

**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): April 27, 2023

Acumen Pharmaceuticals, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-40551
(Commission
File Number)

36-4108129
(IRS Employer
Identification No.)

**427 Park St.,
Charlottesville, Virginia**
(Address of Principal Executive Offices)

22902
(Zip Code)

(434) 297-1000
(Registrant's Telephone Number, Including Area Code)

Not Applicable
(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 Instructions 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))

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	ABOS	The Nasdaq Global Select 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.

On April 27, 2023, Acumen Pharmaceuticals, Inc. (the “Company”) entered into an amendment (“Amendment No. 1”) to the Sales Agreement, dated as of July 1, 2022 (the “Sales Agreement” and, as amended by Amendment No. 1, the “Amended Sales Agreement”) with BofA Securities, Inc., Stifel, Nicolaus & Company, Incorporated and BTIG, LLC (collectively referred to as “Sales Agents” and each individually a “Sales Agent”), pursuant to which the Company may sell its common stock, par value \$0.0001 per share, from time to time through the Sales Agents in sales deemed to be “at the market offerings” as defined in Rule 415 promulgated under the Securities Act of 1934, as amended (the “Securities Act”).

Amendment No. 1 adds BTIG, LLC as an additional Sales Agent to the Sales Agreement and is filed as Exhibit 1.1 to this Current Report on Form 8-K. The foregoing description of Amendment No. 1 is qualified in its entirety by reference to such exhibit.

As of April 26, 2023, the Company has sold 422,160 shares of its common stock having an aggregate offering price of approximately \$4,246,131 under the Sales Agreement, pursuant to a prospectus dated July 1, 2022, relating to the offer and sale of shares of its common stock, having an aggregate offering price of up to \$50,000,000.

The information contained in this Form 8-K (including the exhibits hereto) is hereby incorporated by reference into the Company’s Registration Statement on Form S-3 (Registration No. 333-266004).

Item 8.01 Other Events.

The opinion of the Company’s counsel regarding the validity of the shares of common stock that will be issued pursuant to the Amended Sales Agreement and the related prospectus supplement to be filed by the Company is filed herewith as Exhibit 5.1 and is incorporated by reference herein.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any security nor shall there be any offer, solicitation, or sale of these 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.

Item 9.01 Financial Statements and Exhibits.

(d). Exhibits

Exhibit No.	Description
1.1	Amendment No. 1 to the Sales Agreement, dated April 27, 2023, by and among Acumen Pharmaceuticals, Inc., BofA Securities, Inc., Stifel, Nicolaus & Company, Incorporated and BTIG, LLC
5.1	Opinion of Ropes & Gray LLP
23.1	Consent of Ropes & Gray LLP (included in Exhibit 5.1 hereof)
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Acumen Pharmaceuticals, Inc.

Dated: April 27, 2023

By: /s/ Matthew Zuga

Matthew Zuga

Chief Financial Officer and Chief Business Officer

ACUMEN PHARMACEUTICALS, INC.

Common Stock
(\$0.0001 par value)

AMENDMENT NO. 1 TO THE ATM EQUITY OFFERINGSSM SALES AGREEMENT

April 27, 2023

BofA Securities, Inc.
One Bryant Park
New York, New York 10036

Stifel, Nicolaus & Company, Incorporated
787 Seventh Avenue, 11th Floor
New York, New York 10019

BTIG, LLC
65 East 55th Street
New York, NY 10022

Ladies and Gentlemen:

This Amendment No. 1 (this "Amendment") to the ATM Equity OfferingSM Sales Agreement, dated July 1, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified in writing through the date hereof, the "Existing Sales Agreement" and as amended by this Amendment, the "Sales Agreement"), is made and entered into as of the date hereof by and among Acumen Pharmaceuticals, Inc., a Delaware corporation (the "Company") and BofA Securities, Inc. ("BofA"), Stifel, Nicolaus & Company, Incorporated ("Stifel") and BTIG, LLC (the "New Agent"), as sales agent and/or principal (each of BofA and Stifel, an "Original Agent" and, together, the "Original Agents," and the Original Agents, together with the New Agent, the "Agents"). The Company and the Original Agents are referred to herein collectively as the "Original Parties." The Company and the Agents are referred to herein individually as a "Party" and, collectively, as the "Parties." Capitalized terms used but not otherwise defined herein have the respective meanings ascribed to such terms in the Sales Agreement.

WHEREAS, the Original Parties wish to amend the Existing Sales Agreement in accordance with the terms of the Existing Sales Agreement and this Amendment; and

WHEREAS, pursuant to this Amendment, the New Agent shall (i) become a party to the Sales Agreement as an Agent (as defined in the Sales Agreement) and (ii) agree to be bound by all of the provisions of the Sales Agreement as if it had been an original signatory thereto as an Original Agent.

NOW, THEREFORE, in consideration of premises, and of the representations, warranties, covenants and agreements contained in the Sales Agreement and herein, the Parties hereby agree as follows:

1. **Amendment.** The following sections of the Existing Sales Agreement are hereby amended as set forth below.

- a. **Introductory Paragraph.** The first paragraph of the Existing Sales Agreement is hereby deleted in its entirety and replaced with the following:

Acumen Pharmaceuticals, Inc., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time to or through BofA Securities, Inc. ("BofA"), Stifel, Nicolaus & Company, Incorporated ("Stifel") and BTIG, LLC ("BTIG"), as sales agent and/or principal (each, an "Agent" and, collectively, the "Agents"), shares (the "Shares") of the Company's common stock, \$0.0001 par value (the "Common Stock"), having an aggregate gross sales price not to exceed \$50,000,000, on the terms set forth in this ATM Equity OfferingSM Sales Agreement. The Company agrees that whenever it determines to sell Shares directly to the Agents as principals it will enter into a separate written Terms Agreement (each, a "Terms Agreement"), in substantially the form of Annex I hereto, relating to such sale in accordance with Section 2(k) hereof. References herein to "this Agreement" or to matters contained "herein" or "hereunder," or words of similar import, mean this ATM Equity OfferingSM Sales Agreement and any applicable Terms Agreement.

- b. **Sale and Delivery of Shares.** Section 2(b) of the Existing Sales Agreement is hereby amended such that the reference to "BofA or Stifel" is deleted and replaced with "BofA, Stifel or BTIG".

- c. **Opinion of Counsel for the Agents.** Section 5(b) of the Existing Sales Agreement is hereby deleted in its entirety and replaced with the following:

(b) *Opinion of Counsel for the Agents.* Prior to the initial offering of any Shares hereunder, the Agents shall have received (i) the favorable written opinion or opinions and (ii) a "negative assurance letter", of Latham & Watkins LLP, counsel for the Agents, dated such date, in form and substance previously agreed to among the parties hereto. In giving such opinion or opinions, such counsel may rely, as to all matters governed by the laws of jurisdictions other than the laws of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Agents. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and certificates of public officials.

- d. Opinions of Counsel to the Company. Section 5(c) of the Existing Sales Agreement is hereby amended such that the reference to “Cooley LLP” is deleted and replaced with “Ropes and Gray LLP”.
- e. Notices. Section 10 of the Existing Sales Agreement is hereby deleted in its entirety and replaced with the following:
- Section 10. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Agents shall be directed to BofA Securities, Inc., One Bryant Park, New York, New York 10036, Attention: ATM Execution (email: dg.atm_execution@bofa.com), with a copy to ECM Legal (email: dg.ecm_legal@bofa.com), to Stifel, Nicolaus & Company, Incorporated, One South Street, 15th Floor, Baltimore, Maryland 21202, Fax No. (443) 224-1273, Attention: Syndicate Department and to BTIG, LLC, 65 East 55th Street, New York, New York 10022, Attention: ATM Trading Desk; and notices to the Company shall be directed to it at: Acumen Pharmaceuticals, Inc., 427 Park Street, Charlottesville, Virginia 22902, Attention: Daniel O’Connell, with a copy to (which shall not constitute notice) to: Ropes and Gray LLP, Prudential Tower, 800 Boylston Street, Boston, MA 02199-3600, Attention: Thomas J. Danielski.
- f. Annex I. Annex I to the Existing Sales Agreement is hereby amended such that the New Agent is an addressee and signatory thereto and the reference to “Ropes & Gray LLP” is deleted and replaced with “Latham & Watkins LLP”. In addition, the first paragraph of Annex I to the Existing Sales Agreement is hereby deleted in its entirety and replaced with the following:
- Acumen Pharmaceuticals, Inc., a Delaware corporation (the “Company”), proposes, on the basis of the representations and warranties, and subject to the terms and conditions, stated herein and in the ATM Equity OfferingSM Sales Agreement, dated [•], 2022 (the “Sales Agreement”), between the Company and BofA Securities, Inc. (“BofA”), Stifel, Nicolaus & Company, Incorporated (“Stifel”) and BTIG, LLC (“BTIG”), as sales agent and/or principal (each, an “Agent” and, collectively, the “Agents”), to issue and sell to the Agents as principal for resale (collectively, the “Underwriters”), and the Underwriters severally agree to purchase from the Company the shares of Common Stock specified in the Schedule A hereto (the “*Initial* Securities”), **and to grant to the Underwriters the option to purchase the additional shares of Common Stock specified in the Schedule A hereto (the “Option Securities,” and together with the Initial Securities, the “Securities”), in each case on the terms specified in Schedule A hereto.** Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Sales Agreement.

2. **Representations and Warranties.**

- a. Each Party represents that such Party has all necessary power and authority to enter into and perform the obligations of this Amendment and that there are no consents or approvals required to be obtained by such Party for such Party to enter into and perform its obligations under this Amendment that have not been obtained.
- b. The representations and warranties of the Company contained in the Existing Sales Agreement are true and correct on and as of the date hereof with the same effect as if made on the date hereof.

3. **Filing of Prospectus Supplement.** Promptly after execution and delivery of this Amendment, and in any case prior to the sale of Shares pursuant to the Sales Agreement, the Company shall prepare and file with the Commission, in accordance with the provisions of the 1933 Act and the 1933 Act Regulations, a prospectus supplement relating to the Shares in accordance with the provisions of Rule 424(b), in the form furnished by the Company to the Agents in connection with the offering of the Shares. Such prospectus supplement shall have the meaning of a Prospectus Supplement as defined in the Sales Agreement, and shall identify the New Agent as a Sales Agent in the section titled "Plan of Distribution."

4. **Reimbursement.** Notwithstanding anything to the contrary in the Existing Sales Agreement, the Company will pay or cause to be paid all expenses incident to the performance of the Company's obligations under this Amendment No. 1, including the reasonable fees, disbursements and expenses of counsel for the Agents; *provided*, however, that the fees and disbursement of Agent's counsel pursuant to this Section 4 shall not exceed, in the aggregate \$45,000 in connection with the entry into this Amendment No. 1.

5. **Inconsistency or Conflict.** In the event of any inconsistency or conflict between the terms and provisions of the Sales Agreement, on the one hand, and this Amendment, on the other hand, the terms and provisions of this Amendment shall govern and control.

6. **Governing Law.** THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

7. **Counterparts.** 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 Sales Agreement. Electronic signatures 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 will be deemed original signatures for purposes of this Amendment. Transmission by telecopy, electronic mail or other transmission method of an executed counterpart of this Amendment will constitute due and sufficient delivery of such counterpart.

8. **Agreement Remains in Effect.** Except as provided herein, all provisions, terms and conditions of the Existing Sales Agreement shall remain in full force and effect. This Amendment shall be deemed incorporated into, and form a part of, the Sales Agreement and have the same legal validity and effect as the Sales Agreement. As amended hereby, the Sales Agreement is ratified and confirmed in all respects.

[Signature pages follow]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof; whereupon this instrument, along with all counterparts, will become a binding agreement between the Company and the Agents in accordance with its terms.

Very truly yours,

ACUMEN PHARMACEUTICALS, INC.

By: /s/ Daniel O'Connell

Name: Daniel O'Connell

Title: Chief Executive Officer

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

The foregoing Amendment No. 1 to
the Sales Agreement is hereby confirmed
and accepted as of the date first
written above.

BOFA SECURITIES, INC.

By: /s/ Aamir Mecklai
Name: Aamir Mecklai
Title: Managing Director

STIFEL, NICOLAUS & COMPANY, INCORPORATED

By: /s/ Sean Cessna
Name: Sean Cessna
Title: Managing Director

BTIG, LLC

By: /s/ KC Stone
Name: KC Stone
Title: Managing Director

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



ROPES & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPESGRAY.COM

April 27, 2023

Acumen Pharmaceuticals, Inc.
427 Park St.
Charlottesville, VA

Re: Registration Statement on Form S-3 (File No. 333-266004)

Ladies and Gentlemen:

We have acted as counsel to Acumen Pharmaceuticals, Inc., a Delaware corporation (the "Company"), in connection with its entry into the Sales Agreement, dated as of July 1, 2022, by and among the Company, BofA Securities, Inc. and Stifel, Nicolaus & Company, Incorporated, as amended by Amendment No. 1 to the Sales Agreement, dated as of April 27, 2023, by and among the Company, BofA Securities, Inc., Stifel, Nicolaus & Company, Incorporated and BTIG, LLC (as amended, the "Agreement"), pursuant to which the Company may issue and sell up to \$50,000,000 of shares (the "Shares") of the common stock, \$0.0001 par value (the "Common Stock"), of the Company pursuant to the above-referenced registration statement (the "Registration Statement"), filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act").

In connection with this opinion letter, we have examined such certificates, documents and records and have made such investigation of fact and such examination of law as we have deemed appropriate in order to enable us to render the opinions set forth herein. In conducting such investigation, we have relied, without independent verification, upon certificates of officers of the Company, public officials and other appropriate persons.

The opinion expressed below is limited to the Delaware General Corporation Law.

Based upon and subject to the foregoing, we are of the opinion that when the Shares are issued out of the Company's duly authorized Common Stock and sold in accordance with the terms of the Agreement against payment of the consideration set forth therein, the Shares will be duly authorized, validly issued, fully paid and non-assessable.

We hereby consent to your filing this opinion as an exhibit to the Registration Statement and to the use of our name therein and in the related prospectus under the caption "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Ropes & Gray LLP

Ropes & Gray LLP