeting of stockholders of the Company held in 2023 (the “Commitment Date”), unless the stockholders vote to approve a new policy of non-employee director compensation prior to the Commitment Date;
- Notwithstanding, the foregoing provision, during their first year of service on the Board, newly-appointed or elected non-employee directors may receive (1) equity compensation in connection with their initial appointment or election to the Board having up to one and a half times (1.5x) the average total annual equity compensation paid to the Company’s incumbent non-employee directors in the same year, not including the Board’s chair; and (2) cash compensation on a pro-rated basis consistent with the cash compensation paid to incumbent non-employee directors, not including the Board’s chair. With regard to the Board’s chair, his or her average total annual compensation, including both cash retainers and equity compensation, will not exceed one and a quarter time (1.25x) the average total compensation paid to incumbent non-employee directors in the same year;
- The Policy will provide that, through the Commitment Date, equity compensation paid to non-employee directors will be evenly divided 50/50 between restricted stock units (RSUs) and stock options, as determined based on the reported value of equity compensation. Equity granted under the Policy will continue to be determined based on grant date fair value as computed in accordance with the governing accounting standards of ASC 718;
- No later than 2023, the Company will seek stockholder approval of an equity compensation plan that will include customary limits on the annual equity compensation granted to non-employee directors using data from its Peer Group, subject only to the Board’s business judgment at that time about whether to solicit said vote;

- The Policy will provide that, that, through the Commitment Date, the Company’s Compensation Committee will retain an independent compensation consultant annually to advise the Compensation Committee on non-employee director compensation and the formulation of the companies in its Peer Group shall be based on the following factors, including but not limited to whether the Peer Group companies: (a) operate in the biopharmaceutical and biotechnology or related industries; and (b) are similar in size to bluebird based on market capitalization and/or other factors;
- The Peer Group adopted by the Compensation Committee will be reported in the Company’s annual proxy statements, together with a reasonably detailed description of the terms of the Policy and the methodology for determining the Company’s Peer Group; and
- Through the Commitment Date, the Company will disclose any compensation paid to non-employee directors outside the Policy in the section of the Company’s annual proxy that describes director compensation. Further, if and to the extent required under then-applicable SEC disclosure requirements, the Company shall disclose any payments made to affiliates (i.e., “any entity in which such a person has a 10% or greater equity interest”) and immediate family members of non-employee directors (or non-employee director nominees) as related-party transactions.

IV. WHAT CLAIMS WILL THE SETTLEMENT RELEASE?

Upon the effective date of the Settlement, the Releasing Persons (as defined below) shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims (as defined below) against the Individual Defendants and each and all of the Released Persons (as defined below); provided, however, that such release shall not affect any claims or impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

“Released Claims” means and includes any and all claims for relief or causes of action, debts, demands, rights, liabilities, losses, and claims whatsoever, whether based on federal, state, local statutory, or common law, or any other law, rule, regulation, or contract, whether known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, suspected or unsuspected, apparent or unapparent, and without regard to the subsequent discovery of additional or different facts, that have been or could have been asserted by Plaintiff as a stockholder of bluebird, or any other bluebird stockholder, or any other Person acting or purporting to act derivatively on behalf of bluebird against the Released Persons, in the Derivative Action or in any other forum arising out of, or based upon, or relating in any way to any of the allegations, transactions, facts, matters, events, disclosures, non-disclosures, occurrences, representations, statements, acts or omissions, alleged or referred to in the Complaint, including, without limitation, (i) any compensation bluebird paid to its non-employee directors from January 1, 2016 through the Effective Date, (ii) any non-employee director compensation plan, policies, or guidelines in effect at bluebird from January 1, 2016 through the Effective Date, (iii) any decision of the Company’s officers or directors related to the foregoing; and (iv) that would have been barred by res judicata had the Action been fully litigated to final judgment; provided, however, that it is understood that “Released Claims” and

any release provided by this Settlement shall not include: (a) any claims to enforce the Settlement, and (b) any claims by Defendants or any other insured to enforce their rights under any contract or policy of insurance.

“Released Persons” means each of the Defendants and their past or present officers, directors, employees, partners, members, principals, predecessors, successors, subsidiaries, affiliates, agents, attorneys, insurers, personal or legal representatives, advisors, assigns, spouses, heirs, estates, administrators, related or affiliated entities, any members of any Individual Defendant's immediate family, or any trust of which any Individual Defendant or bluebird is the settlor or which is for the benefit of bluebird or any Individual Defendant and/or member(s) of any Individual Defendant's family.

V. WHAT ARE THE REASONS FOR SETTling THE ACTION?

Plaintiff’s entry into the Stipulation and the Settlement is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims alleged in the Derivative Action. Plaintiff’s Counsel has taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Derivative Action, as well as the difficulties and delays inherent in such litigation, and Plaintiff’s Counsel is also mindful of the inherent problems of proof and possible defenses to the claims alleged in such action. Based upon Plaintiff’s Counsel’s evaluation, Plaintiff has determined that the Settlement is fair, reasonable, adequate, and in the best interests of bluebird and its stockholders and has agreed to settle the Derivative Action upon the terms and subject to the conditions set forth herein.

The Individual Defendants have denied, and continue to deny, any and all allegations of wrongdoing or liability asserted in the Derivative Action. The Individual Defendants have further asserted, and continue to assert, that at all relevant times, they acted in good faith and in a manner that they reasonably believed to be in the best interests of bluebird and its stockholders in connection with the Company’s compensation practices. Defendants are entering into the Stipulation and the Settlement solely to eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further litigation.

VI. HOW WILL THE ATTORNEYS GET PAID?

After agreeing to the terms of the Settlement other than with respect to the amount of any attorneys’ fees and expenses to be paid to Plaintiff’s Counsel, Plaintiff’s Counsel and Defendants separately negotiated the amount of the award of attorneys’ fees and expenses to be paid to Plaintiff’s Counsel. Plaintiff and Defendants did not discuss the appropriateness or amount of attorneys’ fees and expenses at any time prior to reaching agreement on the terms of the Settlement, and the Settling Parties understood at all times that the Settlement was not contingent upon agreement or payment of any attorneys’ fees and expenses to Plaintiff’s Counsel. Defendants acknowledge and agree that Plaintiff’s Counsel is entitled to a fee award. In recognition of the terms of the Settlement and the prosecution and settlement of the Derivative Action, and subject to Court approval, bluebird has agreed to pay an award of attorneys’ fees and expenses to Plaintiff’s Counsel not to exceed \$500,000 (the “Fee and Expense Amount”). The Fee and Expense Amount will be paid by bluebird and/or its insurers. This Fee and Expense

Amount includes the fees and expenses incurred in connection with the prosecution and settlement of the Derivative Action. Plaintiff's Counsel will not seek fees or expenses from the Court in excess of the agreed-to amount and Plaintiff's Counsel will not make an application for attorneys' fees or expenses in any other jurisdiction. Except as otherwise provided in the Stipulation, each of the Settling Parties shall bear his, her, or its own fees and costs.

VII. WHEN WILL THE SETTLEMENT HEARING TAKE PLACE?

The Court has scheduled a Settlement Hearing to be held on June 4, 2021 at 11 a.m., via the Zoom video conferencing platform. At the Settlement Hearing, the Court will consider whether the terms of the Settlement are fair, reasonable, and adequate and thus should be finally approved, whether the Fee and Expense Amount should be approved, and whether the Derivative Action should be dismissed with prejudice by entry of the Final Judgment pursuant to the Stipulation. The Court will also hear and determine objections, if any, to the proposed Settlement and the Fee and Expense Amount and rule on such other matters as the Court may deem appropriate. The Court may adjourn the Settlement Hearing from time to time without further notice to anyone other than the Settling Parties and any Objectors (as defined below). The Court reserves the right to approve the Stipulation at or after the Settlement Hearing with such modifications as may be consented to by the Settling Parties to the Stipulation and without further notice.

VIII. DO I HAVE A RIGHT TO APPEAR AND OBJECT?

Any record or beneficial stockholder of bluebird who objects to the Stipulation, the proposed Final Judgment to be entered, and/or the Fee and Expense Amount who wishes to be heard ("Objector"), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Final Judgment to be entered thereon, unless he, she, or it has, no later than ten (10) calendar days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801, and served upon counsel listed below, the following: (i) proof of current ownership of bluebird stock; (ii) a written notice of the Objector's intention to appear that states the Objector's name, address, and telephone number and, if represented, the Objector's counsel; (iii) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard, and (iv) all documents or writings which the Objector desires the Court to consider. Such filings must be served upon the following counsel by hand delivery, overnight mail, or the Court's electronic filing and service system:

COOCH AND TAYLOR, P.A.
Blake A. Bennett
The Nemours Building
1007 N. Orange St., Suite 1120
Wilmington, Delaware 19807
(302) 984-3800
Attorneys for Plaintiff

RICHARDS, LAYTON & FINGER, P.A.
Rudolf Koch
One Rodney Square
920 North Market Street
Wilmington, Delaware 19801
(302) 651-7700
Attorneys for Individual Defendants

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Elena C. Norman
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
(302) 571-6600
Attorneys for Nominal Defendant

Any Person who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in the Derivative Action or any other action or proceeding or otherwise contesting the Stipulation or the Fee and Expense Amount, and will otherwise be bound by the Final Judgment to be entered and the releases to be given.

IX. HOW DO I GET ADDITIONAL INFORMATION?

This Notice summarizes the Stipulation. It is *not* a complete statement of the events of the Derivative Action or the Stipulation. For additional information about the Derivative Action and the Settlement, please refer to the documents filed with the Court and the Stipulation. You may examine the Court files during regular business hours of each business day at the office of the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801. The Clerk's office will not mail copies of documents to you. For more information concerning the Settlement, you may also call or write to the counsel referenced in Section VIII hereto.

PLEASE DO NOT WRITE TO OR CALL THE COURT.

BY ORDER OF THE COURT

Dated: _____

Register in Chancery