

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 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): **November 16, 2021**

**ABEONA THERAPEUTICS INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation)

**001-15771**

(Commission  
File Number)

**83-0221517**

(I.R.S. Employer  
Identification No.)

**1330 Avenue of the Americas, 33rd Floor,  
New York, NY 10019**

(Address of principal executive offices) (Zip Code)

**(646) 813-4701**

(Registrant's telephone number, including area code)

**N/A**

(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))

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>
<b>Common Stock, \$0.01 par value</b>	<b>ABEO</b>	<b>Nasdaq Capital Markets</b>

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 November 19, 2021, Abeona Therapeutics Inc. (the "Company") entered into an amendment (the "Amendment") to its open market sale agreement (the "Agreement"), dated August 17, 2018, with Jefferies LLC (the "Agent") in connection with the Company's filing of a new shelf registration statement on Form S-3 (File No. 333-256850) (the "Registration Statement"), filed with the Securities and Exchange Commission (the "SEC") on June 7, 2021 and declared effective by the SEC on October 22, 2021.

The Amendment amends the Agreement to reflect the filing of the new Registration Statement (due to the prior Form S-3 (File No. 333-224867) expiring in June 2021) and a new prospectus supplement regarding the offering of shares to be sold pursuant to the Agreement, as amended.

The foregoing description of the Amendment is not complete and is qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed and incorporated herein by reference as Exhibit 1.2 to this Current Report on Form 8-K.

**Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

On November 16, 2021, the Company received a deficiency letter from the Listing Qualifications Department (the "Staff") of the Nasdaq Stock Market ("Nasdaq") notifying the Company that, for the preceding 30 consecutive business days, the closing bid price for the Common Stock was below the minimum \$1.00 per share requirement for continued inclusion on The Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Requirement").

The notification received has no immediate effect on the Company's Nasdaq listing. In accordance with Nasdaq rules, the Company has been provided an initial period

of 180 calendar days, or until May 16, 2022 (the "Compliance Date"), to regain compliance with the Bid Price Requirement. If, at any time before the Compliance Date, the closing bid price for the Common Stock is at least \$1.00 for a minimum of 10 consecutive business days, the Staff will provide the Company written confirmation of compliance with the Bid Price Requirement.

If the Company does not regain compliance with the Bid Price Requirement by the Compliance Date, the Company may be eligible for an additional 180 calendar day compliance period. To qualify, the Company will be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for The Nasdaq Capital Market, with the exception of the Bid Price Requirement, and will need to provide written notice of its intention to cure the deficiency during the second 180 calendar day compliance period, by effecting a reverse stock split, if necessary.

If the Company does not regain compliance with the Bid Price Requirement by the Compliance Date and is not eligible for an additional compliance period at that time, the Staff will provide written notification to the Company the Common Stock will be subject to delisting. At that time, the Company may appeal the Staff's delisting determination to a Nasdaq Hearings Panel. There can be no assurance that the Company will regain compliance or otherwise maintain compliance with any of the other listing requirements.

The Company intends to monitor the closing bid price of the Common Stock and may, if appropriate, consider available options to regain compliance with the Bid Price Requirement.

#### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

See the Exhibit Index below, which is incorporated by reference herein.

<b>Exhibit No.</b>	<b>Description</b>
1.1	<a href="#">Open Market Sale Agreement, dated August 17, 2018, by and between the Company and Jefferies LLC (incorporated by reference to Exhibit 1.1 of Form 8-K filed on August 20, 2018 (File No. 001-15771))</a>
1.2	<a href="#">Amendment No. 1 to Open Market Sale Agreement, dated November 19, 2021, amending the Open Market Sale Agreement, by and between the Company and Jefferies LLC, dated August 17, 2018</a>
5.1	<a href="#">Opinion of Morgan, Lewis &amp; Bockius LLP</a>
23.1	<a href="#">Consent of Morgan, Lewis &amp; Bockius LLP (included in Exhibit 5.1)</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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#### 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.

Abeona Therapeutics Inc.  
(Registrant)

By: /s/ Brendan M. O'Malley

Name: Brendan M. O'Malley

Title: Corporate Secretary

Date: November 19, 2021

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**AMENDMENT NO. 1 TO  
OPEN MARKET SALE AGREEMENT**

**November 19, 2021**

This Amendment No. 1 (“Amendment No. 1”) amends that certain Open Market Sale Agreement, dated as of August 17, 2018 (the “Agreement”), by and between Abeona Therapeutics Inc. (the “Company”) and Jefferies LLC (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 17 of the Agreement permits the Company and the Agent to amend the Agreement;

WHEREAS, the Company reaffirms and restates all of the representations and warranties of the Company included in the Agreement as of the date hereof; and

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

NOW, THEREFORE, in consideration of the premises the Company and the Agent agree as follows:

1. The second paragraph of Section 1 of the Agreement is hereby amended and restated as follows:

“The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (the “Securities Act”), with the Securities and Exchange Commission (the “Commission”), a registration statement on Form S-3 (File No. 333-256850), including a base prospectus relating to certain securities of the Company, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the “Exchange Act”). The Company has prepared a prospectus supplement to the prospectus included as part of such registration statement specifically relating to the Placement Shares (the “Prospectus Supplement”). The Company will furnish to the Agent, for use by the Agent, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement relating to the Placement Shares. Except where the context otherwise requires, such registration statement and any other successor registration statement registering the issuance and sale by the Company of the Placement Shares under the Securities Act, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act, is herein called the “Registration Statement.” The base prospectus, including all documents incorporated or deemed incorporated therein by reference to the extent such information has not been superseded or modified in accordance with Rule 412 under the Securities Act (as qualified by Rule 430B(g) of the Securities Act), included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, is herein called the “Prospectus.” Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated or deemed incorporated by reference therein, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein (the “Incorporated Documents”).”

2. Section 13(d) of the Agreement is hereby amended and restated as follows:

“Unless earlier terminated pursuant to this Section 13, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agent on the terms and subject to the conditions set forth herein except that the provisions of Section 9 (Payment of Expenses), Section 11 (Indemnification and Contribution), Section 12 (Representations and Agreements to Survive Delivery), Section 18 (Governing Law and Time; Waiver of Jury Trial) and Section 19 (Consent to Jurisdiction) hereof shall remain in full force and effect notwithstanding such termination.”

3. The Company agrees, in addition to the payment of expenses set forth in Section 9 of the Agreement, to pay the additional fees and disbursements of counsel to the Agent of up to \$50,000.
4. Section 17 of the Agreement is supplemented and amended such that this Amendment No. 1 and the Agreement, as amended hereby, constitute the entire agreement of the parties 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 deemed effective upon the execution and delivery of this Amendment No. 1 by the parties hereto.
6. 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.
7. THIS AMENDMENT NO. 1 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY 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 AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
8. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

[Signature page follows.]

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 letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

**ABEONA THERAPEUTICS INC.**

By: /s/ Edward G. Carr

Name: Edward G. Carr

Title: Chief Financial Officer

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

**JEFFERIES LLC**

By: /s/ Michael Magarro

Name: Michael Magarro

Title: Managing Director

*[Signature Page to Amendment No. 1 To Open Market Sale Agreement]*

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November 19, 2021

Abeona Therapeutics Inc.  
1330 Avenue of the Americas, 33rd Floor  
New York, NY 10019

Ladies and Gentlemen:

This opinion is furnished to you in connection with the filing of a prospectus supplement, dated November 19, 2021 (the "Prospectus Supplement"), to a Registration Statement on Form S-3, Registration No. 333-256850 (the "Registration Statement") filed by Abeona Therapeutics Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). The Prospectus Supplement relates to the offer and sale by the Company of up to \$124,601,795 aggregate offering amount of shares (the "Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), in an "at the market offering" as defined in Rule 415(a)(4) of the Securities Act in accordance with the Open Market Sale Agreement<sup>SM</sup>, dated August 17, 2018 (the "Sale Agreement"), by and between the Company and Jefferies LLC (the "Agent"), as amended by Amendment No. 1 to the Open Market Sale Agreement<sup>SM</sup>, dated as of November 19, 2021 ("Amendment No. 1," and together with the Sale Agreement, the "Amended Sale Agreement").

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.

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 Sales Agreement and a Placement Notice (as defined in the Amended Sale Agreement), will be duly and 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.

Very truly yours,

*/s/ Morgan, Lewis & Bockius LLP*

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