

AFFYMAX INC
Form 10-Q/A
July 02, 2012

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q/A

Amendment No. 1

**x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2012

or

**o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number 001-33213

AFFYMAX, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

77-0579396

(I.R.S. Employer
Identification Number)

**4001 Miranda Avenue
Palo Alto, CA 94304
(650) 812-8700**

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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 and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐
(Do not check if a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of April 30, 2012, 36,108,845 shares of the registrant's common stock, \$0.001 par value, were outstanding.

AFFYMAX, INC.

**QUARTERLY REPORT ON FORM 10-Q/A
FOR THE QUARTER ENDED MARCH 31, 2012**

Explanatory Note to Form 10-Q Amendment No. 1

This Amendment No. 1 (this Amendment) to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2012 (the Form 10-Q) of Affymax, Inc. is being filed for the purpose of re-filing Exhibit 10.49 to the Form 10-Q in response to comments received from the Securities and Exchange Commission (the SEC) in connection with a pending request for confidential treatment of portions of such exhibit. In addition, as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, new certifications by the registrant's principal executive officer and principal financial officer are filed as exhibits hereto.

No attempt has been made in this Amendment to modify or update the other disclosures presented in the Form 10-Q. This Amendment does not reflect events occurring after the filing of the Form 10-Q (i.e., occurring after May 9, 2012) or modify or update those disclosures that may be affected by subsequent events. Such subsequent matters are addressed in subsequent reports filed by the registrant with the SEC. Accordingly, this Amendment should be read in conjunction with the Form 10-Q and the registrant's other filings with the SEC.

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, thereunto duly authorized.

AFFYMAX, INC.

Dated: June 27, 2012

By: */s/ JOHN A. ORWIN*
Chief Executive Officer and Member of the Board of Directors

Dated: June 27, 2012

By: */s/ HERB CROSS*
Chief Financial Officer (Principal Financial Officer)

EXHIBIT INDEX

Exhibit Number	Description
3.3	Amended and Restated Certificate of Incorporation (1)
3.5	Amended and Restated Bylaws (2)
4.1	Reference is made to exhibits 3.3 and 3.5
4.2	Specimen Common Stock Certificate (1)
4.3	Amended and Restated Investor Rights Agreement, dated September 7, 2006, by and between the Registrant and certain of its stockholders (1)
4.4	Form of Warrant to Purchase shares of Common Stock (3)
4.5	Form of Warrant to Oxford Finance Corporation to Purchase shares of Common Stock (4)
4.6	Form of Warrant to Silicon Valley Bank to Purchase shares of Common Stock (4)
10.49	Co-Promotion Agreement, dated February 24, 2012, by and between the Registrant and Takeda Pharmaceuticals U.S.A., Inc.
10.50	Loan and Security Agreement, dated March 26, 2012, by and between the Registrant, Oxford Finance Corporation and Silicon Valley Bank (4)
31.1	Certification required by Rule 13a-14(a) or Rule 15d-14(a) (4)
31.2	Certification required by Rule 13a-14(a) or Rule 15d-14(a) (4)
31.3	Certification required by Rule 13a-14(a) or Rule 15d-14(a)
31.4	Certification required by Rule 13a-14(a) or Rule 15d-14(a)
32.1#	Certification required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) (4)
101.INS*	XBRL Instance (4)
101.SCH*	XBRL Taxonomy Extension Schema (4)
101.CAL*	XBRL Taxonomy Extension Calculation (4)
101.LAB*	XBRL Taxonomy Extension Labels (4)
101.PRE*	XBRL Taxonomy Extension Presentation (4)
101.DEF*	XBRL Taxonomy Extension Definition (4)

(1) Incorporated by reference to the indicated exhibit of our registration statement on Form S-1, as amended, registration no. 333-136125, declared effective by the Securities and Exchange Commission on December 14, 2006.

Edgar Filing: AFFYMAX INC - Form 10-Q/A

- (2) Incorporated by reference to the indicated exhibit of our Form 8-K as filed with the Securities and Exchange Commission on September 10, 2007.
- (3) Incorporated by reference to the indicated exhibit in our Form 8-K as filed with the Securities and Exchange Commission on February 19, 2009.
- (4) Incorporated by reference to the indicated exhibit of our Form 10-Q as filed with the Securities and Exchange Commission on May 9, 2012.

Portions of the exhibit have been omitted pursuant to a request for confidential treatment. The omitted information has been separately filed with the Securities and Exchange Commission.

The certifications attached as Exhibit 32.1 are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Affymax, Inc., under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

* In accordance with Rule 406T of Regulation S-T, the information in these exhibits is furnished and deemed not filed or a part of registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections and shall not be incorporated by reference into any registration statement or document filed under the Securities Act of 1933, as amended, except as expressly set forth by specific reference in such filing.