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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 23, 2020

**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.)

**627 Davis Drive, Suite 400  
Morrisville, North Carolina 27560**

(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 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, \$0.0002 par value per share	HTBX	The 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 checkmark 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. ☐

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#### Item 1.01 Entry into a Material Definitive Agreement

On April 23, 2020, Heat Biologics, Inc. (the “Company”) entered into Amendment No. 1, dated April 23, 2020 (the “Amendment”), to that certain At Market Issuance Sales Agreement, by and between the Company and B. Riley FBR, Inc. (“B. Riley FBR”) dated April 3, 2019 (together with the Amendment, the “Sales Agreement”) pursuant to which the Company may offer and sell, from time to time, at its option, shares of the Company’s common stock, par value \$0.0002 per share, through B. Riley FBR, as sales agent (the “Sales Agent”) in an “at the market” offering (the “ATM Offering”). The Amendment will be effective at the time the Company’s Registration Statement on Form S-3 (File No. 333-237808) (the “New Registration Statement”) is declared effective by the Securities and Exchange Commission.

The original Sales Agreement provided for the issuance and sale of shares of common stock in the ATM Offering pursuant to the Company’s shelf Registration Statement on Form S-3 (File No. 333-221201) (the “Prior Registration Statement”), which includes a base prospectus and a prospectus supplement dated April 3, 2019 (the “Prior Prospectus”), providing for the sale of up to \$18 million of shares of common stock in the ATM Offering. As of April 20, 2020, the Company has issued and sold an aggregate of 15,551,075 shares of common stock for aggregate gross proceeds of approximately \$2,843,702 pursuant to the Sales Agreement under the Prior Registration Statement, utilizing the Prior Prospectus.

The Amendment provides for the issuance and sale of shares of common stock in the ATM Offering pursuant to the New Registration Statement. The issuance and sale of shares of common stock in the ATM Offering will be made under the New Registration Statement, once it is declared effective, pursuant to a prospectus, which consists of a base prospectus and a prospectus (the “ATM Prospectus”), each of which has been filed with the New Registration Statement. The ATM Prospectus provides for the sale of up to \$50 million of shares of common stock in the ATM Offering under the New Registration Statement.

Under the terms of the Sales Agreement, in no event will the Company issue or sell through the Sales Agent such number or dollar amount of shares of common stock that would (i) exceed the number or dollar amount of shares of common stock registered and available on the Registration Statement, (ii) exceed the number of authorized but unissued shares of common stock, (iii) exceed the number or dollar amount of shares of common stock permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable), or (iv) exceed the number or dollar amount of common stock for which the Company has filed a prospectus supplement to the Registration Statement.

Under the terms of the Sales Agreement, the Company may sell shares of its common stock through B. Riley 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”). B. Riley FBR will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations 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 of up to 3.0% of the gross sales price per share sold and agreed to reimburse B. Riley FBR for certain specified expenses, including the fees and disbursements of its legal counsel in an amount not to exceed \$50,000 and have agreed to reimburse B. Riley FBR an amount not to exceed \$2,500 per quarter during the term of the sales agreement for legal fees to be incurred by B. Riley FBR. The Company has also agreed pursuant to the Sales Agreement to provide B. Riley FBR with customary indemnification and contribution rights.

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 description of the Sales Agreement and the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Sales Agreement and the Amendment, copies of which are filed herewith as Exhibits 1.1. and 1.2, and are incorporated herein by reference.

The representations, warranties and covenants contained in the Sales Agreement and the Amendment were made solely for the benefit of the parties thereto. 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 the Amendment 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. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Sales Agreement and the Amendment, 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 Number	Description
<a href="#">1.1</a>	At Market Issuance Sales Agreement by and between Heat Biologics, Inc. and B. Riley FBR, Inc. dated April 3, 2019 (incorporated by reference to Exhibit 1.1 to the Company’s Form 8-K filed with the SEC on April 4, 2019)
<a href="#">1.2</a>	Amendment No. 1, dated April 23, 2020, to the At Market Issuance Sales Agreement, by and between Heat Biologics, Inc. and B. Riley FBR, Inc. dated April 3, 2019



## 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: April 23, 2020

HEAT BIOLOGICS, INC.

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

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## EXHIBIT INDEX

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<a href="#">1.2</a>	Amendment No. 1, dated April 23, 2020, to the At Market Issuance Sales Agreement, by and between Heat Biologics, Inc. and B. Riley FBR, Inc. dated April 3, 2019

AMENDMENT NO. 1 TO AT MARKET ISSUANCE SALES AGREEMENT

April 23, 2020

B. Riley FBR, Inc.  
299 Park Avenue  
New York, NY 10171

Ladies and Gentlemen:

Heat Biologics, Inc. (the “Company”) and B. Riley FBR, Inc. (the “Agent”) are parties to that certain At Market Issuance Sales Agreement dated April 3, 2019 (the “Original Agreement”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement as follows:

1. Reference to the “Registration Statement” in the Original Agreement shall refer to the shelf registration statement on Form S-3 (File No. 333-237808), originally filed with the Securities and Exchange Commission on April 23, 2020 (as the same may be amended from time to time, “New Registration Statement”), when the New Registration Statement is declared effective by the Securities and exchange Commission.
2. All references to “April 3, 2019” set forth in Schedule 1 of the Original Agreement are revised to read “April 3, 2019 (as amended by Amendment No. 1 to At Market Issuance Sales Agreement, dated April 23, 2020)”.
3. Except as specifically set forth herein, all other provisions of the Original Agreement shall remain in full force and effect.
4. This Amendment No. 1 to the At Market Issuance Sales Agreement shall become effective upon the date that the New Registration Statement is declared effective under the Securities Act.
5. Entire Agreement; Amendment; Severability. This Amendment No. 1 to the Original Agreement together with the Original Agreement (including all schedules and exhibits attached hereto and thereto and Placement Notices issued pursuant hereto and thereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. All references in the Original Agreement to the “Agreement” shall mean the Original Agreement as amended by this Amendment No. 1; *provided, however*, that all references to “date of this Agreement” in the Original Agreement shall continue to refer to the date of the Original Agreement.
6. Applicable Law; Consent to Jurisdiction. 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. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this amendment and agrees that such service shall constitute good and sufficient service of process and notice

thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

7. Waiver of Jury Trial. The Company and the Agent each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this amendment or any transaction contemplated hereby.

8. Counterparts. This amendment may be executed in counterparts, each of which shall be deemed an original, but both 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 transmission.

**[Remainder of Page Intentionally Blank]**

If the foregoing correctly sets forth the understanding among the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding amendment to the Original Agreement between the Company and the Agent.

Very truly yours,

**HEAT BIOLOGICS, INC.**

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

**B. RILEY FBR, INC.**

By: /s/ Patrice McNicoll  
Name: Patrice McNicoll  
Title: Co-Head of Investment Banking