

AGENUS INC  
Form S-3  
October 18, 2017  
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As filed with the Securities and Exchange Commission on October 18, 2017

Registration No. 333-

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

FORM S-3  
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)

2836  
(Primary Standard Industrial  
Classification Code Number)

06-1562417  
(I.R.S. Employer  
Identification Number)

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**3 Forbes Road**

**Lexington, MA 02421**

**(781) 674-4400**

**(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)**

**Garo H. Armen**

**Chief Executive Officer and Chairman of the Board**

**Agenus Inc.**

**3 Forbes Road**

**Lexington, MA 02421**

**(781) 674-4400**

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

*Copy to:*

**Zachary Blume**

**Ropes & Gray LLP**

**Prudential Tower**

**800 Boylston Street**

**Boston, MA 02199-3600**

**(617) 951-7000**

**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

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If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act ), other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, please check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, please check the following box.

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, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company)  Smaller reporting company   
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.

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered(1)</b>	<b>Proposed Maximum Aggregate</b>	<b>Amount of Registration Fee</b>
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	<b>Offering Price(2)</b>	
Common Stock, \$0.01 par value per share (3)	(4)	(4)
Preferred Stock, \$0.01 par value per share	(4)	(4)
Warrants	(4)	(4)
Debt Securities (5)	(4)	(4)
Units	(4)	(4)
<b>Total: (6)</b>	<b>\$250,000,000</b>	<b>\$31,125</b>

- (1) There are being registered hereunder such indeterminate number of shares of common stock, such indeterminate number of shares of preferred stock, such indeterminate principal amount of debt securities and such indeterminate number of warrants to purchase common stock, preferred stock or debt securities, as will have an aggregate initial offering price not to exceed \$250,000,000. Any securities registered under this Registration Statement on Form S-3 (this Registration Statement ) may be sold separately or as units with other securities registered hereunder. The securities registered hereunder also include such indeterminate amounts and numbers of shares of common stock and numbers of shares of preferred stock, and principal amounts of debt securities, as may be issued upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or pursuant to the anti-dilution provisions of any such securities.
- (2) The proposed maximum per unit and aggregate offering prices per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered under this Registration Statement.
- (3) The aggregate amount of common stock registered under this Registration Statement is limited, with respect to at the market offerings, to that which is permissible under Rule 415(a)(4) under the Securities Act of 1933, as amended (the Securities Act ).
- (4) Not required to be included in accordance with General Instruction II.D. of Form S-3 under the Securities Act.
- (5) If any debt securities are issued at an original issue discount, then the issue price, and not the principal amount, of such debt securities shall be used for purposes of calculating the aggregate initial offering price of all securities issued.
- (6) Estimated solely for purposes of determining the registration fee pursuant to Rule 457(o) under the Securities Act.

**The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to Section 8(a) of the Securities Act, may determine.**

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**EXPLANATORY NOTE**

This registration statement contains two prospectuses:

a base prospectus that covers the offering, issuance and sale of up to \$250,000,000 of common stock, preferred stock, warrants, debt securities and units of the registrant; and

a sales agreement prospectus covering the offer, issuance and sale of up to 15,000,000 shares of the registrant's common stock pursuant to a sales agreement with Cantor Fitzgerald & Co. (the "Sales Agreement").

The base prospectus immediately follows this explanatory note. The Sales Agreement prospectus immediately follows the base prospectus. The common stock that may be offered, issued and sold under the Sales Agreement prospectus is included in the \$250,000,000 of securities that may be offered, issued and sold by the registrant under the base prospectus. Upon termination of the Sales Agreement, any portion of the 15,000,000 shares included in the at-the-market offering prospectus that is not sold pursuant to the Sales Agreement will be available for sale in other offerings pursuant to the base prospectus.

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**The information contained in this prospectus is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus is not an offer to sell these securities, and is not soliciting an offer to buy these securities, nor shall there be any sale of these securities, in any jurisdiction where such offer, solicitation or sale is not permitted or would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.**

**Subject to Completion, Dated October 18, 2017**

**PROSPECTUS**

**\$250,000,000**

**Common Stock**

**Preferred Stock**

**Warrants**

**Debt Securities**

**Units**

We may offer to sell to the public, from time to time in one or more offerings for an aggregate initial offering price of up to \$250,000,000:

shares of our common stock;

shares of our preferred stock;

warrants to purchase shares of our common stock, preferred stock and/or debt securities;

debt securities consisting of debentures, notes, or other evidences of indebtedness; or

units consisting of any combination of the foregoing securities.

We may offer and sell any combination of the securities in amounts, at prices and on terms that we will determine at the time of any particular offering, to or through one or more agents, dealers or underwriters, or directly to purchasers, including through subscription rights offerings, on a continuous or delayed basis. If agents, underwriters or dealers are used to sell the securities, we will name them and describe their compensation in a prospectus supplement.

This prospectus describes the general terms of these securities and the general manner in which these securities will be offered. We will provide the specific terms of these securities in supplements to this prospectus. The prospectus supplements will also describe the specific manner in which these securities will be offered and may also supplement, update or amend information contained in this document. You should read this prospectus and any applicable prospectus supplement before you invest.

Our common stock is listed on The NASDAQ Capital Market and trades under the symbol AGEN. On October 17, 2017, the last sale price of our common stock as reported on the NASDAQ Capital Market was \$4.67 per share. The other securities that may be offered are not listed on any securities exchange or included in any automated quotation system.

**You should read carefully and consider the Risk Factors referenced on page 3 of this prospectus and the risk factors described in other documents incorporated by reference herein.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2017.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the SEC), using a shelf registration process for the delayed offering and sale of securities pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act). Under the shelf process, we may, from time to time, sell any of the securities described in this prospectus in one or more offerings for an aggregate initial offering price of up to \$250,000,000.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide one or more prospectus supplements that will contain specific information about the terms of the offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and the accompanying prospectus supplement together with the additional information described under the heading **Where You Can Find More Information** beginning on page 36 of this prospectus.

We have not authorized anyone to provide you with any additional information. This prospectus and any accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the securities described in the accompanying prospectus supplement or an offer to sell or the solicitation of an offer to buy such securities in any circumstances in which such offer or solicitation is unlawful. You should assume that the information appearing in this prospectus, any prospectus supplement, the documents incorporated by reference and any related free writing prospectus is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed materially since those dates.

As used in this prospectus, unless the context otherwise requires, the terms **we**, **us**, **our**, **the Company** and **Agenus** mean, collectively, Agenus Inc. and its subsidiaries and their predecessors.

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**CAUTIONARY NOTE ABOUT FORWARD-LOOKING STATEMENTS**

This prospectus, any prospectus supplement, and any information incorporated by reference into this prospectus or prospectus supplement may contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act ) and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act ). You can identify these forward-looking statements by the fact they use words such as could, expect, anticipate, estimate, target, may, project, guidance, intend, plan, believe, future and other words and terms of similar meaning and expression in connection with any discussion of future operating or financial performance. You can also identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. Such forward-looking statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes to differ materially from current expectations. These statements are likely to relate to, among other things, our business strategy, our research and development, our product development efforts, our ability to commercialize our product candidates, the activities of our licensees, our prospects for initiating partnerships or collaborations, the timing of the introduction of products, the effect of new accounting pronouncements, uncertainty regarding our future operating results and our profitability, anticipated sources of funds as well as our plans, objectives, expectations, and intentions. will,

We have included more detailed descriptions of these risks and uncertainties and other risks and uncertainties applicable to our business that we believe could cause actual results to differ materially from any forward-looking statement in the Risk Factors sections of this prospectus and the documents incorporated by reference herein including, but not limited to, the risk factors incorporated by reference from our filings with the SEC. We encourage you to read those descriptions carefully. Although we believe we have been prudent in our plans and assumptions, no assurance can be given that any goal or plan set forth in forward-looking statements can be achieved. We caution investors not to place significant reliance on forward-looking statements; such statements need to be evaluated in light of all the information contained and incorporated by reference in this prospectus. Furthermore, the statements speak only as of the date of each document, and we undertake no obligation to update or revise these statements, except as required by law.

ASV , AutoSynVax , Oncophage<sup>®</sup>PSV , PhosphoSynVax , Prophage , Retrocyte Display , SECANT Stimulon<sup>®</sup> are trademarks of Agenus Inc. and its subsidiaries. All rights reserved.

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**RISK FACTORS**

Before purchasing any of the securities you should carefully consider the risk factors relating to Agenus incorporated by reference in this prospectus from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2017, as well as the risks, uncertainties and additional information set forth in our SEC reports on Forms 10-K, 10-Q and 8-K and in the other documents incorporated by reference in this prospectus. For a description of these reports and documents, and information about where you can find them, see [Where You Can Find More Information](#) and [Incorporation of Certain Documents By Reference](#). Additional risks not presently known or that we presently consider to be immaterial could subsequently materially and adversely affect our financial condition, results of operations, business and prospects.

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**THE COMPANY**

Agenus is a clinical-stage immuno-oncology ( I-O ) company focused on the discovery and development of therapies that engage the body's immune system to fight cancer. Our approach to cancer immunotherapy involves a diverse portfolio consisting of antibody-based therapeutics, adjuvants and cancer vaccine platforms. We, in collaboration with our partners, are developing a number of immuno-modulatory antibodies against important nodes of immune regulation. These include antibodies targeting CTLA-4, GITR, OX40, and PD-1 that are in clinical development. Our discovery pipeline includes a number of proprietary checkpoint modulating ( CPM ) antibodies against innovative targets such as TIGIT and CD-137. We believe that tailored combination therapies are essential to combat some of the most resistant cancers. Accordingly, our immune education strategy focuses on pursuing antibodies as well as vaccine candidates in conjunction with adjuvants.

We are developing a comprehensive I-O portfolio driven by the following platforms and programs, which we intend to utilize individually and in combination:

our antibody discovery platforms, including our Retrocyte Display<sup>™</sup>, SECAN<sup>®</sup> yeast display, and phage display technologies designed to produce quality human antibodies;

our antibody candidate programs, including our CPM programs;

our vaccine programs, including Prophage<sup>™</sup>, AutoSynVax<sup>™</sup> and PhosphoSynVax<sup>™</sup>; and

our saponin-based vaccine adjuvants, principally our QS-21 Stimulon<sup>®</sup> adjuvant, or QS-21 Stimulon. We also have our own good manufacturing practices manufacturing facility with the capacity to support early phase clinical programs.

We assess development, commercialization and partnering strategies for each of our product candidates periodically based on several factors, including pre-clinical and clinical trial results, competitive positioning and funding requirements and resources. We have formed collaborations with companies such as Incyte Corporation ( Incyte ), Merck Sharpe & Dohme and Recepta Biopharma SA ( Recepta ). Through these alliances, as well as our own internal programs, we currently have more than a dozen antibody programs, including our anti-CTLA-4 and anti-PD-1 antibody programs (both partnered with Recepta for certain South America territories) and anti-GITR and anti-OX40 antibody programs (both partnered with Incyte), all of which are in Phase 1 clinical trials. In February 2017, we amended our collaboration agreement with Incyte to, among other things, convert the GITR and OX40 programs from profit-share to royalty-bearing programs. We are now eligible to receive royalties on global net sales at a flat 15% rate for each of these programs. There are no longer any profit-share programs under the collaboration, and we are eligible to receive up to a total of \$510.0 million in future potential development, regulatory and commercial milestones across all programs in the collaboration. Pursuant to the amended agreement, we received accelerated milestone payments of \$20.0 million from Incyte related to the clinical development of our antibodies targeting GITR and OX40. Concurrent with the execution of the amendment, we and Incyte also entered into a separate stock purchase agreement whereby Incyte purchased an additional 10 million shares of our common stock at \$6.00 per share, resulting in additional proceeds of \$60.0 million to us.

In addition to our antibody platforms and CPM programs, we are also advancing a series of vaccine programs to treat cancer. In January 2017, we announced a clinical trial collaboration with the National Cancer Institute ( NCI ), which is a double-blind, randomized controlled Phase 2 trial that will evaluate the effect of our autologous vaccine candidate, Prophage, in combination with pembrolizumab (Keytruda®, Merck & Co., Inc. ( Merck )) in patients with ndGBM. Under this collaboration, we are supplying Prophage, Merck is providing pembrolizumab and the NCI and Brain Tumor Trials Collaborative member sites are recruiting patients and conducting the trial. Earlier this year, we also initiated a Phase 1 clinical trial for our neoantigen vaccine candidate, AutoSynVax ( ASV ), in patients with advanced cancer. ASV is being used in combination with our QS-21 Stimulon adjuvant.

Our QS-21 Stimulon adjuvant is also partnered with GlaxoSmithKline ( GSK ) and is a key component in multiple GSK vaccine programs that target prophylactic or therapeutic impact in a variety of infectious diseases and cancer. These programs are in various stages, with the most advanced being GSK s shingles and malaria programs, which GSK first announced positive Phase 3 results for in December 2014 and October 2013, respectively. In 2015, we monetized a portion of the future royalties we are contractually entitled to receive from GSK from sales of its shingles and malaria vaccines through a Note Purchase Agreement ( NPA ) and received net proceeds of approximately \$78.2 million. In 2016, GSK filed for approval of its shingles vaccine candidate in the United States, European Union and Canada, and in 2017 it filed for approval in Japan. Assuming regulatory approval, the first products containing QS-21 Stimulon are anticipated to be launched by GSK in 2018. We do not incur clinical development costs for products partnered with GSK.

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Our business activities include product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development activities, and support of our collaborations. Our product candidates require clinical trials and approvals from regulatory agencies, as well as acceptance in the marketplace. Part of our strategy is to develop and commercialize some of our product candidates by continuing our existing arrangements with academic and corporate collaborators and licensees and by entering into new collaborations.

We have incurred significant losses since our inception. As of June 30, 2017, we had an accumulated deficit of \$954.6 million. Since our inception, we have successfully financed our operations primarily through the sale of equity and convertible and other notes, corporate partnerships, and interest income earned on cash, cash equivalents, and short-term investments balances. Based on our current plans and activities, our cash, cash equivalents and short-term investments balance of \$96.8 million as of June 30, 2017 would only be sufficient to satisfy our liquidity requirements through the first quarter of 2018 without any additional funding before that time, which we anticipate. Regardless of this anticipated funding, in accordance with ASU 2014-15 this is deemed to be a condition which raises substantial doubt regarding our ability to continue as a going concern for at least one year from when the June 30, 2017 financial statements were issued. In order to continue as a going concern, we expect to raise additional funding from currently contemplated transactions before year end. We also continue to monitor the likelihood of success of our key initiatives and are prepared to discontinue funding of such activities if they do not prove to be feasible, restrict capital expenditures and/or reduce the scale of our operations, if necessary.

You can find more information about us in our filings with the Securities and Exchange Commission referenced in the sections in this document titled *Where You Can Find More Information* and *Incorporation of Certain Documents by Reference* beginning on pages 36 and 37, respectively.

## **Corporate Information**

Our principal executive office is located at 3 Forbes Road, Lexington, MA, 02421, and our telephone number is (781) 674-4400. Our website address is [www.agenusbio.com](http://www.agenusbio.com). Information contained on our website is not a part of this prospectus.

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**USE OF PROCEEDS**

We intend to use the net proceeds from the sale of the securities from offerings under this prospectus for general corporate purposes unless the applicable prospectus supplement states otherwise. General corporate purposes may include working capital, capital expenditures, repayment and refinancing of debt, research and development expenditures, clinical trial expenditures, acquisitions of additional companies or technologies and investments. We may temporarily invest the net proceeds in investment-grade, interest-bearing securities until they are used for their stated purpose. We have not determined the amount of net proceeds to be used specifically for such purposes. As a result, management will retain broad discretion over the allocation of net proceeds.

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	<b>Six Months</b>		<b>Years Ended December 31,</b>			
	<b>Ended</b>					
	<b>June 30,</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
	<b>2017</b>					
<b>Ratio of Earnings to Fixed Charges</b>						
<b>Deficiency of Earnings to Cover Fixed Charges</b>	\$ (48,816)	\$ (126,995)	\$ (93,268)	\$ (42,486)	\$ (30,073)	\$ (11,325)
<b>Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends</b>						
<b>Deficiency of Earnings to Cover Combined Fixed Charges and Preferred Stock Dividends</b>	\$ (48,919)	\$ (127,199)	\$ (93,471)	\$ (42,690)	\$ (33,233)	\$ (12,117)

For purposes of the ratio of earnings to fixed charges and the ration of combined fixed charges and preferred stock dividends to earnings, earnings consist of income before income taxes, interest and the portions of rentals representative of the interest factor. Fixed charges consist of interest expense and the portions of rentals representative of the interest factor.



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**DILUTION**

If there is a material dilution of the investor's equity interest from the sale of common equity securities offered under this prospectus, we will set forth in any prospectus supplement the following information regarding any such material dilution of the equity interests of purchasers purchasing securities in an offering under this prospectus:

the net tangible book value per share of our equity securities before and after the offering;

the amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers in the offering; and

the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

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**DESCRIPTION OF SECURITIES**

The descriptions of the securities contained in this prospectus, together with the applicable prospectus supplements, summarize the material terms and provisions of the various types of securities that we may offer. We will describe in the applicable prospectus supplement relating to any securities the particular terms of the securities offered by that prospectus supplement. If we so indicate in the applicable prospectus supplement, the terms of the securities may differ from the terms we have summarized below. We will also include in the prospectus supplement information, where applicable, about material U.S. federal income tax considerations relating to the securities, and the securities exchange, if any, on which the securities will be listed.

We may sell from time to time common stock, preferred stock, debt securities, warrants to purchase any such securities or any combination of the foregoing.

In this prospectus, we refer to the common stock, preferred stock, debt securities and warrants to be sold by us collectively as securities. The total dollar amount of all securities that we may issue under the registration statement of which this prospectus forms a part will not exceed \$250,000,000.

If we issue debt securities at a discount from their original stated principal amount, then we will use the issue price, and not the principal amount, of such debt securities for purposes of calculating the total dollar amount of all securities issued under this prospectus.

This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.

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**DESCRIPTION OF CAPITAL STOCK**

Agenus is authorized to issue up to 240,000,000 shares of common stock, par value \$0.01 per share, with 99,743,257 issued and outstanding as of September 30, 2017. Agenus is also authorized to issue up to 5,000,000 shares of preferred stock, par value \$0.01 per share, with 31,620 shares of Series A-1 convertible preferred stock issued and outstanding as of September 30, 2017.

The following description of our capital stock does not purport to be complete and is qualified in all respects by reference to our restated certificate of incorporation, as amended, and restated bylaws, and the Delaware General Corporation Law ( DGCL ).

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**DESCRIPTION OF COMMON STOCK**

**General**

Each share of Agenus common stock has the same relative rights and is identical in all respects with each other share of common stock.

**Voting Rights**

Subject to preferences that may apply to shares of preferred stock outstanding at the time, the holders of outstanding shares of common stock are entitled to receive dividends out of assets legally available for payment of dividends, as the board may from time to time determine. Each stockholder is entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders. Our certificate of incorporation does not provide for cumulative voting for the election of directors, which means that the holders of a majority of the shares voted can elect all of the directors then standing for election. The common stock is not entitled to preemptive rights and is not subject to conversion or redemption. Each outstanding share of common stock offered by this prospectus will, when issued, be fully paid and nonassessable.

**Dividends**

Holders of common stock are entitled to share ratably in any dividends declared by our board of directors, subject to any preferential dividend rights of any outstanding preferred stock. Dividends consisting of shares of common stock may be paid to holders of shares of common stock. We have never declared or paid cash dividends on our common stock. We do not intend to pay cash dividends in the foreseeable future.

**Preemptive Rights**

Holders of common stock do not have any preemptive rights with respect to any shares that may be issued by Agenus in the future. Thus, Agenus may sell shares of its common stock without first offering them to the then holders of common stock.

**Liquidation**

In the event of any liquidation or dissolution of Agenus, whether voluntary or involuntary, the holders of Agenus common stock would be entitled to receive pro rata, after payment of all debts and liabilities of Agenus, all assets of Agenus available for distribution, subject to the rights of the holders of any preferred stock which may be issued with a priority in liquidation or dissolution over the holders of common stock.

**Listing**

Our common stock is listed on The NASDAQ Capital Market under the symbol AGEN. On October 17, 2017, the last reported sale price for our common stock on The NASDAQ Capital Market was \$4.67 per share. As of October 11, 2017, we had approximately 407 stockholders of record.

**Anti-Takeover Provisions**

*Statutory Business Combination Provision*

Delaware has adopted a business combination statute (Section 203 of the DGCL) that may also have additional anti-takeover effects to provisions in Agenus' restated certificate of incorporation and bylaws. Section 203 of the DGCL, which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any business combination with an interested stockholder for a period of three years following the time that such stockholder became an interested stockholder, unless:

the board of directors of the corporation approves either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder, prior to the time the interested stockholder attained that status;

upon the closing of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the number of shares outstanding, those shares owned by persons who are directors and also officers and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

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at or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

With certain exceptions, an interested stockholder is a person or group who or which owns 15% or more of the corporation's outstanding voting stock (including any rights to acquire stock pursuant to an option, warrant, agreement, arrangement or understanding, or upon the exercise of conversion or exchange rights, and stock with respect to which the person has voting rights only), or is an affiliate or associate of the corporation and was the owner of 15% or more of such voting stock at any time within the previous three years.

In general, Section 203 defines a business combination to include:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

A Delaware corporation may opt out of this provision with an express provision in its original certificate of incorporation or an express provision in its amended and restated certificate of incorporation or bylaws resulting from a stockholders' amendment approved by at least a majority of the outstanding voting shares. However, Agenus has not opted out of this provision. Section 203 could prohibit or delay mergers or other takeover or change-in-control attempts and, accordingly, may discourage attempts to acquire Agenus.

### *Size of the Board and Vacancies*

Our bylaws provide that the exact number of directors is determined by resolution of the board of directors or by the stockholders at the annual meeting. Our board of directors has the right to fill any vacancies resulting from death, resignation, disqualification or removal, as well as any newly created directorships arising from an increase in the size of the board.

### *Amendment of Charter Provisions*

The affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of our voting stock, voting together as a single class, is required to, among other things, amend, alter, change or repeal certain provisions of our restated certificate of incorporation. Our bylaws may only be amended (or new bylaws

adopted) by the board of directors or the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of our voting stock represented in person or by proxy at the meeting at which the amendment is voted on.

*Undesignated Preferred Stock*

We could issue preferred stock that could have other rights, including economic rights senior to our common stock, so that the issuance of the preferred stock could adversely affect the market value of our common stock. The issuance of the preferred stock may also have the effect of delaying, deferring or preventing a change in control of Agenus without any action by the stockholders. The effects of issuing preferred stock could include one or more of the following:

restricting dividends on the common stock;

diluting the voting power of the common stock;

impairing the liquidation rights of the common stock; or

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discouraging, delaying or preventing changes in control or management of Agenus.

**Transfer Agent**

The transfer agent and registrar for Agenus common stock is American Stock Transfer & Trust Company. Its telephone number is (800) 937-5449.



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**DESCRIPTION OF PREFERRED STOCK**

We currently have authorized 5,000,000 shares of preferred stock, of which 31,620 shares have been designated as series A-1 convertible preferred stock. As of the date of this prospectus, all of the series A-1 convertible preferred stock is issued and outstanding in the amount described in the preceding sentence. The remaining 4,968,380 authorized shares of preferred stock are undesignated and not issued or outstanding as of the date of this prospectus. As of the date of this prospectus, we do not have any equity securities that would be senior to, or on par with, our authorized preferred stock.

**Series A Preferred Stock**

On September 24, 2003, we sold 31,620 shares of series A convertible preferred stock, par value \$.01 per share, which we refer to as series A preferred stock. Under the terms and conditions of the Certificate of Designation creating the series A preferred stock, the stock is convertible by the holder at any time into shares of our common stock, is non-voting, carries a 2.5 percent annual dividend yield, has an initial conversion price of \$94.86, and is redeemable by us at its face amount on or after September 24, 2013. In February 2013, we entered into a Securities Exchange Agreement with the holder of our series A preferred stock pursuant to which the holder exchanged all 31,620 of the then outstanding shares of our series A preferred stock for an equivalent number of shares of series A-1 convertible preferred stock ( series A-1 preferred stock ). The terms of the series A-1 preferred stock are materially identical to the series A preferred stock, except that shares of the series A-1 preferred stock accrue a 0.63% annual dividend, as compared to a 2.5% annual dividend for the series A preferred stock. After giving effect to the transaction, no shares of the series A preferred stock remain outstanding. The liquidation value of the series A-1 preferred stock is equal to \$1,000 per share outstanding plus any accrued and unpaid dividends. The Certificate of Designation does not restrict the repurchase or redemption of shares by us while there is an arrearage in the payment of dividends. The Certificate of Designation does not contemplate a sinking fund. This description of the series A-1 preferred stock is qualified in its entirety by reference to the Certificate of Designation.

**Undesignated Preferred Stock**

This section describes the general terms and provisions of the preferred stock that we may offer by this prospectus. The prospectus supplement will describe the specific terms of the series of the preferred stock offered through that prospectus supplement. Those terms may differ from the terms discussed below. Any series of preferred stock we will issue will be governed by our restated certificate of incorporation, as amended, including the certificate of designations relating to such series of preferred stock, and our bylaws, as amended. In this section entitled Description of Preferred Stock, references to Agenus, we, our and us refer only to Agenus Inc. and not to its consolidated subsidiaries.

We will fix the rights, preferences, privileges and restrictions of the preferred stock of each series in the certificate of designations relating to that series. We will incorporate by reference as an exhibit to the registration statement that includes this prospectus the form of any certificate of designations which describes the terms of the series of preferred stock we are offering before the issuance of the related series of preferred stock. This description will include the following, to the extent applicable:

the title and stated value;

the number of shares we are offering;

the liquidation preference per share;

the purchase price;

the dividend rate, period and payment date, and method of calculation for dividends, if any;

whether any dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;

the provisions for a sinking fund, if any;

the provisions for redemption or repurchase, if applicable, and any restrictions on our ability to exercise those redemption and repurchase rights;

any listing of the preferred stock on any securities exchange or market;

whether the preferred stock will be convertible into our common stock and, if applicable, the conversion price, or how it will be calculated, and the conversion period;

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whether the preferred stock will be exchangeable into debt securities and, if applicable, the exchange price, or how it will be calculated, and the exchange period;

voting rights, if any, of the preferred stock;

preemptive rights, if any;

restrictions on transfer, sale or other assignment, if any;

whether interests in the preferred stock will be represented by depositary shares;

a discussion of any material or special United States federal income tax considerations applicable to the preferred stock;

the relative ranking and preferences of the preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs; any limitations on issuance of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the preferred stock.

When we issue shares of preferred stock under this prospectus, the shares, when issued in accordance with the terms of the applicable agreement, will be validly issued, fully paid and non-assessable and will not have, or be subject to, any preemptive or similar rights.

Section 242 of DGCL provides that the holders of each class or series of stock will have the right to vote separately as a class on certain amendments to our restated certificate of incorporation that would affect the class or series of preferred stock, as applicable. This right is in addition to any voting rights that may be provided for in the applicable certificate of designation.

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**DESCRIPTION OF WARRANTS**

We may issue warrants or other rights. We may issue these securities in such amounts or in as many distinct series as we wish. This section summarizes the terms of these securities that apply generally. We will describe the financial and other specific terms of any such series of securities in the prospectus supplement accompanying this prospectus. Those terms may vary from the terms described here.

When we refer to a series of securities in this section, we mean all securities issued as part of the same series under any applicable indenture, agreement or other instrument. When we refer to the prospectus supplement, we mean the applicable prospectus supplement describing the specific terms of the security you purchase. The terms used in the prospectus supplement will have the meanings described in this prospectus, unless otherwise specified.

In this section entitled Description of Warrants, references to Agenus, we, our and us refer only to Agenus Inc. and its consolidated subsidiaries. Also, in this section, references to holders mean those who own warrants or other rights registered in their own names, on the books that we or any applicable trustee or warrant or rights agent maintain for this purpose, and not those who own beneficial interests in warrants registered in street name or in warrants issued in book-entry form through one or more depositories. Owners of beneficial interests in warrants should also read the section entitled Legal Ownership and Book-Entry Issuance.

**Warrants**

The following description of warrants does not purport to be complete and is qualified in its entirety by reference to the description of a particular series of warrants contained in an applicable prospectus supplement. For information relating to common stock and preferred stock, see Description of Common Stock and Description of Preferred Stock, respectively.

We may offer by means of this prospectus warrants for the purchase of our preferred stock or common stock. We may issue warrants separately or together with any other securities offered by means of this prospectus, and the warrants may be attached to or separate from such securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a warrant agent specified therein. The warrant agent will act solely as our agent in connection with the warrants of such series and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

**Agreements**

Unless otherwise provided in the applicable prospectus supplement, the following provisions will apply to any warrants we issue pursuant to this prospectus. Each series of warrants may be evidenced by certificates and may be issued under a separate indenture, agreement or other instrument to be entered into between us and a bank that we select as agent with respect to such series. The agent, if any, will have its principal office in the U.S. and have a combined capital and surplus of at least \$50,000,000. Warrants in book-entry form will be represented by a global security registered in the name of a depository, which will be the holder of all the securities represented by the global security. Those who own beneficial interests in a global security will do so through participants in the depository's system, and the rights of these indirect owners will be governed solely by the applicable procedures of the depository and its participants. We describe book-entry securities under Legal Ownership and Book-Entry Issuance.

**General Terms of Warrants**

The prospectus supplement relating to a series of warrants will identify the name and address of the warrant agent, if any. The prospectus supplement will describe the following terms, where applicable, of the warrants in respect of which this prospectus is being delivered:

the title and issuer of the warrants;

the aggregate number of warrants;

the price or prices at which the warrants will be issued;

the currencies in which the price or prices of the warrants may be payable;

the designation, amount and terms of the securities purchasable upon exercise of the warrants;

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the designation and terms of the other securities with which the warrants are issued and the number of warrants issued with each such security or each principal amount of security;

if applicable, the date on and after which the warrants and any related securities will be separately transferable;

any securities exchange or quotation system on which the warrants or any securities deliverable upon exercise of such securities may be listed;

the price or prices at which and currency or currencies in which the securities purchasable upon exercise of the warrants may be purchased;

the date on which the right to exercise the warrants shall commence and the date on which such right shall expire;

the minimum or maximum amount of warrants that may be exercised at any one time;

whether the warrants will be issued in fully registered for or bearer form, in global or non-global form or in any combination of these forms;

information with respect to book-entry procedures, if any;

a discussion of certain U.S. federal income tax considerations; and