

BIOMARIN PHARMACEUTICAL INC

Form 8-K

October 28, 2009

**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): October 28, 2009**

**BioMarin Pharmaceutical Inc.**

(Exact name of registrant as specified in its charter)

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

**000-26727**  
(Commission File Number)

**68-0397820**  
(IRS Employer  
Identification No.)

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105 Digital Drive, Novato, California

(Address of principal executive offices)

94949

(Zip Code)

Registrant's telephone number, including area code: (415) 506-6700

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 2.02 Results of Operations and Financial Condition.**

On October 28, 2009, BioMarin Pharmaceutical Inc. (the Company) announced financial results for the third quarter ended September 30, 2009. The Company's press release issued on October 28, 2009 is attached hereto as Exhibit 99.1 and is incorporated by reference herein.

In its press release, the Company included net income for the quarter and nine months ended September 30, 2009, the quarter and nine months ended September 30, 2008, the year ended December 31, 2008 and an estimate of net income for the year ending December 31, 2009, each not determined in accordance with U.S. Generally Accepted Accounting Principles (GAAP). The non-GAAP net income for the third quarter of 2008 and 2009 excluded the non-cash stock compensation expense, certain nonrecurring material items and the tax effect of the adjustments. The non-GAAP net income for the nine months ended September 30, 2009 and the nine months ended September 30, 2008 excluded the non-cash stock compensation expense, certain nonrecurring material items and the tax effect of the adjustments. The anticipated non-GAAP net income for the year ended December 31, 2009 and actual results for the year ended December 31, 2008 excluded the non-cash stock compensation expense for 2008, management's estimate of the non-cash stock compensation expense for 2009 and certain other nonrecurring material items and the tax effect of the adjustments for 2008 and 2009. Reconciliations for such non-GAAP financial measures to the comparable GAAP financial measures are included in the press release attached hereto as Exhibit 99.1.

The Company believes that this non-GAAP information is useful to investors, taken in conjunction with the Company's GAAP information because it provides additional information regarding the performance of the Company's core ongoing business, Naglazyme, Kuvan and Aldurazyme and development of its pipeline. By providing information about both the overall GAAP financial performance and the non-GAAP measures that focus on continuing operations, the Company believes that the additional information enhances investors' overall understanding of the Company's business and prospects for the future. Further, the Company uses both the GAAP and the non-GAAP results and expectations internally for its operating, budgeting and financial planning purposes.

**Item 9.01. Financial Statements and Exhibits.**

(a) Financial Statements of Business Acquired.

Not applicable.

(b) Pro Forma Financial Information.

Not Applicable.

(c) Shell Company Transactions.

Not Applicable.

(d) Exhibits.

Exhibit 99.1 Press Release of the Company dated October 28, 2009

**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.

BioMarin Pharmaceutical Inc.,

a Delaware corporation

Date: October 28, 2009

By: /s/ JEFFREY H. COOPER  
**Jeffrey H. Cooper**

**Senior Vice President and Chief Financial Officer**