
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 3, 2017**

Heat Biologics, Inc.

(Exact name of registrant as specified in charter)

Delaware

(State or other jurisdiction of incorporation)

001-35994

(Commission File Number)

26-2844103

(IRS Employer Identification No.)

**801 Capitola Drive
Durham, NC 27713**

(Address of principal executive offices and zip code)

(919) 240-7133

(Registrant's telephone number including area code)

N/A

(Former Name and Former Address)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of 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(b) 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))
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Item 8.01. Other Events.

On February 3, 2017, Heat Biologics, Inc. (the “Company”) filed a prospectus supplement (the “Prospectus Supplement”) pursuant to which it may sell shares of its common stock, par value \$0.0002 per share, having an aggregate offering price of up to \$17,500,000 (the “Shares”) through FBR Capital Markets & Co. (“FBR”). The Company and FBR entered into an At Market Issuance Sales Agreement, dated August 15, 2016 (the “Sales Agreement”) pursuant to which the Company may sell from time to time, at its option, the Shares through FBR, as sales agent. Sales of shares of common stock made pursuant to the Sales Agreement, if any, will be made pursuant to the Company’s effective shelf registration statement on Form S-3 (File No. 333-199274) filed with the U.S. Securities and Exchange Commission (“SEC”), the base prospectus, dated October 23, 2014, filed as part of such registration statement and the Prospectus Supplement, dated February 3, 2016, as filed by the Company with the SEC.

Under the terms of the Sales Agreement, the Company may sell shares of its common stock through FBR by any method permitted that is deemed an “at the market offering” as defined in Rule 415 under the Securities Act of 1933, as amended (the “Securities Act”), including sales made directly on or through the NASDAQ Capital Market, the existing trading market for the Company’s common stock, sales made to or through a market maker other than on an exchange or otherwise, in negotiated transactions at market prices, and/or any other method permitted by law. FBR will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Company’s common stock from time to time, based upon the Company’s instructions (including any price, time or size limits or other customary parameters or conditions the Company may impose). Actual sales will depend on a variety of factors to be determined by the Company from time to time, including (among others) market conditions, the trading price of the Company’s common stock, capital needs and determinations by the Company of the appropriate sources of funding for the Company. The Company is not obligated to make any sales of common stock under the Sales Agreement and the Company cannot provide any assurances that it will issue any shares pursuant to the Sales Agreement. The Company will pay a commission rate equal to up to 3.0% of the gross sales price per share sold. We have agreed to reimburse FBR for certain specified expenses in connection with this offering, including the fees and disbursements of its legal counsel in an amount not to exceed \$15,000. The Company has also agreed pursuant to the Sales Agreement to provide FBR with customary indemnification and contribution rights.

The Sales Agreement may be terminated at any time by the Company upon five days’ notice to FBR, or by FBR upon ten days’ notice to the Company or at any time by FBR in certain circumstances, including upon the occurrence of an event that would be reasonably likely to have a material adverse effect on the Company’s assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders’ equity or results of operations.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any security nor shall there be any sale of these 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.

The Sales Agreement is filed as Exhibit 1.1 to the Company’s Current Report on Form 8-K dated August 15, 2016 (the “August 2016 Form 8-K”). The description of the Sales Agreement does not purport to be complete and is qualified in its entirety by reference to the Sales Agreement filed as an exhibit to the August 2016 Form 8-K and is incorporated herein by reference. The opinion of the Company’s counsel regarding the validity of the Shares that will be issued pursuant to the Sales Agreement and the Prospectus Supplement is also filed herewith as Exhibit 5.1.

The representations, warranties and covenants contained in the Sales Agreement were made solely for the benefit of the parties to the Sales Agreement. In addition, such representations, warranties and covenants (i) are intended as a way of allocating the risk between the parties to the Sales Agreement and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the Sales Agreement is included with this filing only to provide investors with information regarding the terms of transaction, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Sales Agreement, which subsequent information may or may not be fully reflected in public disclosures.

Item 9.01 . Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed with this Current Report on Form 8-K.

Exhibit No.	Description
5.1	Opinion of Gracin & Marlow, LLP
23.1	Consent of Gracin & Marlow, LLP (included in Opinion of Gracin & Marlow, LLP filed as Exhibit 5.1)



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.

Dated: February 3, 2017

HEAT BIOLOGICS, INC.

By: /s/ Jeffrey Wolf
Name: Jeffrey Wolf
Title: Chairman, Chief Executive Officer &
President

EXHIBIT INDEX

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405 Lexington Avenue, 26th Floor
New York, New York 10174
Telephone (212) 907-6457
www.gracinmarlow.com

February 3, 2017

The Board of Directors
Heat Biologics, Inc.
801 Capitola Drive
Durham, North Carolina 27713

Ladies and Gentlemen:

We have acted as counsel to Heat Biologics, Inc., a Delaware corporation (the “Company”), in connection with the proposed issuance of up to \$17,500,000 of shares (the “Shares”) of common stock of the Company, par value \$0.0002 per share (the “Common Stock”). The Shares are included in a Registration Statement on Form S-3 (File No. 333-199274) (the “Registration Statement”), filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), and declared effective by the Commission on October 23, 2014, a base prospectus, dated October 23, 2014, included in the Registration Statement at the time it originally became effective (the “Base Prospectus”), and a prospectus supplement, dated February 3, 2017, filed with the Commission pursuant to Rule 424(b) under the Securities Act (together with the Base Prospectus, the “Prospectus”). The Shares are being sold pursuant to an At Market Issuance Sales Agreement (the “Sales Agreement”), dated August 15, 2016, between the Company and FBR Capital Markets & Co.

As counsel to the Company, we have examined and relied upon the Registration Statement, the Prospectus, the Sales Agreement, and the originals or copies, certified or otherwise identified to our satisfaction, of such other documents, corporate records, certificates of public officials and other instruments as we have deemed necessary for the purposes of rendering this opinion and we are familiar with the proceedings taken and proposed to be taken by the Company in connection with the authorization, issuance and sale of the Shares. In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with the originals of all documents submitted to us as copies.

In rendering the opinion set forth below, we have assumed that the Shares will be sold in all events for cash consideration per Share equal to or greater than the par value of the Common Stock. In addition, we have also assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the Delaware General Corporation Law (the “DGCL”).

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company against payment therefor (for cash consideration not less than the par value of the Common Stock) in the circumstances contemplated by the Sales Agreement, the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that (i) the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL, and (ii) upon the issue of any of the Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under its Third Amended and Restated Certificate of Incorporation.

We express no opinion as to matters governed by any laws other than the DGCL and applicable reported judicial decisions as in effect on the date hereof.

We hereby consent to the reference to our firm under the caption “Legal Matters” in the Prospectus and to the filing of this opinion as Exhibit 5.1 to the Company’s Current Report on Form 8-K relating to the issuance and sale of the Shares pursuant to the Sales Agreement. In giving our 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.

This opinion is delivered solely in connection with the consummation of the transactions described herein, and may not be relied upon by you for any other purpose nor by any other person for any purpose.

Very truly yours,

/s/ Gracin & Marlow, LLP

GRACIN & MARLOW, LLP