
**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): February 5, 2021

OBALON THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-37897

(Commission
File Number)

20-1828101

(IRS Employer
Identification No.)

5421 Avenida Encinas, Suite F
Carlsbad, California

(Address of principal executive offices)

92008

(Zip Code)

(844) 362-2566

(Registrant's telephone number, including area code)
(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:

- ☐ 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, par value \$0.001 per share	OBLN	The NASDAQ Stock Market LLC (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 ☒

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 4.01 Changes in Registrant's Certifying Accountant.

On January 19, 2021, Obalon Therapeutics, Inc., a Delaware corporation (the "Company") entered into an Agreement and Plan of Merger with ReShape Lifesciences Inc. and Optimus Merger Sub, Inc. In connection with the Agreement and Plan of Merger, the Board of Directors (the "Board") of the Company, upon recommendation of the Board's Audit Committee, determined to engage BDO USA, LLP ("BDO") as the Company's independent registered public accounting firm to audit the Company's consolidated financial statements for the year ended December 31, 2020. On February 5, 2021, the Company formally engaged BDO and informed KPMG LLP ("KPMG") that it was dismissed as the Company's independent registered public accounting firm.

KPMG's report, as an independent registered public accounting firm, dated February 27, 2020, on the Company's consolidated balance sheets as of December 31, 2019 and 2018, the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows for each of the years in the two-year period ended December 31, 2019 and the related notes to the consolidated financial statements did not contain any adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles except that KPMG's report on the Company's consolidated financial statements as of and for the years ended December 31, 2019 and 2018, contained the below separate paragraphs:

- *"Going Concern*
The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations and has a net capital deficiency that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty."
- *"Change in Accounting Principle*
As discussed in Note 2 to the consolidated financial statements, the Company has changed its method of accounting for leases as of January 1, 2019 due to the adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842), and the related amendments."

During the two year period ended December 31, 2019 and the subsequent period through February 5, 2021, there were no (i) disagreements with KPMG on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements if not resolved to KPMG's satisfaction would have caused KPMG to make reference to the subject matter of the disagreement in connection with its report on the Company's consolidated financial statements; or (ii) reportable events as defined in Item 304(a)(1)(v) of Regulation S-K.

The Company has provided KPMG with a copy of the disclosures made by the Company in this Item 4.01 in response to Item 304(a) of Regulation S-K under the Exchange Act and has requested that KPMG furnish the Company with a letter addressed to the Securities and Exchange Commission stating whether it agrees with the statements made by the Company in this Item 4.01 and, if not, stating the respects in which it does not agree. A letter from KPMG is attached hereto as Exhibit 16.1.

During the two year period ended December 31, 2019, and the subsequent period through February 5, 2021, the Company did not consult BDO with respect to either (i) the application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the Company's financial statements, and no written report or oral advice was provided to the Company by BDO that BDO concluded was an important factor considered by the Company in reaching a decision as to the accounting, auditing or financial reporting issue; or (ii) any matter that was either the subject of a disagreement, as that term is described in Item 304(a)(1)(iv) of Regulation S-K under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the related instructions to Item 304 of Regulation S-K under the Exchange Act, or a reportable event, as that term is defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
16.1	<u>Letter from KPMG LLP to the Securities and Exchange Commission, dated February 10, 2021.</u>

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: February 10, 2021

By: /s/ Nooshin Hussainy
Nooshin Hussainy
Chief Financial Officer

February 10, 2021

Securities and Exchange Commission
Washington, D.C. 20549

Ladies and Gentlemen:

We were previously principal accountants for Obalon Therapeutics, Inc. and, under the date of February 27, 2020, we reported on the consolidated financial statements of Obalon Therapeutics, Inc. as of and for the years ended December 31, 2019 and 2018. On February 5, 2021, we were dismissed. We have read Obalon Therapeutics, Inc.'s statements included under Item 4.01 of its Form 8-K dated February 10, 2021, and we agree with such statements, except that we are not in a position to agree or disagree with the statement that our dismissal and the engagement of BDO USA LLP was recommended by the Audit Committee of the Board of Directors, and we are not in a position to agree or disagree with the statement that BDO USA LLP was not engaged regarding the application of accounting principles to a specified transaction or the type of audit opinion that might be rendered on Obalon Therapeutics, Inc.'s consolidated financial statements.

Very truly yours,

/s/ KPMG LLP
