
**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): August 7, 2023

AVALO THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-37590
(Commission File Number)

45-0705648
(IRS Employer Identification No.)

540 Gaither Road, Suite 400, Rockville, Maryland 20850

(Address of principal executive offices) (Zip Code)

Registrant's Telephone Number, Including Area Code: (410) 522-8707

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:

- 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))

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, \$0.001 Par Value	AVTX	Nasdaq Capital Market

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

Item 1.01. Entry into a Material Definitive Agreement.

As previously disclosed, Avalo Therapeutics, Inc. (the “Company”) is party to a Sales Agreement (the “Sales Agreement”), dated May 4, 2023, with Oppenheimer & Co. Inc. (“Oppenheimer”), pursuant to which the Company may offer and sell, from time to time through Oppenheimer, shares of the Company’s common stock, par value \$0.001 per share, having an aggregate offering price of up to \$9,032,567.

On August 7, 2023, the Company and Oppenheimer entered into Amendment No. 1 to the Sales Agreement (the “Amendment”, and together with the Sales Agreement, the “Amended Sales Agreement”) to provide for an increase in the aggregate offering amount under the Sales Agreement, such that as of August 7, 2023 under the Amended Sales Agreement, the Company may offer and sell additional shares of common stock having an aggregate offering price of up to \$50,000,000 (the “Offering”). As of August 4, 2023, the Company has sold an aggregate of 8,927,334 shares of common stock pursuant to the Sales Agreement with an aggregate offering price of approximately \$8.3 million, leaving an aggregate offering price of up to approximately \$41.7 million remaining under the Amended Sales Agreement. The terms and conditions of the Sales Agreement otherwise remain unchanged.

The issuance and sale of additional shares in the Offering, if any, by the Company under the Amended Sales Agreement will be pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-271225) filed with the Securities and Exchange Commission (the “SEC”) on April 12, 2023 (the “Registration Statement”) and declared effective by the SEC on May 2, 2023, the prospectus supplement relating to the Offering filed with the SEC on May 4, 2023 and amended on August 7, 2023, and any applicable additional prospectus supplements related to the Offering that form a part of the Registration Statement.

Subject to the terms and conditions of the Amended Sales Agreement, Oppenheimer will use its commercially reasonable efforts to sell the shares of common stock from time to time, based upon the Company’s instructions, by methods deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended. The Company or Oppenheimer may suspend or terminate the Offering upon notice to the other party and subject to other conditions.

The Company is not obligated to make any sales of common stock under the Amended Sales Agreement. The Offering of shares of common stock pursuant to the Amended Sales Agreement will terminate upon the earlier of (i) the sale of all shares of common stock subject to the Amended Sales Agreement or (ii) termination of the Amended Sales Agreement in accordance with its terms.

The foregoing description of the Amended Sales Agreement is not complete and is qualified in its entirety by reference to the full text of the Sales Agreement, a copy of which is filed as Exhibit 1.1 to the Company’s Current Report on Form 8-K, as filed with the SEC on May 4, 2023, and the Amendment, a copy of which is filed as Exhibit 1.1 hereto, both of which are incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the securities discussed herein, nor shall there be any offer, solicitation, or sale of the securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The opinion of Wyrick Robbins Yates & Ponton LLP, the Company’s legal counsel, regarding the validity of the shares of common stock to be offered and sold under the Amended Sales Agreement is filed as Exhibit 5.1 hereto. This opinion is also filed with reference to, and is hereby incorporated by reference into, the Registration Statement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No.	Description
1.1	<u>Amendment No. 1 to the Sales Agreement, dated as of August 7, 2023, between Avalo Therapeutics, Inc. and Oppenheimer & Co. Inc.</u>
5.1	<u>Opinion of Wyrick Robbins Yates & Ponton LLP.</u>
23.1	<u>Consent of Wyrick Robbins Yates & Ponton LLP (included in Exhibit 5.1).</u>
104	The cover pages of this Current Report on Form 8-K, formatted in Inline XBRL.

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.

AVALO THERAPEUTICS, INC.

Date: August 7, 2023

By: /s/ Christopher Sullivan

Christopher Sullivan
Chief Financial Officer

AMENDMENT NO. 1 TO
SALES AGREEMENT

August 7, 2023

This Amendment No. 1 (“**Amendment No. 1**”) amends that certain Sales Agreement, dated May 4, 2023 (the “**Agreement**”), by and between Avalo Therapeutics, Inc. (the “**Company**”) and Oppenheimer & Co. Inc., as agent (the “**Agent**”). Defined terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Agreement.

WITNESSETH THAT:

WHEREAS, Section 15 of the Agreement permits the Company and the Agent to amend the Agreement;

WHEREAS, the Company has increased availability to sell additional Placement Shares under the Registration Statement; and

WHEREAS, the Company and the Agent now desire to amend the Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Agent agree as follows:

1. Section 1 of the Agreement is hereby amended by replacing the number “\$9,032,567” on the third line thereof and replacing it with the number “50,000,000”.

2. References to the date of the Agreement in the form of Placement Notice included as Schedule 1 to the Agreement are hereby revised to read, “May 4, 2023, as amended by Amendment No. 1 thereto, dated August 4, 2023.”

3. This Amendment No. 1 shall be deemed effective on the date first set forth above.

4. Except as amended hereby, the Agreement as now in effect is ratified and confirmed hereby in all respects. For the avoidance of doubt, this Amendment No. 1 and all of its provisions shall be deemed to be a part of the Agreement, as amended hereby. The Agreement as amended by this Amendment 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 and thereof.

5. This Amendment No. 1 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 No. 1 or the transactions contemplated hereby 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 in the Agreement 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.

[Signature page follows.]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

AVALO THERAPEUTICS, INC.

By: <u>Christopher Sullivan</u>	/s/
Christopher Sullivan	Name:
Chief Financial Officer	Title:

The foregoing Amendment No. 1 is hereby confirmed and accepted by the Agent in New York, New York as of the date first above written.

OPPENHEIMER & CO. INC.

By: /s/ Michael Margolis, R.Ph.
Name: Michael Margolis, R.Ph.
Title: Senior Managing Director, Co-Head of Healthcare
Investment Banking

[Signature Page to Amendment No. 1]

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607

August 7, 2023

Avalo Therapeutics, Inc.
540 Gaither Road, Suite 400
Rockville, Maryland 20850

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the proposed offer and sale by Avalo Therapeutics Inc., a Delaware corporation (the "Company"), in connection with the issuance and sale of up to \$50,000,000 of shares (the "Shares") of the Company's common stock, par value \$0.001 per share, all of which are authorized but heretofore unissued shares to be offered and sold by the Company, except for 8,927,334 Shares for gross proceeds of \$8,277,869, which were already offered and sold as of August 4, 2023 for which we previously provided a due authorization opinion, pursuant to the Registration Statement on Form S-3 (File No. 333-271225) (the "Registration Statement") filed with the U.S. Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act"), on April 12, 2023, and declared effective by the SEC on May 2, 2023, the base prospectus dated May 2, 2023 contained in the Registration Statement (the "Base Prospectus"), and the prospectus supplements relating to the proposed offer and sale of the Shares filed with the SEC on May 4, 2023 and August 7, 2023 pursuant to Rule 424(b) of the rules and regulations under the Securities Act (together with the Base Prospectus, the "Prospectus"). We understand that the Shares, which may be issued from time to time on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, are proposed to be offered and sold by the Company through Oppenheimer & Co. Inc. as sales agent, pursuant to that certain Sales Agreement, dated as of May 4, 2023, as amended on August 7, 2023, by and between the Company and Oppenheimer & Co. Inc. (the "Sales Agreement").

In connection with the preparation of this opinion, we have examined the Registration Statement and the Prospectus and such documents and considered such questions of law as we have deemed necessary or appropriate. We have assumed the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof and the genuineness of all signatures. As to questions of fact material to our opinions, we have relied upon the certificates of certain officers of the Company without independent investigation or verification.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued and sold in the manner described in the Sales Agreement and in accordance with the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to the use of our name wherever appearing in the Registration Statement, including the prospectus constituting a part thereof, and any amendments thereto.

Sincerely,

/s/ WYRICK ROBBINS YATES & PONTON LLP