

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form 10-K/A**

**Amendment No. 1**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2021

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For transition period from to  
Commission File Number: 001-39186

**ARCUTIS BIOTHERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or Other Jurisdiction of Incorporation or Organization)  
3027 Townsgate Road Suite 300  
Westlake Village, California  
(Address of Principal Executive Offices)

81-2974255  
(I.R.S. Employer Identification Number)  
91361  
(Zip Code)

(805) 418-5006  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001	ARQT	The Nasdaq Global Select Market

Securities registered pursuant to section 12(g) of the Act: None

Indicate by a check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller reporting company

Emerging growth company

Act.  
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.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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 June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant was approximately \$1,082,483,639, based on the closing price of the registrant's common stock as reported on The Nasdaq Global Select Market.

The number of shares of the registrant's Common Stock outstanding as of February 16, 2022 was 50,380,254.

**DOCUMENTS INCORPORATED BY REFERENCE:**

Portions of the registrant's Proxy Statement for the registrant's 2022 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K to the extent stated herein. The Proxy Statement will be filed within 120 days of the registrant's fiscal year ended December 31, 2021.

## EXPLANATORY NOTE

This Amendment No.1 (the "Amendment") amends the Annual Report on Form 10-K of Arcutis Biotherapeutics, Inc. (the "Company") for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on February 22, 2022 (the "Form 10-K").

This Amendment is being filed for the sole purpose of correcting a reference to Arcutis Biotherapeutics, Inc. in the second sentence of the opening paragraph of the Opinion on Internal Control Over Financial Reporting of Ernst & Young LLP, the Company's independent auditor, included in the Form 10-K under Item 9A. "Controls and Procedures." Due to a clerical error, the sentence inadvertently referred to an incorrect company name.

This Amendment consists solely of the preceding cover page, this explanatory note, a replacement Item 9A. "Controls and Procedures," which contains the corrected reference to Arcutis Biotherapeutics, Inc., a signature page, and an updated exhibit index included in Part IV, Item 15(b) of the Form 10-K solely to include new certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 as required by Rule 12b-15 of the Securities Exchange Act of 1934, as amended. Except as otherwise expressly noted herein, this Amendment does not modify, amend or update any of the financial information or any other information set forth in the Form 10-K. Accordingly, this Amendment should be read in conjunction with the Original Form 10-K.

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## **ITEM 9A. CONTROLS AND PROCEDURES**

### ***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this Annual Report on Form 10-K. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of December 31, 2021, our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC, and that such required information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

### ***Management Report on Internal Control Over Financial Reporting***

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an assessment of the effectiveness of our internal control over financial reporting based on our assessment on the criteria set forth in "Internal Control - Integrated Framework (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the results of our assessment, our management concluded that our internal control over financial reporting was effective as of December 31, 2021. The effectiveness of our internal control over financial reporting as of December 31, 2021 has been audited by an independent registered public accounting firm, as stated in their report included in Part IV Item 15, "Exhibits, Financial Statement Schedules" of this Annual Report on Form 10-K.

### ***Changes in Internal Control over Financial Reporting***

There was no change in our internal controls over financial reporting during the year ended December 31, 2021 covered by this Annual Report on Form 10-K that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

### ***Inherent Limitations on Effectiveness of Controls and Procedures***

Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP.

Our internal control over financial reporting includes those policies and procedures that:

(i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets;

(ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and

(iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Management, including our Chief Executive Officer and Chief Financial Officer, do not expect that our internal controls will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of internal controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Also, any evaluation of the effectiveness of controls in future periods are subject to the risk that those internal controls may become inadequate because of changes in business conditions, or that the degree of compliance with the policies or procedures may deteriorate.

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## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Arcutis Biotherapeutics, Inc.

### Opinion on Internal Control Over Financial Reporting

We have audited Arcutis Biotherapeutics, Inc.'s internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Arcutis Biotherapeutics, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the balance sheets of the Company as of December 31, 2021 and 2020, the related statements of operations and comprehensive loss, convertible preferred stock and stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2021, and the related notes and our report dated February 22, 2022 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Los Angeles, California

February 22, 2022

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**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

Item 15(b) of the Form 10-K is hereby amended solely to update the exhibit index with the new certifications required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 as required by Rule 12b-15 of the Securities Exchange Act of 1934, as amended.

**(b) Exhibits.**

<b>Exhibit Number</b>	<b>Description of Document</b>	<b>Incorporated by Reference Form</b>	<b>Date</b>	<b>Number</b>	<b>Filed/Furnished Herewith</b>
3.1	<a href="#">Restated Certificate of Incorporation.</a>	S-1/A	1/21/20	3.2	
3.2	<a href="#">Restated Bylaws.</a>	S-1/A	1/21/20	3.4	
4.1	<a href="#">Form of Common Stock Certificate.</a>	S-1/A	1/21/20	4.1	
4.2†	<a href="#">Amended and Restated Investors' Rights Agreement, dated October 8, 2019, by and among the Registrant and certain of its stockholders.</a>	S-1/A	1/21/20	4.2	
4.3	<a href="#">Description of Arcutis Biotherapeutics' Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934.</a>	10-K	3/19/20	4.3	
10.1#	<a href="#">Form of Indemnity Agreement.</a>	S-1	1/6/20	10.1	
10.2#	<a href="#">2017 Stock Incentive Plan and forms of award agreements.</a>	S-1	1/6/20	10.2	
10.3#	<a href="#">2020 Stock Incentive Plan and forms of award agreements.</a>	S-1/A	1/21/20	10.3	
10.4#	<a href="#">2020 Employee Stock Purchase Plan and forms of award agreements.</a>	S-1/A	1/21/20	10.4	
10.5#	<a href="#">2022 Employment Inducement Incentive Plan and forms of award agreements.</a>	10-K	2/22/22	10.5	
10.6#	<a href="#">Offer Letter, dated January 9, 2020, by and between the Registrant and Todd Franklin Watanabe.</a>	S-1/A	1/21/20	10.5	
10.7#	<a href="#">Offer Letter, dated January 9, 2020, by and between the Registrant and David W. Osborne.</a>	S-1/A	1/21/20	10.6	
10.8#	<a href="#">Offer Letter, dated January 9, 2020, by and between the Registrant and Howard G. Welgus, M.D.</a>	S-1/A	1/21/20	10.7	
10.9#	<a href="#">Offer Letter, dated January 9, 2020, by and between the Registrant and John W. Smither.</a>	S-1/A	1/21/20	10.8	
10.10#	<a href="#">Offer Letter, dated January 9, 2020, by and between the Registrant and Kenneth A. Lock.</a>	S-1/A	1/21/20	10.9	
10.11#	<a href="#">Offer Letter, dated January 9, 2020, by and between the Registrant and Patricia A. Turney.</a>	S-1/A	1/21/20	10.10	
10.12#	<a href="#">Consulting Agreement, dated August 16, 2016, by and between Bhaskar Chaudhuri and the Registrant.</a>	S-1	1/6/20	10.11	
10.13†^	<a href="#">License Agreement, dated July 23, 2018, by and between AstraZeneca AB and the Registrant.</a>	S-1	1/6/20	10.12	
10.14†^	<a href="#">Exclusive Option and License Agreement, dated January 4, 2018, by and between Jiangsu Hengrui Medicine Co., Ltd. and the Registrant.</a>	S-1	1/6/20	10.13	
10.15†^	<a href="#">Collaboration Agreement, dated June 28, 2019, by and between Hawkeye Therapeutics, Inc. and the Registrant.</a>	S-1	1/6/20	10.14	
10.16#	<a href="#">Transition and Amendment Agreement, dated December 13, 2019 by and between Bhaskar Chaudhuri and the Registrant.</a>	S-1	1/6/20	10.15	
10.17	<a href="#">Option Notice and Amendment No. 2 to Exclusive Option and License Agreement, dated December 5, 2019, by and between Jiangsu Hengrui Medicine Co., Ltd. and the Registrant.</a>	S-1	1/6/20	10.16	
10.18#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and Todd Franklin Watanabe.</a>	S-1/A	1/21/20	10.17	

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10.19#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and David W. Osborne.</a>	S-1/A	1/21/20	10.18
10.20#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and Howard G. Welgus, M.D.</a>	S-1/A	1/21/20	10.19
10.21#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and John W. Smither.</a>	S-1/A	1/21/20	10.20
10.22#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and Kenneth A. Lock.</a>	S-1/A	1/21/20	10.21
10.23#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and Patricia A. Turney.</a>	S-1/A	1/21/20	10.22
10.24#	<a href="#">Offer Letter, dated December 18, 2020, by and between the Registrant and Matthew R. Moore.</a>	10-K	2/16/21	10.23
10.25#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and Matthew R. Moore.</a>	10-K	2/16/21	10.24
10.26†^	<a href="#">Supply Agreement, dated November 24, 2020, by and between Registrant and Interquim, S.A.</a>	10-K	2/16/21	10.25
10.27†^	<a href="#">Exclusive Distribution Agreement, dated February 8, 2021, by and between the Registrant and Cardinal Health 105, Inc.</a>	10-Q	5/6/21	10.1
10.28#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and Scott L. Burrows.</a>	10-Q	5/6/21	10.2
10.29	<a href="#">Sales Agreement, dated May 6, 2021, by and between the Registrant and Cowen and Company, LLC.</a>	10-Q	5/6/21	10.3
10.30†	<a href="#">Supply and Manufacturing Agreement, dated September 15, 2021, between DPT Laboratories, Ltd. and the Registrant.</a>	10-Q	11/4/21	10.1
10.31#	<a href="#">Offer Letter, dated December 13, 2021, by and between the Registrant and Mas Matsuda.</a>	10-K	2/22/22	10.31
10.32#	<a href="#">Severance &amp; Change in Control Agreement, by and between the Registrant and Mas Matsuda.</a>	10-K	2/22/22	10.32
10.33^	<a href="#">Loan and Security Agreement, dated December 22, 2021, by and among the Registrant, SLR Investment Corp. and the lenders party thereto.</a>	10-K	2/22/22	10.33
23.1	<a href="#">Consent of Independent Registered Public Accounting Firm, PCAOB ID: 42</a>	10-K	2/22/22	23.1
24.1	<a href="#">Power of Attorney (included in the signature page to this Annual Report on Form 10-K).</a>	10-K	2/22/22	24.1
31.1	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	10-K	2/22/22	31.1
31.2	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	10-K	2/22/22	31.2
31.3	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>			*
31.4	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>			*
32.1	<a href="#">Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	10-K	2/22/22	32.1

101.INS	Inline XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.	*
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	*
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).	*

\* Filed herewith.

† Registrant has omitted portions of the exhibit as permitted under Item 601(b)(10) of Regulation S-K.

^ Registrant has omitted schedules and exhibits pursuant to Item 601(a)(5) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of the omitted schedules and exhibits to the SEC upon request.

# Indicates management contract or compensatory plan.







