
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
FORM 8-K

CURRENT REPORT
Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934

December 27, 2021
Date of Report (date of earliest event reported)

CUMBERLAND PHARMACEUTICALS INC.
(Exact name of registrant as specified in its charter)

Tennessee
(State or other jurisdiction of incorporation or organization)

001-33637
(Commission File Number)

62-1765329
(IRS Employer Identification No.)

2525 West End Avenue, Suite 950 Nashville, Tennessee 37203
(Address of Principal Executive Offices) (Zip Code)

(615) 255-0068
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 (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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each Class	Trading Symbol	Name of each exchange on which registered
Common stock, no par value	CPIX	Nasdaq Global Select 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 8.01 Other Events.

At-the-Market Offering Program

On December 27, 2021, Cumberland Pharmaceuticals Inc. (the “Company”) filed a prospectus supplement with the Securities and Exchange Commission (the “SEC”) in connection with the Company’s “at-the-market” offering program (the “ATM Offering”) for the offer and sale from time to time through or to B. Riley Securities, Inc. (f/k/a B. Riley FBR, Inc.) (the “Sales Agent”), as sales agent or principal, of up to \$19,000,000 of shares of the Company’s common stock, no par value per share (the “Shares”), pursuant to the Company’s At Market Issuance Sales Agreement with the Sales Agent dated November 7, 2017, as amended by Amendment No. 1 dated December 27, 2021 (collectively, the “Sales Agreement”). Prior to the date hereof, an aggregate of 30,704 Shares were sold under the Sales Agreement for aggregate gross proceeds of approximately \$200,909.

The Shares are being offered and sold pursuant to the Company’s shelf registration statement on Form S-3 (the “Shelf Registration Statement”) filed with the SEC on December 11, 2020, which became effective upon the notice of effectiveness filed January 8, 2021 (File No. 333-251308).

From time to time during the term of the Sales Agreement, the Company may deliver a placement notice to the Sales Agent specifying the length of the selling period, the amount of Shares to be sold, any limitation on the number of shares that may be sold in any one trading day and the minimum price below which sales may not be made. Pursuant to the Sales Agreement and upon its acceptance of a placement notice from the Company, the Sales Agent may sell the Shares, by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended (the “Securities Act”). The Company may instruct the Sales Agent not to sell Shares if the sales cannot be effected at or above the price designated by the Company in any placement notice. The Company or the Sales Agent may suspend the ATM Offering at any time upon proper notice and subject to other conditions.

The Company will pay the Sales Agent a commission for its services in acting as agent in the sale of Shares. The Sales Agent will be entitled to compensation in an amount equal to 3.0 percent (3.0%) of the gross sales price of all of the Shares sold through it under the Sales Agreement.

The ATM Offering will terminate upon the earlier of (1) the sale of all Shares subject to the Sales Agreement or (2) termination of the Sales Agreement. The Sales Agreement may be terminated by the Sales Agent or the Company at any time upon five days’ notice, and by the Sales Agent at any time in certain circumstances, including suspension of trading of Shares on the Nasdaq Global Select Stock Market or the occurrence of a material adverse change in the Company’s business.

The Company made certain customary representations, warranties and covenants concerning the Company and the Shares in the Sales Agreement and also agreed to indemnify the Sales Agent against certain liabilities, including liabilities under the Securities Act.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, counsel to the Company, has issued a legal opinion relating to the legality of the issuance and the sale of the Shares. A copy of such legal opinion, including the consent included therein, is attached as Exhibit 5.1 hereto.

The Company intends to use the net proceeds from the ATM Offering, if any, for working capital and general corporate purposes, including research and development expenses and capital expenditures.

The Sales Agreement was previously filed as Exhibit 1.1 to the shelf registration statement on Form S-3 (the “Shelf Registration Statement”) filed with the SEC on November 7, 2017 (File No. 333-221402) and is hereby re-filed as Exhibit 1.1 to this Current Report on Form 8-K. Amendment No. 1 to the Sales Agreement is filed herewith as Exhibit 1.2 to this Current Report on Form 8-K. The description of the material terms of the Sales Agreement is qualified in its entirety by reference to such Exhibit 1.1 and Exhibit 1.2.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of these securities 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 other jurisdiction.

Cautionary Statement Regarding Forward-Looking Statements - Safe Harbor

This Current Report on Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are based upon management's current beliefs, views, estimates and expectations, including as to the Company's industry, business strategy, goals and expectations concerning its market position, strategic and transformation initiatives, future operations, margins, profitability, comparable store growth, capital expenditures, liquidity, capital resources, expansion of technology expertise, and other financial and operating information, including expectations as to future operating profit improvement. Such statements include without limitation those about the Company's expectations for future financial and operating results, projections, statements about the ATM Offering and the use of proceeds therefrom, and other statements that are not historical facts. Forward-looking statements are subject to significant risks and uncertainties and actual developments, business decisions, outcomes and results may differ materially from those reflected or described in the forward-looking statements. The following factors, among others, could cause actual developments, business decisions, outcomes and results to differ materially from those reflected or described in the forward-looking statements: market conditions, competition, an inability of manufacturers to supply the Company's products, maintaining an effective sales and marketing infrastructure, availability of additional debt and equity capital required to finance the business, our ability to continue to acquire brands, management of our growth and integration of our acquisitions, impacts on our business, as well as national and international markets and economies resulting from the 2020 COVID-19 pandemic, and the other factors described in the section entitled "Risk Factors" in the Company's Annual Report on Form 10-K for the year ended December 31, 2020, the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2021, June 30, 2021 and September 30, 2021, respectively, and the Company's other filings with the SEC. Forward-looking statements contained in this Current Report on Form 8-K speak only as of the date of this Current Report on Form 8-K. The Company undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by any applicable securities laws.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1	At Market Issuance Sales Agreement, dated November 7, 2017, by and between Cumberland Pharmaceuticals Inc. and B. Riley FBR, Inc. (incorporated by reference to Exhibit 1.1 of our Registration Statement on Form S-3, file No. 333-221402).
1.2	Amendment No. 1 to the At Market Issuance Sales Agreement, dated December 27, 2021, by and between Cumberland Pharmaceuticals Inc. and B. Riley Securities, Inc. (formerly B. Riley FBR, Inc.).
5.1	Opinion of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC.
23.1	Consent of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (contained in Exhibit 5.1 above).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

AMENDMENT NO. 1 TO AT MARKET ISSUANCE SALES AGREEMENT

December 27, 2021

B. Riley Securities, Inc.
299 Park Avenue, 7th Floor
New York, NY 10171

Ladies and Gentlemen:

Cumberland Pharmaceuticals Inc. (the “Company”) and B. Riley Securities, Inc. (formerly B. Riley FBR, Inc.) (the “Agent,”) are parties to that certain At Market Issuance Sales Agreement dated November 7, 2017 (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. With respect to issuances of Placement Shares that occur on or after the date hereof, reference to the “Registration Statement” in the Original Agreement shall refer to the registration statement on Form S-3 (File No. 333-251308), as amended, filed with the Securities and Exchange Commission on December 11, 2020 and declared effective January 8, 2021 (“New Registration Statement”).

2. Section 6(k) of the Original Agreement is hereby deleted in its entirety and replaced as follows:

“S-3 Eligibility. At the time the Registration Statement was or will be filed and declared effective, and at the time the Company’s most recent Annual Report on Form 10-K was filed with the Commission, the Company met or will meet the then applicable requirements for the use of Form S-3 under the Securities Act, including, but not limited to, General Instruction I.B.6 of Form S-3, if applicable. As of the close of trading on the Exchange on December 6, 2021, the aggregate market value of the outstanding voting and non-voting common equity (as defined in Rule 405) of the Company held by persons other than affiliates of the Company (pursuant to Rule 144 of the Securities Act, those that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the Company) (the “Non-Affiliate Shares”), was approximately \$59,991,914 (calculated by multiplying (x) the price at which the common equity of the Company was last sold on the Exchange on December 6, 2021 times (y) the number of Non-Affiliate Shares as of the date hereof). The Company is not a shell company (as defined in Rule 405 under the Securities Act) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in General Instruction I.B.6 of Form S-3) with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.”

3. Section 6(p) of the Original Agreement is hereby deleted in its entirety and replaced as follows:

“Independent Public Accountant. BDO USA LLP (“BDO”) and BKD LLP (“BKD” and together with BDO, the “Accountants”), whose reports on the consolidated financial statements of the Company are filed with the Commission as part of the Company’s most recent Annual Report on Form 10-K filed with the Commission and incorporated into the Registration Statement, are and, during the periods covered by their reports, were independent public accountants within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). BKD is the current independent registered public accounting firm of the Company. To the Company’s knowledge, the Accountants are not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) with respect to the Company.”

4. All references to “November 7, 2017” set forth in Schedule 1 and Exhibit 7(l) of the Original Agreement are revised to read “November 7, 2017 (as amended by Amendment No. 1 to At Market Issuance Sales Agreement, dated December 27, 2021)”.

5. The term “Company Counsel” in the Original Agreement is revised to refer to “Baker, Donelson, Bearman, Caldwell & Berkowitz, PC”.

6. The Company’s address for notice under Section 14 of the Original Agreement is hereby deleted in its entirety and replaced as follows:

“and if to the Company, shall be delivered to:

Cumberland Pharmaceuticals Inc.
2525 West End Avenue, Suite 950
Nashville, Tennessee 37203
Attention: John Hamm
Telephone: 615-255-0068
Email: jhamm@cumberlandpharma.com

with a copy to:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
1600 West End Avenue, Suite 2000
Nashville, TN 37203
Attention: Tonya Mitchem Grindon
Telephone: 615-726-5607
Email: tgrindon@bakerdonelson.com”

7. In addition to the requirements under Section 9 of the Original Agreement, the Company agrees to pay the reasonable fees and disbursements of the Agent counsel in an amount not to exceed (a) \$45,000 in connection with this Amendment No. 1 to At Market Issuance Sales Agreement and (b) \$2,500 in the aggregate per calendar quarter in connection with ongoing diligence arising from the transactions contemplated by this Amendment and the Original Agreement.

8. Pursuant to Sections 7(n) and 10(f) of the Original Agreement, Agent agrees to waive any requirement for BDO to provide a Comfort Letter with respect to the Company’s financial statements as of and for the two-year period ended December 31, 2019.

9. Except as specifically set forth herein, all other provisions of the Original Agreement shall remain in full force and effect.

10. 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.

11. 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.

12. Waiver of Jury Trial. The Company and the Agent each hereby irrevocably waive any right they 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.

13. 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 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,

CUMBERLAND PHARMACEUTICALS, INC.

By: /s/ A.J. Kazimi
Name: A.J. Kazimi
Title: Chief Executive Officer

B. RILEY SECURITIES, INC.

By: /s/ Matt Feinberg
Name: Matt Feinberg
Title: Managing Director

[Signature page to Amendment No. 1 to At Market Issuance Sales Agreement]

BAKER DONELSON

1600 WEST END AVENUE · SUITE 2000 · NASHVILLE, TENNESSEE 37203

615.726.5600 · bakerdonelson.com

Exhibit 5.1

Nathan Kibler, Shareholder
Direct Dial: 865.549.7125
Direct Fax: 865.633.7125
E-Mail Address: nkibler@bakerdonelson.com

December 27, 2021

Board of Directors
Cumberland Pharmaceuticals Inc.
2525 West End Avenue, Suite 950
Nashville, TN 37208

Re: 333-251308 on Form S-3; Shares of common stock, no par value per share, having an aggregate offering price of up to \$19 Million

Ladies and Gentlemen:

We have acted as counsel to Cumberland Pharmaceuticals Inc., a Tennessee corporation (the “Company”), in connection with the sale and issuance of shares (the “Shares”) of the Company’s common stock, no par value per share (the “Common Stock”), having an aggregate gross sales price of up to \$19 Million, pursuant to that certain At Market Issuance Sales Agreement, dated as of November 7, 2017 and amended on December 27, 2021 (as amended, the “At Market Issuance Sales Agreement”), by and between the Company and B. Riley Securities, Inc. (formerly B. Riley FBR, Inc.) (the “Agent”).

The Shares are included in a Registration Statement on Form S-3 filed with the Securities and Exchange Commission (the “Commission”) in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the “1933 Act”), under File Number 333-251308, including the base prospectus, filed with the SEC on December 11, 2020 and which became effective upon the notice of effectiveness filed January 8, 2021 (the “Base Prospectus”), and a related prospectus supplement, dated December 27, 2021, filed with the Commission pursuant to Rule 424(b) under the 1933 Act (the Base Prospectus and the prospectus supplement are referred to herein collective as the “Prospectus”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the 1933 Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the Prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the Tennessee Business Corporation Act (the “Act”), and we express no opinion with respect to any other laws.

In our aforesaid examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as certified, telecopied,

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photostatic, or reproduced copies. We have also assumed the accuracy, completeness and authenticity of the foregoing certifications of officers and statements of fact, on which we are relying, and have made no independent investigations thereof. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

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 (not less than par value) in accordance with the terms of the At Market Issuance Sales Agreement, 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 Act; 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 the Company's charter.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Company's Current Report on Form 8-K, dated December 27, 2021, and to the reference to our firm in the Prospectus under the heading "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the 1933 Act or the rules and regulations of the Commission thereunder or Item 509 of Regulation S-K.

Very truly yours,

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, a
professional corporation

By: /s/ Nathan Kibler

Nathan Kibler

Authorized Representative