

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 12, 2024

Outlook Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-37759
(Commission File Number)

38-3982704
(IRS Employer Identification No.)

**485 Route 1 South
Building F, Suite 320
Iselin, New Jersey**
(Address of principal executive offices)

08830
(Zip Code)

Registrant's telephone number, including area code: **(609) 619-3990**

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 pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock	OTLK	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 8.01 Other Events.

As reported by Outlook Therapeutics, Inc. (the “Company”) on its Current Report on Form 8-K filed with the Securities and Exchange Commission (the “Commission”) on May 16, 2023, the Company entered into an at-the-market-sales agreement (the “Sales Agreement”) with BTIG, LLC (“BTIG”), pursuant to which the Company may issue and sell shares of its common stock, \$0.01 par value per share (“Common Stock”), from time to time through BTIG as sales agent and/or principal having an aggregate offering price of up to \$100,000,000 (the “Shares”).

On April 12, 2024, the Company and BTIG entered into an amendment (the “Amendment”) to the Sales Agreement, pursuant to which the parties agreed to expand the meaning of the defined term “Registration Statement” in the Sales Agreement to include the shelf registration statement (File Number 333-278340) on Form S-3 that was filed with the Commission on March 28, 2024 and declared effective on April 5, 2024 (the “New Registration Statement”). The New Registration Statement replaces the shelf registration statement (File Number 333-254778) on Form S-3 (the “Prior Registration Statement”) that was in effect at the time the Sales Agreement was executed.

The offer and sale of the Shares through BTIG will be made pursuant to the New Registration Statement, and a related prospectus supplement filed with the Commission on the date hereof (the “Prospectus Supplement”), pursuant to which the Company is offering shares of its Common Stock having an aggregate offering price of up to \$93,731,868. The Prospectus Supplement supersedes, and the Company has ceased the use of and the offering of Common Stock under, the Prior Registration Statement.

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 as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference. A copy of the opinion of Cooley LLP relating to the validity of the Common Stock is attached as Exhibit 5.1 hereto.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of any 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.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
10.1	Amendment, dated April 12, 2024, to Sales Agreement, dated May 16, 2023, by and between the Company and BTIG.
5.1	Opinion of Cooley LLP
23.1	Consent of Cooley LLP (included in Exhibit 5.1)
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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.

Outlook Therapeutics, Inc.

Date: April 12, 2024

By: /s/ Lawrence A. Kenyon
Lawrence A. Kenyon
Chief Financial Officer

Yvan-Claude Pierre
+1 212 479 6721
ypierre@cooley.com

April 12, 2024

Outlook Therapeutics, Inc.
485 Route 1 South
Building F, Suite 320
Iselin, New Jersey 08830
Ladies and Gentlemen:

We have acted as counsel to Outlook Therapeutics, Inc., a Delaware corporation (the “*Company*”), in connection with the offering by the Company of shares of its common stock, par value \$0.01 per share (the “*Common Stock*”), having an aggregate offering price of up to \$93,731,868 (the “*Shares*”) pursuant to the Registration Statement on Form S-3 (File No. 333-278340) (the “*Registration Statement*”) filed with the Securities and Exchange Commission (the “*Commission*”) under the Securities Act of 1933, as amended (the “*Securities Act*”), the prospectus included in the Registration Statement (the “*Base Prospectus*”) and the prospectus supplement relating to the Shares dated April 12, 2024 filed with the Commission pursuant to Rule 424(b) under the Act (together with the Base Prospectus, the “*Prospectus*”). The Shares are to be sold by the Company in accordance with that certain At-The-Market Sales Agreement, dated May 16, 2023, as amended on April 12, 2024, by and between the Company and BTIG, LLC (the “*Agreement*”), as described in the Prospectus.

In connection with this opinion, we have examined and relied upon the Registration Statement and the Prospectus, the Agreement, the Company’s certificate of incorporation and bylaws, each as currently in effect, and such other records, documents, opinions, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

We have assumed (i) that each sale of Shares will be duly authorized by the Board of Directors of the Company, a duly authorized committee thereof or a person or body pursuant to an authorization granted in accordance with Section 152 of the General Corporation Law of the State of Delaware (the “*DGCL*”), (ii) that no more than 47.0 million Shares will be sold under the Agreement pursuant to the Prospectus and (iii) that the price at which the Shares are sold will equal or exceed the par value of the Shares. We express no opinion to the extent that future issuances of securities of the Company, anti-dilution adjustments to outstanding securities of the Company or other matters cause the number of shares of Common Stock issuable under the Agreement to exceed the number of shares of Common Stock available for issuance by the Company.

Our opinion is expressed solely with respect to the DGCL. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

COOLEY LLP 55 HUDSON YARDS, NEW YORK, NY 10001-2157,
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On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued against payment therefor in accordance with the Agreement, the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we undertake no obligation or responsibility to update or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the reference to our firm under the heading “Legal Matters” in the Prospectus and to the filing of this opinion as an exhibit to the Company’s Current Report on Form 8-K filed with the Commission on the date hereof and incorporated by reference into the Registration Statement. 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.

Sincerely,

Cooley LLP

By: /s/ Yvan-Claude Pierre
Yvan-Claude Pierre

COOLEY LLP 55 HUDSON YARDS, NEW YORK, NY 10001-2157,
T: (212) 479-6000, F: (212) 479-6275 COOLEY.COM

April 12, 2024

Outlook Therapeutics, Inc.
485 Route 1 South Building
F, Suite 320 Iselin, New
Jersey 08830
Attention: Lawrence A. Kenyon, Chief Financial Officer

Dear Mr. Kenyon:

Reference is made to the At The Market Sales Agreement, dated as of May 16, 2023 (the "Sales Agreement"), between Outlook Therapeutics, Inc. (the "Company") and BTIG, LLC ("BTIG"). This letter (the "Amendment") constitutes an agreement between the Company and BTIG to amend the Sales Agreement as set forth herein. Defined terms that are used but not defined herein shall have the meanings ascribed to such terms in the Sales Agreement.

1. The defined term "Agreement" in the Sales Agreement is amended to mean the Sales Agreement as amended by this Amendment.
2. The second paragraph of Section 1 of the Sales Agreement is hereby amended and restated in its entirety as follows:

" The Company has prepared and filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "Securities Act"), with the Commission, (i) a shelf registration statement on Form S-3 (File No. 333-254778) that was initially declared effective on April 1, 2021 (the "Prior Registration Statement"), and (ii) a shelf registration statement on Form S-3 (File No. 333-278340) that was filed with the Commission on March 28, 2024 prior to the expiration of the Prior Registration Statement in accordance with Rule 415(a)(6) and that was declared effective by the Commission on April 5, 2024, and in the case of each of (i) and (ii), including a base prospectus, with respect to offerings of certain securities of the Company, including the Shares, 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 promulgated thereunder (collectively, the "Exchange Act"). The Company has prepared a prospectus supplement to the base prospectus included as part of each such registration statement at the time it became effective specifically relating to the offering of the Shares pursuant to this Agreement (and the term "Prospectus Supplement" means, collectively (i) for the period from May 16, 2023 until April 12, 2024, the prospectus supplement dated May 16, 2023 and filed pursuant to Rule 424(b)(5) and (ii) for the period from April 15, 2024, the prospectus supplement dated April 12, 2024 and filed pursuant to Rule 424(b)(5)). The Company will furnish to BTIG, for use by BTIG, copies of the base prospectus included as part of such registration statement at the time it became effective, as supplemented by the Prospectus Supplement. Except where the context otherwise requires, each such registration statement, as declared effective by the Commission, including the information, if any, deemed pursuant to Rule 430B or 430C under the Securities Act, as applicable, to be part of the registration statement at the time of its effectiveness and all documents filed as part thereof or incorporated by reference therein, and including any information contained in the Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act, collectively, are herein called the "Registration Statement," and the base prospectus included in each such registration statement at the time it became effective, including all documents 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), as it may be supplemented by the Prospectus Supplement, in the form filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any "Issuer Free Writing Prospectus", as defined in Rule 433 under the Securities Act ("Rule 433"), relating to the Shares that (i) is required to be filed with the Commission by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i), in each case, in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g), is herein collectively called the "Prospectus." If the Company has filed an abbreviated registration statement to register additional securities of the Company pursuant to Rule 462(b) under the Securities Act, then any reference to the Registration Statement in this Agreement shall also be deemed to include such abbreviated registration statement filed by the Company pursuant to Rule 462(b) under the Securities Act. 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 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 (such documents incorporated or deemed to be incorporated by reference are herein called the "Incorporated Documents"). For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval system, or if applicable, the Interactive Data Electronic Applications system when used by the Commission (collectively, "EDGAR")."

3. The Company and BTIG hereby agree that the date hereof shall be a Representation Date under the Sales Agreement and the Company shall file a Prospectus Supplement and deliver the deliverables pursuant to Sections 7(m), 7(n) and 7(o) of the Sales Agreement on or about the date hereof; provided that, before the Company delivers the Placement Notice or BTIG sells any Shares, the Company shall deliver to BTIG the deliverables pursuant to Sections 7(m), 7(n) and 7(o) of the Sales Agreement.
4. In connection with this Amendment, the Company shall reimburse BTIG for its expenses in the amount of \$10,000, which shall be paid on the date hereof.
5. Except as expressly set forth herein, all of the terms and conditions of the Sales Agreement shall continue in full force and effect after the execution of this Amendment and shall not be in any way be changed, modified or superseded by the terms set forth herein.
6. This Amendment may be executed in two or more counterparts and by facsimile or “.pdf” signature or otherwise, and each of such counterparts shall be deemed an original and all of such counterparts together shall constitute one and the same agreement.

[remainder of page intentionally left blank]

In acknowledgment that the foregoing correctly sets forth the understanding reached by the Company and BTIG, please sign in the space provided below, whereupon this Amendment shall constitute a binding amendment to the Sales Agreement as of the date indicated above.

Very truly yours,

BTIG, LLC

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

Accepted and Agreed:

OUTLOOK THERAPEUTICS, INC.

By: /s/ Lawrence A. Kenyon
Name: Lawrence A. Kenyon
Title: Chief Financial Officer

[SIGNATURE PAGE TO OTLK AMENDMENT TO SALES AGREEMENT]
