

**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): May 9, 2023

MADRIGAL PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33277
(Commission
File Number)

04-3508648
(IRS Employer
Identification No.)

Four Tower Bridge
200 Barr Harbor Drive, Suite 200
West Conshohocken, Pennsylvania
(Address of principal executive offices)

19428
(Zip Code)

(267) 824-2827

Registrant's telephone number, including area code

(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:

- 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, \$0.0001 Par Value Per Share | MDGL | The NASDAQ Stock Market LLC |

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.

On May 9, 2023, Madrigal Pharmaceuticals, Inc. (the “Company”) entered into Amendment No. 1 (the “Amendment”) to the Sales Agreement dated June 1, 2021 (as amended, the “Sales Agreement”) with Cowen and Company, LLC (“Cowen”), which Amendment increases by up to an additional \$200,000,000 the amount of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”) that can be issued and sold by the Company from time to time through or to Cowen, acting as agent or principal (the “ATM Offering”).

Sales of the Common Stock, if any, under the Sales Agreement will be made by any method that is deemed to be an “at the market” offering as defined in Rule 415(a)(4) of the Securities Act of 1933, as amended. The Company has no obligation to sell any of the Common Stock and may at any time suspend offers under the Sales Agreement or terminate the Sales Agreement pursuant to its terms.

Subject to the terms and conditions of the Sales Agreement, Cowen will use its commercially reasonable efforts to sell the shares of Common Stock from time to time, as the sales agent, based upon the Company’s instructions. The offering of shares of Common Stock pursuant to the Sales Agreement will terminate upon the earlier of (i) the sale of all Common Stock subject to the Sales Agreement or (ii) the termination of the Sales Agreement in accordance with its terms.

The foregoing description of Amendment to the Sales Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Amendment, a copy of which is incorporated herein by reference as Exhibit 1.1.

The Common Stock to be sold under the Sales Agreement, if any, will be issued and sold pursuant to the Company’s automatic shelf registration statement on Form S-3 (File No. 333-256666), filed with the Securities and Exchange Commission (“SEC”) on June 1, 2021. On May 9, 2023, the Company filed a prospectus supplement with the SEC in connection with the offer and sale of the additional \$200,000,000 of Common Stock pursuant to the Amendment to the Sales Agreement. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the Common Stock nor shall there be any sale of the Common Stock in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction. The legal opinion of Hogan Lovells US LLP relating to the legality of the issuance and sale of the Common Stock pursuant to the ATM Offering is attached as Exhibit 5.1 to this Current Report on Form 8-K and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 1.1 | Amendment No. 1 to Sales Agreement, dated May 9, 2023, by and between Madrigal Pharmaceuticals, Inc. and Cowen and Company, LLC. |
| 5.1 | Legal Opinion of Hogan Lovells US LLP. |
| 23.1 | Consent of Hogan Lovells US LLP (included in Exhibit 5.1) |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL file) |

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 hereunto duly authorized.

MADRIGAL PHARMACEUTICALS, INC.

By: /s/ Brian J. Lynch

Name: Brian J. Lynch

Title: Senior Vice President and General Counsel

Date: May 9, 2023

AMENDMENT NO. 1 TO SALES AGREEMENT

May 9, 2023

Madrigal Pharmaceuticals, Inc.
 Four Tower Bridge
 200 Barr Harbor Drive, Suite 200
 West Conshohocken, Pennsylvania 19428

Ladies and Gentlemen:

Madrigal Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), together with Cowen and Company, LLC (the "**Agent**"), are parties to that certain Sales Agreement dated June 1, 2021 (the "**Original Agreement**"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The Company and the Agent desire to amend the Original Agreement as set forth in this Amendment No. 1 thereto (this "**Amendment**") as follows:

1. Section 1 is hereby amended as follows:

"The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through or to Cowen, acting as agent or principal, shares (the "**Shares**") of the Company's common stock, par value \$0.0001 per share (the "**Common Stock**"), having an aggregate offering price of up to \$400,000,000 (the "**Maximum Amount**")."

2. All references to "June 1, 2021" set forth in Schedule 1 and Exhibit 7(m) of the Original Agreement are revised to read "June 1, 2021 (as amended by Amendment No. 1, dated May 9, 2023)".

3. A new Section 20 as set forth below is hereby added to the Sales Agreement immediately following Section 19 thereof:

"20. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that Cowen is a Covered Entity and becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from Cowen of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that Cowen is a Covered Entity and Cowen or a BHC Act Affiliate of Cowen becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against Cowen are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(c) For purposes of this Section 20, (a) "**BHC Act Affiliate**" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k), (b) "**Covered Entity**" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b), (c) "**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable, and (d) "**U.S. Special Resolution Regime**" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder."

4. Except as specifically set forth herein, all other provisions of the Original Agreement shall remain in full force and effect.

5. The Company will pay reasonable and documented out-of-pocket fees and disbursements of counsel to the Agent of up to \$75,000 in the aggregate incurred in connection with this Amendment No. 1 and other related documents.

6. This Amendment together with the Original Agreement (including all exhibits attached hereto and thereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Amendment nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall

be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Amendment. 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.

7. EACH OF THE COMPANY AND THE AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAW.

9. Each of the Company and the Agent agrees that any legal suit, action or proceeding arising out of or based upon this Amendment or the transactions contemplated hereby ("Related Proceedings") shall be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the "Specified Courts"), and irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any Specified Court, as to which such jurisdiction is non-exclusive) of the Specified Courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to a party's address set forth in Section 11 of the Original Agreement, as amended by this Amendment, shall be effective service of process upon such party for any suit, action or proceeding brought in any Specified Court. Each of the Company and the Agent irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim in any Specified Court that any such suit, action or proceeding brought in any Specified Court has been brought in an inconvenient forum.

10. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed amendment by one party to the other may be made by facsimile transmission or electronic transmission (e.g., PDF).

[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,

COWEN AND COMPANY, LLC

By: /s/ Michael Murphy

Name: Michael Murphy

Title: Managing Director

[Signature Page to Amendment No. 1 to Sales Agreement]

ACCEPTED as of the date first-above written:

MADRIGAL PHARMACEUTICALS, INC.

By: /s/ Brian J. Lynch

Name: Brian J. Lynch

Title: SVP and General Counsel

[Signature Page to Amendment No. 1 to Sales Agreement]



Hogan Lovells US LLP
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555 Thirteenth Street, NW
Washington, DC 20004
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www.hoganlovells.com

May 9, 2023

Board of Directors
Madrigal Pharmaceuticals, Inc.
Four Tower Bridge
200 Barr Harbor Drive, Suite 200
West Conshohocken, PA 19428

Ladies and Gentlemen:

We are acting as counsel to Madrigal Pharmaceuticals, Inc., a Delaware corporation (the “**Company**”), in connection with the issuance and sale of up to \$200,000,000 of shares of the Company’s common stock, par value \$0.0001 per share (the “**Shares**”), from time to time and at various prices in an “at-the-market” offering pursuant to the terms of the Sales Agreement dated June 1, 2021, as amended by Amendment No. 1 to Sales Agreement on May 9, 2023 (as amended, the “**Sales Agreement**”), by and between the Company and Cowen and Company, LLC as placement agent (the “**Agent**”). The offering of the Shares by the Company is being made pursuant to the Company’s registration statement on Form S-3 (the “**Registration Statement**”) filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “**Act**”) on June 1, 2021, including a base prospectus (the “**Base Prospectus**”) that forms a part thereof and a prospectus supplement dated May 9, 2023 (the “**Prospectus Supplement**” and together with the Base Prospectus, the “**Prospectus**”). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including pdfs). As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

This opinion letter is based as to matters of law solely on the Delaware General Corporation Law, as amended. We express no opinion herein as to any other statutes, rules or regulations.

Based upon, subject to and limited by the foregoing, we are of the opinion that following the (i) execution and delivery by the Company of the Sales Agreement, (ii) authorization by the Company’s Board of Directors, or authorization by the duly authorized Financing Committee of the Board of

Directors, within the limitations established by resolutions duly adopted by the Financing Committee of the Board of Directors and in each case made available to us, of the terms pursuant to which the Shares may be sold pursuant to the Sales Agreement, (iii) authorization by a duly authorized executive officer, designated by the Financing Committee to approve placement notices under the Sales Agreement, of the terms of the applicable placement notice executed in a manner consistent with the foregoing and pursuant to which the Shares may be sold pursuant to the Sales Agreement, (iv) issuance of the Shares pursuant to the terms of the Sales Agreement, and (v) receipt by the Company of the consideration for the Shares sold pursuant to such terms and such applicable placement notice, the Shares will be validly issued, fully paid, and nonassessable.

This opinion letter has been prepared for use in connection with the filing by the Company of a Current Report on Form 8-K on the date hereof relating to the offer and sale of the Shares, which Form 8-K will be incorporated by reference into the Registration Statement and Prospectus, and speaks as of the date hereof. We assume no obligation to advise of any changes in the foregoing subsequent to the delivery of this letter.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the above-described Form 8-K and to the reference to this firm under the caption "Legal Matters" in the Prospectus. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Act.

Very truly yours,

/s/ Hogan Lovells US LLP

Hogan Lovells US LLP