

**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): March 6, 2020

Zafgen, Inc.

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction
of incorporation)

001-36510
(Commission
File Number)

20-3857670
(I.R.S. Employer
Identification No.)

**3 Center Plaza, Suite 610
Boston, Massachusetts**
(Address of principal executive offices)

02108
(Zip Code)

Registrant's telephone number, including area code (617) 622-4003

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:

- 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	ZFGN	NASDAQ Global 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.

Item 1.01 Entry into a Material Definitive Agreement.

Agreement and Plan of Merger

On March 6, 2020, Zafgen, Inc. (“Zafgen”) entered into an amendment (the “Amendment”) by and among Chondrial Therapeutics, Inc., a privately held biotechnology company (“Chondrial”), Chondrial Therapeutics Holdings, LLC, the sole stockholder of Chondrial (“Holdings”), and Zordich Merger Sub, Inc., a wholly owned subsidiary of Zafgen (“Merger Sub”), to the Agreement and Plan of Merger, dated December 17, 2019, by and among Zafgen, Chondrial, Holdings and Merger Sub, as amended (the “Merger Agreement”). Pursuant to the Merger Agreement, and upon the terms and subject to the satisfaction of the conditions described in the Merger Agreement, Chondrial will be merged with and into Merger Sub (the “Merger”) at the effective time of the Merger, with Chondrial continuing after the Merger as the surviving company and a wholly-owned subsidiary of Zafgen.

The board of directors of Zafgen has unanimously approved the Amendment and the related transactions. Other than as set forth in the Amendment, the terms of Merger Agreement are unchanged. In connection with the Merger, Zafgen has filed with the Securities and Exchange Commission (“SEC”) a preliminary proxy statement and other relevant materials in connection with the proposed transactions.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Additional Information about the Proposed Merger and Where to Find It

This communication relates to the proposed merger transaction involving Zafgen and Chondrial and may be deemed to be solicitation material in respect of the proposed merger involving Zafgen and Chondrial. In connection with the proposed merger, Zafgen intends to file relevant materials with the SEC, including a proxy statement relating to the approval of the merger agreement. Investors and security holders of Zafgen are urged to read these materials when they become available because they will contain important information about Zafgen, Chondrial and the proposed merger. The proxy statement and other relevant materials (when they become available), and any other documents filed by Zafgen with the SEC, may be obtained free of charge at the SEC web site at www.sec.gov. In addition, investors and security holders may obtain free copies of the documents filed with the SEC by Zafgen by directing a written request to: Zafgen, Inc., 3 Center Plaza, Suite 610, Boston, Massachusetts 02108, Attention: Secretary. Investors and security holders are urged to read the proxy statement and other relevant materials when they become available before making any voting or investment decision with respect to the proposed merger.

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Participants in the Solicitation

Zafgen and its directors and executive officers and Chondrial and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Zafgen in connection with the proposed merger. Information regarding the special interests of these directors and executive officers in the proposed merger are included in the proxy statement referred to above. The information in the preliminary proxy statement is not complete and may be changed. These documents are available free of charge at the SEC web site (www.sec.gov) and from the Secretary of Zafgen at the address above.

Zafgen Forward-Looking Information is Subject to Risks and Uncertainty

This communication contains forward-looking statements based upon Zafgen's and Chondrial's current expectations. Forward-looking statements involve risks and uncertainties, and include, but are not limited to, statements about the structure, timing and completion of the proposed merger; the combined company's listing on Nasdaq after the closing of the proposed merger; expectations regarding the ownership structure of the combined company; the combined company's expected cash position at the closing of the proposed merger; the future operations of the combined company; the nature, strategy and focus of the combined company; the development and commercial potential and potential benefits of any product candidates of the combined company; the executive and board structure of the combined company; the location of the combined company's corporate headquarters; and other statements that are not historical fact. Actual results and the timing of events may differ materially from those indicated by these forward-looking statements as a result of various important factors, including, without limitation: (i) the risk that the conditions to the closing of the proposed merger are not satisfied, including the failure to timely obtain stockholder approval for the proposed merger, if at all; (ii) uncertainties as to the timing of the consummation of the proposed merger and the ability of each of Zafgen and Chondrial to consummate the proposed merger; (iii) risks related to Zafgen's ability to manage its operating expenses and its expenses associated with the proposed merger pending closing; (iv) risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed merger; (v) the risk that as a result of adjustments to the exchange ratio, Zafgen stockholders and Chondrial stockholders could own more or less of the combined company than is currently anticipated; (vi) risks related to the market price of Zafgen's common stock relative to the exchange ratio; (vii) unexpected costs, charges, expenditures or expenses resulting from the proposed merger; (viii) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed merger; (ix) Zafgen's ability to retain personnel as a result of the announcement or completion of the proposed merger; and (x) risks associated with the possible failure to realize certain anticipated benefits of the proposed merger, including with respect to future financial and operating results. Actual results and the timing of events may differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties. These and other risks and uncertainties are more fully described in periodic filings with the SEC, including the factors described in the section entitled "Risk Factors" in Zafgen's Annual Report on Form 10-K for the year ended December 31, 2019 filed with the SEC, and in other filings that Zafgen makes and will make with the SEC in connection with the proposed merger, including the proxy statement described above under "Additional Information about the Proposed Merger and Where to Find It." You should not place undue reliance on these forward-looking statements, which apply only as of the date of this communication. Zafgen expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in its expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2.1	<u>Amendment No. 1 to Agreement and Plan of Merger, dated as of March 6, 2020, by and among Zafgen, Inc., Chondrial Therapeutics, Inc., Chondrial Therapeutics Holdings, LLC, and Zordich Merger Sub, Inc.</u>

SIGNATURE

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.

ZAFGEN, INC.

Date: March 6, 2020

By: /s/ Jeffrey S. Hatfield

Jeffrey S. Hatfield, Chief Executive Officer

AMENDMENT NO. 1
AGREEMENT AND PLAN OF MERGER
among:
ZAFGEN, INC.;
ZORDICH MERGER SUB, INC.;
CHONDRIAL THERAPEUTICS, INC.; and
CHONDRIAL THERAPEUTICS HOLDINGS, LLC

Dated as of March 6, 2020

THIS AMENDMENT NO. 1 TO THE AGREEMENT AND PLAN OF MERGER, dated as of March 6, 2020 (this “**Amendment**”), is entered into by and among ZAFGEN, INC., a Delaware corporation (“**Zordich**”); ZORDICH MERGER SUB, INC., a Delaware corporation and wholly owned subsidiary of Zordich (“**Merger Sub**”); CHONDRIAL THERAPEUTICS, INC., a Delaware corporation (the “**Company**”) and CHONDRIAL THERAPEUTICS HOLDINGS, LLC, a Delaware limited liability company (“**Holdings**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement and Plan of Merger, dated as of December 17, 2019, by and among the parties hereto (the “**Merger Agreement**”).

WHEREAS, Zordich, Merger Sub, the Company and Holdings desire to amend the Merger Agreement on the terms and conditions set forth herein;

WHEREAS, Section 11.2 of the Merger Agreement provides that subject to the provisions of applicable Law, the Merger Agreement may be amended by authorized action of Zordich, Merger Sub, the Company and Holdings; and

WHEREAS, the respective boards of directors of Zordich, Merger Sub, the Company and Holdings have approved this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendment of Section 6.5. Section 6.5 (Holdings Options) of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

“6.5 Holdings Options.

(a) Subject to Section 6.5(d), as of the Effective Time, each Holdings Option that is outstanding and unexercised as of the Effective Time under the Holdings Plan, whether or not vested, shall be substituted for an option to purchase Zordich Common Stock, and Zordich shall take all necessary steps to effectuate such substitution in accordance with the terms (as in effect as of the date of this Agreement) of the Holdings Plan, the terms of the option agreement by which such Holdings Option is evidenced and the terms of this Section 6.5 (and shall deliver to the Company drafts of all documentation with respect thereto for review and comment by the Company no later than ten (10) Business Days prior to the Anticipated Closing Date). All rights with respect to Holdings interests under substituted Holdings Options shall thereupon be converted into rights with respect to Zordich Common Stock, as equitably adjusted pursuant to this Section 6.5(a). Accordingly, from and after the Effective Time:

(i) each substituted Holdings Option may be exercised solely for shares of Zordich Common Stock;

(ii) the number of shares of Zordich Common Stock subject to each such substituted Holdings Option shall be determined by multiplying (A) the number of Holdings Units that were subject to such Holdings Option, as in effect immediately prior to the Effective Time, by (B) the number of Company Outstanding Shares as of immediately prior to the Effective Time, by (C) a fraction, the numerator of which is one (1) and the denominator of which is the fully-diluted number of Holdings Units as of such time (assuming conversion of all classes of units of Holdings into Holdings Units, and including Holdings Units underlying all Holdings Options), by (D) the Exchange Ratio, and rounding the resulting number down to the nearest whole number of shares of Zordich Common Stock;

(iii) the per share exercise price for the shares of Zordich Common Stock issuable upon exercise of each substituted Holdings Option shall be determined by multiplying (A) the fair market value of a share of Zordich Common Stock at the Effective Time (as determined under the applicable Zordich Stock Plan) by (B) a fraction, the numerator of which is the per share exercise price of the Holdings Option as in effect immediately prior to the Effective Time, and the denominator of which is the fair market value of the Holdings Units subject to such Holdings Option immediately prior to the Effective Time, and rounding the resulting exercise price up to the nearest whole cent, provided, however, that the per share exercise price of each replacement option to purchase shares of Zordich Common Stock shall be increased to the extent necessary so that, with respect to each applicable award of a Holdings Option to purchase Holdings Units, the excess of the aggregate fair market value of the shares of Zordich Common Stock subject to the replacement option immediately after the substitution over the aggregate option price of such shares is not greater than the excess of the aggregate fair market value of all Holdings Units subject to such Holdings Option immediately before the substitution over the aggregate option price of such Holdings Units; and

(iv) any restriction on the exercise of any substituted Holdings Option shall continue in full force and effect and the term, exercisability, vesting schedule and other provisions of such Holdings Option shall otherwise remain unchanged; provided, however, that: (A) to the extent provided under the terms of a Holdings Option, such Holdings Option in accordance with this Section 6.5(a) shall, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification, recapitalization or other similar transaction with respect to Zordich Common Stock subsequent to the Effective Time and (B) the Zordich Board or a committee thereof shall succeed to the authority and responsibility of the Holdings board of managers or any committee thereof with respect to each substituted Holdings Option.

(b) Notwithstanding anything to the contrary in this Section 6.5(a), the substitution of each Holdings Option (regardless of whether such option qualifies as an “incentive stock option” within the meaning of Section 422 of the Code) for an option to purchase shares of Zordich Common Stock shall be made in a manner consistent with Treasury Regulations Section 1.424-1 to the extent necessary for that substitution to not constitute a “modification” of such Holdings Option for purposes of Section 409A of the Code.

(c) Zordich shall file with the SEC, promptly after the Effective Time, a registration statement on Form S-8, if available for use by Zordich, relating to the shares of Zordich Common Stock issuable with respect to Holdings Options substituted by Zordich in accordance with Section 6.5(a).

(d) Prior to the Effective Time, Holdings shall take all actions that may be necessary (under the Holdings Plan and otherwise) to effectuate the provisions of this Section 6.5 and to ensure that, from and after the Effective Time, holders of Holdings Options have no rights with respect thereto other than those specifically provided in this Section 6.5.”

2. References to the Merger Agreement. After giving effect to this Amendment, each reference in the Merger Agreement to “this Agreement”, “hereof”, “hereunder” or words of like import referring to the Merger Agreement shall refer to the Merger Agreement as amended by this Amendment and all references in the Zordich Disclosure Schedules and the Company Disclosure Schedules to “the Agreement” and “the Merger Agreement” shall refer to the Merger Agreement as amended by this Amendment.
3. Construction. Except as expressly provided in this Amendment, all references in the Merger Agreement and the Zordich Disclosure Schedules and the Company Disclosure Schedules to “the date hereof” and “the date of this Agreement” shall refer to December 17, 2019.

4. Other Miscellaneous Terms. The provisions of Section 11 (Miscellaneous Provisions) of the Merger Agreement shall apply *mutatis mutandis* to this Amendment, and to the Merger Agreement as modified by this Amendment, taken together as a single agreement, reflecting the terms therein as modified hereby.
5. No Further Amendment. Except as amended hereby, the Merger Agreement, shall remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

ZAFGEN, INC.

By: /s/ Jeffrey S. Hatfield

Name: Jeffrey S. Hatfield

Title: Chief Executive Officer

ZORDICH MERGER SUB, INC.

By: /s/ Patricia L. Allen

Name: Patricia L. Allen

Title: Vice President, Secretary and Treasurer

CHONDRIAL THERAPEUTICS, INC.

By: /s/ Carole S. Ben-Maimon, MD

Name: Carole S. Ben-Maimon, MD

Title: President and Chief Executive Officer

CHONDRIAL THERAPEUTICS HOLDINGS, LLC

By: /s/ Carole S. Ben-Maimon, MD

Name: Carole S. Ben-Maimon, MD

Title: President and Chief Executive Officer

[Signature Page to Amendment No. 1 to Merger Agreement]