# 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 21, 2021**

# OBALON THERAPEUTICS, INC.

**(Exact name of registrant as specified in its charter)**

**Delaware**
**(State or other jurisdiction of incorporation)**

| | |
|---|---|
| **001-37897**<br>**(Commission**<br>**File Number)** | **26-1828101**<br>**(IRS Employer**<br>**Identification No.)** |
| **5421 Avenida Encinas, Suite F**<br>**Carlsbad, California**<br>**(Address of principal executive offices)** | **92008**<br>**(Zip Code)** |

**(844) 362-2566**
**(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:

x Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o 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, par value $0.001 per share | OBLN | The NASDAQ Stock Market LLC<br>(NASDAQ Capital 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 x

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. x

**Item 8.01 Other Events.**

On May 21, 2021, Obalon Therapeutics, Inc. ("Obalon") issued a press release regarding its upcoming special meeting of stockholders on May 25, 2021 at 8:30 a.m. Pacific Daylight Time for stockholders to vote on all proposals relating to the Agreement and Plan of Merger (the "Merger Agreement"), dated January 19, 2021, by and among Obalon, ReShape Lifesciences Inc. ("ReShape") and Optimus Merger Sub, Inc., as set forth in Obalon's joint proxy statement/prospectus for the Special Meeting filed with the Securities and Exchange Commission (the "SEC") on Form S-4/A on April 9, 2021.

A copy of the press release is filed as Exhibit 99.1 to this report.

**Additional Information**

This Current Report on Form 8-K does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval with respect to the proposed merger contemplated by the Merger Agreement. No offer of securities shall be made except by means of a prospectus meeting the requirements of the Securities Act of 1933, as amended, and no offer to sell or solicitation of an offer to buy shall be made in any jurisdiction in which such offer, solicitation or sale would be unlawful.

In connection with the proposed merger, Obalon and ReShape filed with the SEC and mailed or otherwise provided to their respective stockholders a joint proxy statement/prospectus on Form S-4 and other relevant documents in connection with the proposed merger. Before making a voting decision, Obalon's and ReShape's stockholders are urged to read the joint proxy statement/prospectus and any other documents filed by each of Obalon and ReShape with the SEC in connection with the proposed merger or incorporated by reference therein carefully and in their entirety because they will contain important information about Obalon, ReShape and the proposed transactions. Investors and stockholders may obtain a free copy of these materials and other documents filed by Obalon and ReShape with the SEC at the SEC's website at www.sec.gov, at Obalon's website at www.investor.obalon.com, at ReShape's website at www.ir.reshapelifescience.com or by sending a written request to Obalon at 5421 Avenida Encinas, Suite F, Carlsbad, California 92008, Attention: Legal.

**Participants in the Solicitation**

This document does not constitute a solicitation of proxy, an offer to purchase or a solicitation of an offer to sell any securities Obalon and ReShape and their respective directors, executive officers and certain other members of management and employees may be deemed to be participants in soliciting proxies from their respective stockholders in connection with the proposed merger. Information regarding the persons who may, under the rules of the SEC, be considered to be participants in the solicitation of Obalon's and ReShape's stockholders, respectively, in connection with the proposed merger is set forth in joint proxy statement/prospectus filed with the SEC by Obalon and ReShape. Security holders may obtain information regarding the names, affiliations and interests of Obalon's directors and officers in Obalon's Annual Report on Form 10-K for the fiscal year ended December 31, 2020, which was filed with the SEC on March 12, 2021, and its definitive proxy statement for the 2020 annual meeting of stockholders, which was filed with the SEC on August 7, 2020. Security holders may obtain information regarding the names, affiliations and interests of ReShape's directors and officers in ReShape's Annual Report on Form 10-K for the fiscal year ended December 31, 2020, which was filed with the SEC on March 11, 2020 and its Form 3s and 4s filed on behalf on its directors and officers. To the extent the holdings of Obalon securities by Obalon's directors and executive officers or the holdings of ReShape's securities by ReShape's directors and executive officers have changed since the amounts set forth in Obalon's proxy statement for its 2020 annual meeting of stockholders or ReShape's proxy statement for its most recent special meeting of stockholders, respectively, such changes have been or will be reflected on Statements of Change in Ownership on Form 4 filed with the SEC. Additional information regarding these individuals and any direct or indirect interests they may have in the proposed merger is set forth in the joint proxy statement/prospectus filed with the SEC on April 13, 2021 in connection with the proposed merger, at Obalon's website at www.investor.obalon.com and at ReShape's website at www.ir.reshapelifescience.com.

**Forward-Looking Statements**

Certain statements contained in this filing may be considered forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including statements regarding the merger and the ability to consummate the merger. These forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as “believes,” “plans,” “anticipates,” “projects,” “estimates,” “expects,” “intends,” “strategy,” “future,” “opportunity,” “may,” “will,” “should,” “could,” “potential,” or similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties. Forward-looking statements speak only as of the date they are made, and Obalon undertakes no obligation to update any of them publicly in light of new information or future events. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation: (1) Obalon may be unable to obtain stockholder approval as required for the proposed merger; (2) conditions to the closing of the merger may not be satisfied; (3) the merger may involve unexpected costs, liabilities or delays; (4) the respective businesses of Obalon and ReShape may suffer as a result of uncertainty surrounding the merger; (5) the outcome of any legal proceedings related to the merger; (6) Obalon and ReShape may be adversely affected by other economic, business, and/or competitive factors; (7) the occurrence of any event, change or other circumstances that could give rise to the termination of the Merger Agreement; (8) the effect of the announcement of the merger on the ability of Obalon or ReShape to retain and hire key personnel and maintain relationships with customers, suppliers and others with whom Obalon or ReShape does business, or on Obalon’s or ReShape’s operating results and business generally; and (9) other risks to consummation of the merger, including the risk that the merger will not be consummated within the expected time period or at all Additional factors that may affect the future results of Obalon and ReShape are set forth in their respective filings with the SEC, including each of Obalon’s and ReShape’s most recently filed Annual Report on Form 10-K, subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings with the SEC, which are available on the SEC’s website at www.sec.gov, specifically under the heading “Risk Factors.” The risks and uncertainties described above and in Obalon’s most recent Annual Report on Form 10-K and ReShape’s most recent Annual Report on Form 10-K are not exclusive and further information concerning Obalon and ReShape and their respective businesses, including factors that potentially could materially affect their respective businesses, financial condition or operating results, may emerge from time to time. Readers are urged to consider these factors carefully in evaluating these forward-looking statements, and not to place undue reliance on any forward-looking statements. Readers should also carefully review the risk factors described in other documents that Obalon and ReShape file from time to time with the SEC. The forward-looking statements in these materials speak only as of the date of these materials. Except as required by law, Obalon and ReShape assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

| Exhibit No. | Description |
|---|---|
| 99.1 | Press Release, dated May 21, 2021 |

**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.

**OBALON THERAPEUTICS, INC.**

Date: May 21, 2021

By: /s/ Andrew Rasdal
Andrew Rasdal
President and Chief Executive Officer

**Exhibit 99.1**

**Obalon Therapeutics Continues to Urge Stockholders to Vote FOR All Proposals Related to Merger with ReShape Lifesciences**

SAN DIEGO, CA – May 20, 2021 – Obalon Therapeutics, Inc. (NASDAQ: OBLN), a vertically integrated medical technology company with the first and only FDA-approved swallowable gas-filled intragastric balloon system for the treatment of obesity, is taking this opportunity to remind its stockholders to vote on all the proposals related to the proposed merger with ReShape Lifesciences Inc. in advance of the upcoming reconvened special meeting of Obalon stockholders (the "Special Meeting") **on May 25, 2021, at 8:30 a.m. PT**.

**All stockholders are highly encouraged to vote by phone or email on this critical transaction. Without the required stockholder approval, the merger will not be able to be completed. The failure to complete the merger may result in, among other things, a material adverse effect on Obalon and its stock price.**

After giving effect to the merger, Obalon stockholders will own approximately 49% of the stock of the combined company, and as a result, Obalon stockholders would have the opportunity to participate in any future growth of the combined company after the consummation of the merger. The Obalon board of directors has recommended that the Obalon stockholders vote **FOR** each of the proposals.

Obalon stockholders as of the close of business **on April 7, 2021**, the record date for the special meeting, are eligible to vote and attend the virtual special meeting **whether or not they currently hold those shares.**

All materials regarding the Obalon special meeting are available at www.virtualshareholdermeeting.com/OBLN2021SM.

**Remember, Your Vote Is Important, No Matter How Many or How Few Shares You Own.**

**HOW TO VOTE**

Obalon urges all stockholders of record who have not yet voted to do so by following the instructions on their proxy card to vote by phone or online.

**If you have questions or require assistance in voting your proxy, please call our proxy solicitor MacKenzie Partners toll-free at (800) 322-2885 or by email at proxy@mackenziepartners.com for assistance.**

**About Obalon Therapeutics, Inc.**
Obalon Therapeutics, Inc. (NASDAQ:OBLN) is a San Diego-based company focused on developing and commercializing novel technologies for weight loss.

**Important Additional Information and Where to Find It**
This communication is being made in respect of the proposed merger involving Obalon Therapeutics, Inc. and ReShape Lifesciences Inc. Obalon filed a registration statement on Form S-4 (File No. 333-254841) with the SEC. The Registration Statement on Form S-4 was declared effective on April 13, 2021. The final joint proxy and consent solicitation statement/prospectus was filed with the SEC on April 13, 2021 and was first sent to the stockholders of Obalon and ReShape on or about April 13, 2021. The final joint proxy and consent solicitation statement/prospectus contains important information about Obalon, ReShape, the proposed merger and related matters. STOCKHOLDERS ARE URGED TO READ THE FINAL JOINT PROXY STATEMENT/PROSPECTUS (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS) AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY IN THEIR ENTIRETY, AS THEY CONTAIN IMPORTANT INFORMATION THAT STOCKHOLDERS SHOULD CONSIDER BEFORE MAKING A DECISION ABOUT THE MERGER AND RELATED MATTERS. In addition to receiving the final joint proxy statement/prospectus and proxy card or voting instruction form by mail, stockholders will also be able to obtain the final joint proxy statement/prospectus, as well as other filings containing information about Obalon, without charge, from the SEC's website (http://www.sec.gov) or, without charge, by directing a written request to: Obalon Therapeutics, Inc., 5421 Avenida Encinas, Suite F, Carlsbad, CA 92008, Attention: Corporate Secretary.