

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 29, 2021

MACROGENICS, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-36112
(Commission
File Number)

06-1591613
(IRS Employer
Identification No.)

9704 Medical Center Drive
Rockville, Maryland
(Address of Principal Executive Offices)

20850
(Zip Code)

Registrant's telephone number, including area code: (301) 251-5172

Not applicable
(Former Name or Former Address, if Changed Since Last Report)

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, par value \$0.01 per share	MGNX	Nasdaq Global Select Market

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (Sec.230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (Sec.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

On April 29, 2021, MacroGenics, Inc. (the “Company”) entered into Amendment No. 1 (the “Amendment”) to the Sales Agreement dated November 4, 2020 (as amended, the “Sales Agreement”) with Cowen and Company, LLC (“Cowen”), which Amendment increases the amount of the Company’s common stock, par value \$0.01 per share (the “Shares”), that can be sold by the Company through Cowen, as the Company’s agent and/or principal under the Sales Agreement, from an aggregate offering price of up to \$100,000,000 to an aggregate offering price of up to \$300,000,000.

Subject to the terms and conditions of the Sales Agreement, Cowen will use its commercially reasonable efforts to sell the Shares from time to time, based upon the Company’s instructions. The Company has provided Cowen with customary indemnification rights, and Cowen will be entitled to a commission of up to 3.0% of the gross sales price of the Shares sold through it pursuant to the Sales Agreement.

Sales of the Shares will be made pursuant to a previously filed and effective registration statement on Form S-3 (File No. 333-249851). Shares may be offered only by means of a prospectus, including a prospectus supplement, forming a part of the effective registration statement. Sales of the Shares, if any, under the Sales Agreement may be made in transactions that are deemed to be “at the market offerings” as defined in Rule 415 under the Securities Act of 1933, as amended, including sales made by means of ordinary brokers’ transactions, including on The Nasdaq Global Select Market, at market prices or as otherwise agreed with Cowen. The Company has no obligation to sell any of the Shares, and may at any time suspend offers under the Sales Agreement or terminate the Sales Agreement. As of the date of this report, the Company has sold \$100,000,000 of Shares under the Sales Agreement.

The foregoing description of the Sales Agreement does not purport to be complete and is qualified in its entirety by reference to the full Sales Agreement, which is attached hereto as Exhibit 1.1, including the Amendment, which is attached hereto as Exhibit 1.2, and is incorporated by reference herein.

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

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
1.1	Sales Agreement, dated November 4, 2020, between MacroGenics, Inc. and Cowen and Company, LLC (incorporated by reference to Exhibit 1.2 to the Company’s Registration Statement on Form S-3 (No. 333-249851) filed with the SEC on November 4, 2020)
1.2	Amendment No. 1 to Sales Agreement, dated April 29, 2021, between MacroGenics, Inc. and Cowen and Company, LLC
5.1	Opinion of Cooley LLP.
23.1	Consent of Cooley LLP (included in Exhibit 5.1).
104	Cover Page Interactive Data (embedded within the Inline XBRL document)

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.

Date: April 29, 2021

MACROGENICS, INC.

By: /s/ Jeffrey Peters

Name: Jeffrey Peters

Title: Vice President and General Counsel

MACROGENICS, INC.

AMENDMENT NO. 1 TO
SALES AGREEMENT

April 29, 2021

COWEN AND COMPANY, LLC
599 Lexington Avenue
New York, NY 10022

Ladies and Gentlemen:

Reference is made to the Sales Agreement, dated as of November 4, 2020 (the "**Sales Agreement**"), between Cowen and Company, LLC ("**Cowen**") and MacroGenics, Inc., a Delaware corporation (the "**Company**"), pursuant to which the Company agreed to sell through Cowen, acting as agent and/or principal, shares of common stock, par value \$0.01 per share, of the Company. All capitalized terms used in this Amendment No. 1 to Sales Agreement (this "**Amendment**") and not otherwise defined herein shall have the respective meanings assigned to such terms in the Sales Agreement. Cowen and the Company agree as follows:

A. Amendments to Sales Agreement. The Sales Agreement is amended as follows:

1. The heading on page 1 of the Sales Agreement shall be amended such that the reference to "\$100,000,000" shall be deleted.
2. Section 1 of the Sales Agreement shall be replaced as follows:

Issuance and Sale of Shares. 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 Cowen, acting as agent and/or principal, shares of the Company's common stock, \$0.01 par value per share (the "**Common Stock**"), (i) having an aggregate offering price of up to \$100,000,000 (the "**Initial Placement Shares**") and (ii) on or after April 29, 2021, having an aggregate offering price of up to \$200,000,000 (the "**Additional Placement Shares**") and, together with the Initial Placement Shares, the "**Placement Shares**"). For the avoidance of doubt, the amount of Additional Placement Shares available for offer and sale under this Agreement are in addition to any offers and sales of Placement Shares made prior to the date hereof or hereafter under the sales agreement prospectus supplement for the Initial Placement Shares filed by the Company on November 4, 2020. Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitation set forth in this Section 1 on the number of shares of Common Stock issued and sold under this Agreement shall be the sole responsibility of the Company, and Cowen shall have no obligation in connection with such compliance. The issuance and sale of Common Stock through Cowen will be effected pursuant to the Registration Statement (as defined below) filed by the Company with the Securities and Exchange Commission (the "**Commission**"), which registration statement became effective on November 4, 2020, although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement (as defined below) to issue the Common Stock.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the “**Securities Act**”), with the Commission an “automatic shelf registration statement” (as defined in Rule 405 under the Securities Act (“**Rule 405**”)) on Form S-3ASR, including a base prospectus, relating to certain securities, including the Common Stock, 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 (collectively, the “**Exchange Act**”). The Company has prepared prospectus supplements specifically relating to the Initial Placement Shares and the Additional Placement Shares (together, the “**Prospectus Supplement**”), in each case, to the base prospectus included as part of such registration statement. The Company has furnished to Cowen, for use by Cowen, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement relating to the Initial Placement Shares. In addition, the Company has filed or will file, in accordance with the provisions of the Securities Act, with the Commission a sales agreement prospectus supplement specifically relating to the Additional Placement Shares (the “**Sales Prospectus**”). The Company will make available to Cowen, for use by Cowen, copies of the Sales Prospectus, including the base prospectus included as part of such registration statement. Except where the context otherwise requires, such registration statement, and any post-effective amendment thereto, as amended when it became effective, 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 or 462(b) under the Securities Act, or any subsequent registration statement on Form S-3 filed pursuant to Rule 415(a)(6) under the Securities Act by the Company with respect to the Common Stock, is herein called the “**Registration Statement**.” The base prospectus, including all documents incorporated therein by reference, included in the Registration Statement, and the Sales Prospectus, including all documents incorporated therein by reference, as it or they may be supplemented by the applicable Prospectus Supplement or by any additional prospectus supplement, in the form in which such prospectus and/or Prospectus Supplement and/or Sales Prospectus have most recently been 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 of the Securities Act regulations (“**Rule 433**”), relating to the Placement 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 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 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. 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 the Electronic Data Gathering, Analysis, and Retrieval system or any successor thereto (“**EDGAR**”).

3. New Section 6(oo) shall be added to the Sales Agreement as follows:

Regulatory Compliance. The Company has not received any unresolved FDA Form 483, notice of adverse filing, warning letter, untitled letter or other correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local, or foreign governmental or regulatory authority, alleging or asserting noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) (the “**FDCA**”), except for such Forms, filings, letters, correspondence, notices, allegations or assertions that would not, individually or in the aggregate, result in a Material Adverse Change. The Company and its directors, officers, employees and agents is and have been in material compliance with applicable health care laws, including without limitation, the FDCA, the federal Anti-Kickback Statute (42 U.S.C. Sec. 1320a-7b(b)), the civil False Claims Act (31 U.S.C. Sec. 3729 et seq.), the criminal False Claims Law (42 U.S.C. Sec. 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. Sec. 1320a-7a), HIPAA, as amended by the HITECH Act, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), and the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Affordability Reconciliation Act of 2010, including, without limitation, the Physician Payments Sunshine Act (42 U.S.C. Sec. 1320a-7h), and the regulation promulgated pursuant to such laws, and comparable state laws, and all other local, state, federal, national, supranational, and foreign health care laws relating to the regulation of the Company (collectively, “**Health Care Laws**”). The Company has not, either voluntarily or involuntarily, initiated, conducted or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, “dear doctor” letter, or other notice or action relating to the alleged lack of safety or efficacy of any product or any alleged product defect or violation and, to the Company’s knowledge, no third-party has initiated or conducted any such notice or action. Neither the Company nor any of its officers or directors, nor to the Company’s knowledge, employees, or agents has been or is currently excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

4. New Section 6(pp) shall be added to the Sales Agreement as follows:

Healthcare Product Manufacturing. The manufacture of the Company’s and its subsidiaries’ product and product candidates by or on behalf of the Company and its subsidiaries is being conducted in compliance in all material respects with all applicable Health Care Laws, and, to the extent applicable, the respective counterparts thereof promulgated by governmental authorities in countries outside the United States. Neither the Company nor any of its subsidiaries has had any manufacturing site (whether Company-owned, subsidiary-owned or that of a third party manufacturer for the Company’s or its subsidiaries’ product candidates) subject, in the case of third party manufacturers to the Company’s knowledge, to a governmental authority (including FDA or the European Medicines Agency (“**EMA**”)) shutdown or import or export prohibition, nor received any FDA, EMA or other Governmental Authority “warning letters,” or “untitled letters” alleging or asserting material noncompliance with any applicable Health Care Laws, requests to make material changes to the Company’s or its subsidiaries’ product candidates, processes or operations, or similar correspondence or notice from the FDA, EMA or other governmental authority alleging or asserting material noncompliance with any applicable Health Care Laws, other than those that have been satisfactorily addressed and/or closed with the FDA, EMA or other governmental authority. To the knowledge of the Company, neither the FDA, EMA or any other governmental authority is considering such action.

5. The first sentence of the Officer Certificate pursuant to Section 7(m) of the Sales Agreement shall be replaced as follows:

The undersigned, the duly qualified and elected _____, of MacroGenics, Inc., a Delaware corporation (the "**Company**"), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(m) of the Sales Agreement dated November 4, 2020, as amended on April 29, 2021 (the "**Sales Agreement**"), between the Company and Cowen and Company, LLC, that to the best of the knowledge of the undersigned:

- B. Company Filings. The Company shall file a Prospectus Supplement pursuant to 424(b) reflecting this Amendment within two (2) Business Days of the date hereof.
- C. No Other Amendments. Except as set forth in Part A above, all the terms and provisions of the Sales Agreement shall continue in full force and effect.
- D. Counterparts. 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 or other electronic transmission.
- E. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws.

[Remainder of page intentionally left blank.]

If the foregoing correctly sets forth the understanding between the Company and Cowen, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and Cowen.

Very truly yours,

COWEN AND COMPANY, LLC

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

**ACCEPTED as of the date
first-above written:
MACROGENICS, INC.**

By: /s/ James Karrels
Name: James Karrels
Title: SVP, CFO

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



Eric Blanchard
+1 212 479 6565
eblanchard@cooley.com

April 29, 2021

MacroGenics, Inc.
9704 Medical Center Drive
Rockville, MD 20850

We have represented MacroGenics, Inc., a Delaware corporation (the "**Company**"), in connection with the offering by the Company of up to \$200,000,000 of the Company's common stock, par value \$0.01 per share, (the "**Shares**"), pursuant to a Registration Statement on Form S-3 (File No. 333-249851) (the "**Registration Statement**"), filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**Act**"), the prospectus included within the Registration Statement (the "**Base Prospectus**"), and the prospectus supplement dated April 29, 2021, filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations of the Act (together with the Base Prospectus, the "**Prospectus**"). The Shares are to be sold by the Company in accordance with the Sales Agreement dated November 4, 2020 as amended April 29, 2021 (the "**Sales Agreement**") between the Company and Cowen and Company, LLC, as described in the Prospectus.

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the Prospectus, (b) the Company's Certificate of Incorporation, as amended, and Amended and Restated Bylaws, each as currently in effect, (c) the Sales Agreement and (d) the originals or copies certified to our satisfaction of such records, documents, 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 officers of the Company and have not sought to independently verify 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 8,000,000 Shares will be sold under the Sales 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 Common Stock. We express no opinion to the extent that future issuances of securities of the Company and/or anti-dilution adjustments to outstanding securities of the Company cause the number of shares of Common Stock outstanding or issuable upon conversion or exercise of outstanding securities of the Company to exceed the number of Shares then issuable under the Sales Agreement.

Our opinion is expressed only 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.

On the basis of the foregoing and in reliance thereon, we are of the opinion that the Shares, when issued and paid for in accordance with the Sales Agreement and as provided in the Prospectus, will be validly issued, fully paid and nonassessable.

COOLEY LLP 55 HUDSON YARDS NEW YORK, NY 10001
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We consent to the reference to our firm under the caption "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 to be filed with the Commission for incorporation by reference into the Registration Statement.

Sincerely,

COOLEY LLP

By: /s/ Eric Blanchard
Eric Blanchard

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