

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): February 3, 2021

ADMA BIOLOGICS, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	001-36728 (Commission File Number)	56-2590442 (IRS Employer Identification No.)
465 State Route 17, Ramsey, New Jersey (Address of principal executive offices)		07446 (Zip Code)

Registrant's telephone number, including area code: (201) 478-5552

(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))

Indicate by check mark whether the registrant is an emerging growth company as defined in 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.

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	ADMA	Nasdaq Global Market
Preferred Stock Purchase Rights	—	Nasdaq Global Market

Item 1.01 Entry into a Material Definitive Agreement

Amendment No. 2 to the Open Market Sale AgreementSM

ADMA Biologics, Inc. (the “Company”) is a party to the Open Market Sale AgreementSM, dated August 5, 2020, with Jefferies LLC (“Jefferies”), which was previously amended by Amendment No. 1 to the Open Market Sale AgreementSM, dated November 5, 2020, by and between the Company and Jefferies (as so amended, the “Prior Sale Agreement”). Pursuant to the Prior Sale Agreement, the Company could offer to sell, from time to time through Jefferies, shares of the Company’s common stock (the “Shares”) having an aggregate offering price of up to \$70.0 million.

On February 3, 2021, the Company and Jefferies entered into Amendment No. 2 to the Open Market Sale AgreementSM (“Amendment No. 2” and together with the Prior Sale Agreement, the “Amended Sale Agreement”) to provide for an increase in the aggregate offering amount under the Prior Sale Agreement, such that as of February 3, 2021, the Company may offer and sell Shares having an additional aggregate offering price of up to approximately \$35.4 million under the Amended Sale Agreement, by methods deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended.

Subject to the terms of the Amended Sale Agreement, Jefferies will use commercially reasonable efforts to sell the Shares from time to time (the Offering”), based upon the Company’s instructions (including any price, time or size limits or other customary parameters or conditions the Company may impose). The Company cannot provide any assurances that it will issue any additional Shares pursuant to the Amended Sale Agreement. The Company will pay Jefferies a commission of up to 3.0% of the gross proceeds from the sale of the Shares, if any. The Company has also agreed to provide Jefferies with customary indemnification rights. The offering of the Shares will terminate upon the earliest of (a) the sale of the maximum number or amount of the Shares permitted to be sold under the Amended Sale Agreement and (b) the termination of the Amended Sale Agreement by the parties thereto.

The foregoing description of the Amended Sale Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of Amendment No. 2, which is filed herewith as Exhibit 1.1 and incorporated by reference herein.

Item 8.01 Other Events

Certain Preliminary Financial Results as of December 31, 2020

Based upon this Amended Sale Agreement, the Company's current projected revenue and expenditures, including capital expenditures and continued implementation of the Company's commercialization, expansion activities and the proceeds from the Offering, as well as certain other assumptions, the Company currently believes that the Company's cash, cash equivalents, projected revenue and accounts receivable will be sufficient to fund the Company's operations, as currently conducted, now into the fourth quarter of 2021. The Company’s preliminary, unaudited revenues for the fourth quarter 2020 and for the full year 2020, were \$13.9 million and \$42.2 million of revenues, respectively. Additionally, as of December 31, 2020, the Company’s preliminary, unaudited cash and cash equivalents totaled \$55.9 million. In order to have sufficient cash to fund the Company’s operations thereafter, the Company anticipates it will need to raise additional capital before the end of the fourth quarter of 2021. The Company has prepared these estimates on the basis of currently available information; however these estimates are preliminary and are subject to completion of financial closing procedures that could result in changes to these amounts and do not present all information necessary for an understanding of the Company’s results of operations for the fourth quarter or full year 2020. These preliminary estimates have been prepared by, and are the responsibility of, the Company’s management. The Company’s independent registered public accounting firm, CohnReznick LLP, has not audited or reviewed, and does not express an opinion with respect to, these estimates. Complete annual results will be included in our Annual Report on Form 10-K for the year ended December 31, 2020. Additionally, these estimates may change based upon several factors, including the success of the Company’s commercial sales of its products, manufacturing ramp-up activities, the acceptability of its immune globulin products by physicians, patients or payers and the various financing options that may be available to the Company. In addition, the Company’s end-to-end production cycle from procurement of raw materials to commercial release of finished product can take between seven and 12 months or potentially longer, requiring substantial investments in raw material plasma and other manufacturing materials. For further information, see the risks and uncertainties described in the Company’s filings with the U.S. Securities and Exchange Commission, including its most recent reports on Form 10-K, 10-Q and 8-K, and any amendments thereto.

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K contains “forward-looking statements” pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, about the Company. Forward-looking statements include, without limitation, any statement that may predict, forecast, indicate, or imply future results, performance or achievements, and may contain such words as “estimate,” “project,” “intend,” “forecast,” “target,” “anticipate,” “plan,” “planning,” “expect,” “believe,” “will,” “should,” “could,” “would,” “may,” or, in each case, their negative, or words or expressions of similar meaning. These forward-looking statements also include, but are not limited to, statements about the Company’s future results of operations; the Company’s expectations regarding the sufficiency of its cash, cash equivalents, projected revenues and accounts receivable to fund its operations; timing of revenue and profitability and execution of corporate objectives and achievement of goals. Actual events or results may differ materially from those described in this document due to a number of important factors. Current and prospective security holders are cautioned that there also can be no assurance that the forward-looking statements included in this Current Report on Form 8-K will prove to be accurate. Except to the extent required by applicable laws or rules, the Company does not undertake any obligation to update any forward-looking statements or to announce revisions to any of the forward-looking statements. Forward-looking statements are subject to many risks, uncertainties and other factors that could cause the Company’s actual results, and the timing of certain events, to differ materially from any future results expressed or implied by the forward-looking statements, including, but not limited to, the risks and uncertainties described in the Company’s filings with the U.S. Securities and Exchange Commission, including its most recent reports on Form 10-K, 10-Q and 8-K, and any amendments thereto.

Item 9.01 Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1	Amendment No. 2 to Sale Agreement, dated as of February 3, 2021
5.1	Opinion of Morgan, Lewis & Bockius LLP
23.1	Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5.1)
104	Cover Page Interactive Data File (embedded with the Inline XBRL Document)

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.

February 3, 2021

ADMA Biologics, Inc.

By: /s/ Brian Lenz

Name: Brian Lenz

Title: Executive Vice President and Chief Financial Officer

AMENDMENT NO. 2 TO THE OPEN MARKET SALE AGREEMENTSM

February 3, 2021

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

Ladies and Gentlemen:

This Amendment No. 2 to the Open Market Sale AgreementSM (this “**Amendment**”) is entered into as of the date first written above by ADMA Biologics, Inc., a Delaware corporation (the “**Company**”), and Jefferies LLC as sales agent and/or principal (the “**Agent**”) that together are the parties to that certain Open Market Sale AgreementSM, dated August 5, 2020, as amended by Amendment No. 1 to the Open Market Sale AgreementSM, dated November 5, 2020 (the “**Original Agreement**”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties hereto, intending to be legally bound, hereby agree as follows:

1. The preamble to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“ADMA Biologics, Inc., a Delaware corporation (the “**Company**”), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through Jefferies LLC, as sales agent and/or principal (the “**Agent**”), shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Shares**”), having an aggregate offering price of up to \$105,412,500 on the terms set forth in this agreement (this “**Agreement**”).”

2. The definition of “Maximum Program Amount” in Section 1(a) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“**Maximum Program Amount**” means Common Shares with an aggregate Sales Price of the lesser of (a) \$105,412,500, (b) the number or dollar amount of Common Shares registered under the effective Registration Statement (defined below) pursuant to which the offering is being made, (c) the number of authorized but unissued Common Shares (less Common Shares issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock), (d) the number or dollar amount of Common Shares permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable), or (e) the number or dollar amount of Common Shares for which the Company has filed a Prospectus (defined below).”

3. The Company shall file a Prospectus Supplement pursuant to Rule 424(b) under the Securities Act reflecting this Amendment and disclose this Amendment in a Current Report on Form 8-K within one (1) Business Day following the date hereof.
 4. The Company agrees to pay all costs, fees and expenses incurred in connection with entering into this Amendment and the performance of the Company's obligations under the Original Agreement as amended by this Amendment and the transactions contemplated hereby and thereby, including without limitation, (i) all filing fees, attorneys' fees and expenses incurred by the Company or any Agent in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Shares authorized by this Amendment for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by an Agent, preparing and printing a "Blue Sky Survey" or memorandum and a "Canadian wrapper" and any supplements thereto, advising the Agent of such qualifications, registrations, determinations and exemptions and (ii) the reasonable fees and disbursements of the Agent's counsel, including the reasonable fees and expenses of counsel for the Agent in connection with, FINRA review, if any, and approval of the Agent's participation in the offering and distribution of the Shares authorized by this Amendment. The fees and disbursements of Agent's counsel pursuant to subsections (i) and (ii) above shall not exceed \$50,000. For the avoidance of doubt, the \$50,000 of fees and disbursements of Agent's counsel that may become payable by the Company hereunder shall be in addition to the fees and disbursements of Agent's counsel in connection with entering into the Original Agreement and the first amendment thereto that were payable by the Company under Section 3(d) of the Agreement and up to \$15,000 of fees and disbursements of Agent's Counsel that may become payable by the Company pursuant to Section 3(d) of the Agreement in connection with each Triggering Event Date on which the Company is required to provide a certificate pursuant to Section 4(a) of the Agreement.
 5. The Company represents and warrants to, and agrees with the Agent that as of the date of this Amendment, this Amendment has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.
 6. This Amendment, together with the Original Agreement, constitutes the entire agreement of the parties hereto and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Amendment may not be amended or modified unless in writing by all the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The invalidity or unenforceability of any provision contained herein shall not affect the validity or enforceability of any other provision hereof. If any provision of this Amendment is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable. All references in the Original Agreement to the "Agreement" shall mean the Original Agreement as amended by this Amendment; provided, however, that all references to "date of this Agreement" in the Original Agreement shall continue to refer to the date of the Original Agreement.
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7. This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Amendment or the transactions contemplated hereby or by the Original Agreement may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.
8. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed amendment by one party to the other may be made by facsimile, electronic mail or other transmission method as permitted by applicable law, and the parties hereto agree that any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. A party’s electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party’s hand.

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this Amendment shall constitute a binding amendment to the Original Agreement between the Company and the Agent.

Very truly yours,

JEFFERIES LLC

By: /s/ Michael Magarro
Name: Michael Magarro
Title: Managing Director

**ACCEPTED as of the date
first-above written:**

ADMA BIOLOGICS, INC.

By: /s/ Adam Grossman
Name: Adam Grossman
Title: President and Chief Executive Officer

[Signature Page to Amendment No. 2 to the Open Market Sale AgreementSM]

Morgan Lewis

February 3, 2021

ADMA Biologics, Inc.
465 State Route 17
Ramsey, NJ 07446

Re: ADMA Biologics, Inc. Registration Statement on Form S-3 (333-234107)

Ladies and Gentlemen:



We have acted as counsel to ADMA Biologics, Inc., a Delaware corporation (the “Company”), in connection with the filing of a prospectus supplement, dated February 3, 2021 (the “Prospectus”), by the Company with the Securities and Exchange Commission (the “Commission”) on February 3, 2021 pursuant to Rule 424(b)(5) of the Securities Act of 1933, as amended (the “Act”), relating to the offer and sale by the Company of up to \$35,412,500 aggregate offering amount of shares (the “Shares”) of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”), in an “at the market offering” as defined in Rule 415(a)(4) of the Act in accordance with the Open Market Sale AgreementSM, dated August 5, 2020 (the “Sale Agreement”), by and between the Company and Jefferies LLC (the “Agent”), as amended by Amendment No. 1 to the Open Market Sale AgreementSM, dated as of November 5, 2020, by and between the Company and the Agent (“Amendment No. 1”) and further amended by Amendment No. 2 to the Open Market Sale AgreementSM, dated as of February 3, 2021, by and between the Company and the Agent (“Amendment No. 2” and together with the Sale Agreement, as amended by Amendment No. 1, the “Amended Sale Agreement”), pursuant to the referenced Registration Statement on Form S-3 (No. 333-234107) (the “Registration Statement”) filed with the Commission on October 4, 2019 and declared effective on October 15, 2019.

As to all matters of fact (including factual conclusions and characterizations and descriptions of purpose, intention or other state of mind), we have relied, with your permission, entirely upon written actions by the Board of Directors of the Company and certificates of certain officers of the Company and have assumed, without independent inquiry, the accuracy of those certificates and written actions by the Board of Directors of the Company.

As counsel to the Company, in rendering the opinions hereinafter expressed, we have examined and relied upon originals or copies of such corporate records, agreements, documents and instruments as we have deemed necessary or advisable for purposes of this opinion, including (i) the certificate of incorporation and bylaws of the Company, (ii) the Registration Statement and the exhibits thereto filed with the Commission, (iii) the Prospectus, (iv) the Amended Sale Agreement and (v) the written actions of the Board of Directors of the Company referenced above.

Morgan, Lewis & Bockius LLP

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This opinion is limited solely to the Delaware General Corporation Law without regard to choice of law, to the extent that the same may apply to or govern the transactions contemplated by the Registration Statement. We express no opinion as to the effect of events occurring, circumstances arising, or changes of law becoming effective or occurring, after the date hereof on the matters addressed in this opinion.

Based on such examination and subject to the foregoing, we are of the opinion that the Shares, when issued by the Company and delivered by the Company against payment therefor as contemplated by the Amended Sale Agreement, and an Issuance Notice (as defined in the Amended Sale Agreement), will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the reference to us under the caption "Legal Matters" in the Prospectus. In giving this consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations of the Commission thereunder. In rendering this opinion, we are opining only as to the specific legal issues expressly set forth herein, and no opinion shall be inferred as to any other matter or matters. This opinion is intended solely for use in connection with the issuance and sale of the Shares subject to the Registration Statement and is not to be relied upon for any other purpose.

Very truly yours,

/s/ Morgan, Lewis & Bockius LLP