
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

Date of Report (Date of earliest event reported): May 6, 2021

OPKO Health, Inc.

(Exact Name of Registrant as Specified in its Charter)

<u>Delaware</u>	<u>001-33528</u>	<u>75-2402409</u>
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)
<u>4400 Biscayne Blvd.</u>	<u>Miami, Florida</u>	<u>33137</u>
(Address of Principal Executive Offices)	(Zip Code)	

Registrant's telephone number, including area code: (305) 575-4100

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:

- ☐ 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 \$0.01 per share	OPK	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 1.01. Entry into a Material Definitive Agreement.

The disclosure contained in Item 3.02 of this Current Report on Form 8-K is incorporated by reference in this Item 1.01.

ITEM 3.02. Unregistered Sales of Equity Securities.

On May 6, 2021, OPKO Health Inc., a Delaware corporation (the “Company”), entered into exchange agreements (the “Exchange Agreements” and each an “Exchange Agreement”) with certain noteholders (the “Noteholders”) of the Company’s 4.50% Convertible Senior Notes due 2025 (the “2025 Notes”), pursuant to which the Noteholders have agreed to exchange (the “Exchange”) \$55.42 million in aggregate principal amount of the Company’s outstanding 2025 Notes (the “Exchanged Notes”) for shares of the Company’s common stock, par value \$0.01 per share (“Common Stock”). Pursuant to the Exchange Agreements, the number of shares of Common Stock to be issued by the Company to the Noteholders upon consummation of the Exchange (the “Offered Shares”) will be determined based upon a volume-weighted-average-price per share of Common Stock, subject to a floor of \$3.50 per share, during a four-trading-day averaging period, commencing on the trading day immediately following the date of each Exchange Agreement. The Company has agreed to pay the Noteholders accrued and unpaid interest on the Exchanged Notes in cash. The offer and sale of the Offered Shares is being made pursuant to Section 3(a)(9) of the Securities Act of 1933, as amended, as the Exchange is being effected between the Company and existing security holders, and no commission or other remuneration is being paid or given directly or indirectly for soliciting the Exchange.

The foregoing description of the Exchange Agreements is only a summary and is qualified in its entirety by reference to the full text of the form of Exchange Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated by reference in Item 1.01 and Item 3.02.

ITEM 8.01. Other Events.

As previously reported, in connection with the Company’s original issuance of its \$200.0 million aggregate principal amount of the 2025 Notes, the Company entered into a share lending agreement, dated as of February 4, 2019 (the “Share Lending Agreement”), together with Jefferies Capital Services, LLC (the “Share Borrower”), under which the Company agreed to lend to the Share Borrower up to 30.0 million shares of Common Stock. As previously reported, on February 7, 2019, the Company issued 29.25 million shares of Common Stock and loaned them to the Share Borrower under the Share Lending Agreement. The Company currently expects that, upon consummation of the Exchange, there will be a pro rata reduction in the outstanding borrowed shares of Common Stock.

ITEM 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Form of Exchange Agreement, dated as of May 6, 2021, by and between OPKO Health Inc. and the applicable Noteholder.
104	Cover Page Interactive Data File-the cover page XBRL tags are embedded within the Inline XBRL document

Exhibit Index

Exhibit No.	Description
<u>10.1</u>	<u>Form of Exchange Agreement, dated as of May 6, 2021, by and between OPKO Health Inc. and the applicable Noteholder.</u>

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.

OPKO Health, Inc.

Date: May 7, 2021

By: /s/ Adam Logal
Name: Adam Logal
Title: Sr. Vice President, CFO

EXCHANGE AGREEMENT

This Exchange Agreement (this “Agreement”) is made and entered into as of May 6, 2021, by and between OPKO Health, Inc., a Delaware corporation (the “Company”), and the noteholder identified on Schedule A (the “Noteholder”). The Company and the Noteholder are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

WHEREAS, the Noteholder beneficially owns the aggregate principal amount of the Company’s 4.50% Convertible Senior Notes due 2025 set forth on Schedule A (the “Notes”) that were issued pursuant to that certain Indenture, dated as of February 7, 2019 (as supplemented by the First Supplemental Indenture, dated as of February 7, 2019, the “2025 Indenture”), between the Company and U.S. Bank National Association, as trustee;

WHEREAS, the Noteholder wishes to exchange the Notes for (i) that number of shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), equal to the Exchanged Shares (as defined in Schedule B), which shall be calculated in accordance with the methodology set forth on Schedule B and (ii) cash in the amount set forth on Schedule B, representing accrued and unpaid interest on the Notes (the “Exchanged Cash”); and

WHEREAS, the Company is willing to issue the Exchanged Shares and deliver the Exchanged Cash in exchange for the Notes upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and understandings herein contained, the Parties, intending to be legally bound, hereby agree as follows:

SECTION 1. Exchange of Notes.

1.1 **The Exchange.** On and subject to the terms and conditions set forth in this Agreement on the Closing Date (as defined below), the Company shall, in exchange and in full consideration for the Notes, issue the Exchanged Shares and deliver the Exchanged Cash to the Noteholder, and the Noteholder shall accept the Exchanged Shares and the Exchanged Cash in full and final payment for the Notes (the “Exchange”).

1.2 **No Additional Consideration.** The Company and the Noteholder acknowledge and agree that the Exchanged Shares shall be issued and the Exchanged Cash shall be paid to the Noteholder in exchange for the Notes without the payment of any additional consideration on the part of the Noteholder or any other person or entity.

1.3 **Closing.** The closing of the transactions contemplated hereunder (the “Closing”) shall take place at 10:00 a.m. Eastern time on the second Business Day immediately

following the last day of the VWAP Period (as defined in Schedule B) (the “Closing Date”). “Business Day” means any day except Saturday, Sunday and any day which is a federal legal holiday or a day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. At the Closing:

(a) The Noteholder shall deliver to the Company the Notes via DTC settlement in accordance with the instructions received from the Company set forth on Schedule C.

(b) The Company shall deliver to the Noteholder the Exchanged Shares via book-entry delivery through the facilities of DTC in accordance with the DWAC instructions received from the Noteholder set forth on Schedule B.

(c) The Company shall deliver to the Noteholder the Exchanged Cash via wire transfer in accordance with the instructions received from the Noteholder set forth on Schedule B.

SECTION 2. Conditions of the Noteholder’s Obligations at the Closing. The obligation of the Noteholder to exchange the Notes for the Exchanged Shares and Exchanged Cash at the Closing is subject to the satisfaction as of the Closing of the following conditions:

2.1 Representations and Warranties True. The representations and warranties contained in Section 4 hereof shall be true and correct at and as of the Closing as though made as of the Closing Date.

2.2 Litigation. No suit, action or other proceeding shall be pending before any court or governmental or regulatory official, body or authority or threatened in writing seeking to restrain or prohibit (or seeking damages in connection with) the transactions contemplated hereby, and no injunction, judgment, order, decree or ruling with respect thereto shall be in effect.

SECTION 3. Conditions of the Obligations of the Company at the Closing. The obligation of the Company to consummate the transactions contemplated hereby is subject to the satisfaction as of the Closing of the following conditions:

3.1 Representations and Warranties True. The representations and warranties contained in Section 5 hereof shall be true and correct at and as of the Closing as though made as of the Closing Date.

3.2 Litigation. No suit, action or other proceeding shall be pending before any court or governmental or regulatory official, body or authority or threatened in writing seeking to restrain or prohibit (or seeking damages in connection with) the transactions contemplated hereby, and no injunction, judgment, order, decree or ruling with respect thereto shall be in effect.

SECTION 4. Representations and Warranties of the Company. As a material inducement to the Noteholder to enter into this Agreement, the Company hereby represents and warrants to the Noteholder that the following statements are true and correct as of the date of this Agreement and will be true and correct as of the Closing Date.

4.1 Power and Authorization. The Company is a corporation duly organized, validly existing and in good standing under the laws of Delaware. The Company possesses all requisite corporate power, authority and capacity to execute and deliver this Agreement and necessary to carry out the transactions contemplated by this Agreement.

4.2 Valid and Enforceable Agreement; No Violation. The execution, delivery and performance of this Agreement have been duly authorized by the Company. This Agreement constitutes a valid and binding obligation of the Company, enforceable in accordance with its terms and, when executed and delivered by the Company in accordance with its terms, shall constitute a valid and binding obligation of the Company, enforceable in accordance with its terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other laws affecting or relating to enforcement or creditors' rights generally, and (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity (the "Enforceability Exceptions"). This Agreement and the consummation of the Exchange will not violate, conflict with or result in a breach of or default under (i) the charter, bylaws or other organizational documents of the Company, (ii) any agreement or instrument to which the Company is a party or by which any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Company.

4.3 Validity of Shares. When issued and delivered in accordance with this Agreement, the Exchanged Shares shall (i) be duly and validly authorized, issued and outstanding, (ii) be fully paid and non-assessable, (iii) be free and clear of any liens (other than any liens created by the Noteholder), and (iv) not have been issued in violation of the preemptive rights of any person. The Exchanged Shares have been approved for listing on the Nasdaq Global Select Market without requiring approval thereof by the Company's stockholders under the rules of the Nasdaq Market, subject to official notice of issuance.

4.4 No Registration Required. The Exchanged Shares are being offered and sold pursuant to, and in compliance with, Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act"). Assuming the accuracy of the Noteholder's representations in Section 5 hereof, it is not necessary in connection with the issuance of the Exchanged Shares to the Noteholder, in the manner contemplated by this Agreement, to register such issuance under the Securities Act. Upon issuance, the Exchanged Shares will be issued without any restricted CUSIP or other restrictive legend and will be freely tradable (other than by affiliates of the Company) under the Securities Act.

4.5 Reports and Financial Statements. The Company has filed all reports on Form 10-K, Form 10-Q, Form 8-K and all other reports required to be filed with the Securities and Exchange Commission (the “SEC”) pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”) since January 1, 2019, and all such filings, as may have been amended, complied in all material respects with the Exchange Act and such rules and regulations as of the respective dates filed with the SEC.

4.6 Broker’s Fees. Neither the Company nor any of its officers or directors has incurred any liability for any banker’s, broker’s or finder’s fees or commissions in connection with the transactions contemplated by this Agreement.

SECTION 5. Representations and Warranties of the Noteholder. As a material inducement to the Company to enter into this Agreement, the Noteholder hereby represents and warrants to the Company that the following statements are complete and accurate as of the date of this Agreement and will be complete and accurate as of the Closing Date:

5.1 Power and Authorization. The Noteholder is a [_____] duly organized, validly existing and in good standing under the laws of [_____]. The Noteholder possesses all requisite power, authority and capacity to execute and deliver this Agreement and necessary to carry out the transactions contemplated by this Agreement.

5.2 Valid and Enforceable Agreement; No Violations. The execution, delivery and performance of this Agreement has been duly authorized by the Noteholder. This Agreement when executed and delivered by the Noteholder in accordance with the terms hereof, shall constitute a valid and binding obligation of the Noteholder, enforceable against the Noteholder in accordance with its terms, except that such enforcement may be subject to the Enforceability Exceptions. This Agreement and the consummation of the Exchange will not violate, conflict with or result in a breach of or default under (i) the Noteholder’s organizational documents, (ii) any agreement or instrument to which the Noteholder is a party or by which the Noteholder or any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Noteholder.

5.3 Title to the Notes. The Noteholder is the sole beneficial owner of the Notes. The Noteholder has good, valid and marketable title to the Notes, free and clear of any liens or encumbrances (other than pledges or security interests that the Noteholder may have created in favor of a prime broker under and in accordance with its prime brokerage agreement with such broker, and which will be released at Closing). The Noteholder has not, in whole or in part, except as described in the preceding sentence, (a) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of the Notes or its rights in the Notes, or (b) given any person or entity any transfer order, power of attorney or other authority of any nature whatsoever

with respect to the Notes. Upon the Noteholder's delivery of the Notes to the Company pursuant to the Exchange, such Notes shall be free and clear of all liens.

5.4 Investment Purpose. The Noteholder is acquiring the Exchanged Shares for its own account for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act.

5.5 Non-Affiliate Status. The Noteholder is not, and has not been during the consecutive three month period preceding the date hereof, a director, officer or "affiliate" within the meaning of Rule 144 promulgated under the Securities Act of the Company.

5.6 Consultation with Counsel and Advisors. The Noteholder has been represented by such legal and tax counsel and other counsel and advisors selected by the Noteholder as the Noteholder has found necessary to consult concerning this transaction, to review and evaluate the tax, economic and other ramifications of the Exchange, including, without limitation, whether the Exchange will result in any adverse tax consequences to the Noteholder.

5.7 Securities Representations. The Noteholder is either (i) a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act, or (ii) an accredited investor (as defined in Regulation D promulgated under the Securities Act).

5.8 Full Satisfaction of Obligations under the Notes. The Noteholder acknowledges that upon issuance of the Exchanged Shares and Exchanged Cash, the obligations of the Company to the Noteholder under the Notes shall have been satisfied in full.

5.9 Broker's Fees. Neither the Noteholder nor any of its officers or directors has incurred any liability for any banker's, broker's or finder's fees or commissions in connection with the transactions contemplated by this Agreement.

SECTION 6. Termination.

6.1 Conditions of Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Parties;

(b) by the Company if there has been a material misrepresentation, material breach of warranty by the Noteholder in the representations and warranties set forth in this Agreement or the Schedules attached hereto; and

(c) by the Noteholder if there has been a material misrepresentation, material breach of warranty by the Company in the representations and warranties set forth in this Agreement or the Schedules attached hereto.

SECTION 7. Miscellaneous.

7.1 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by, illegal or unenforceable under applicable law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.2 Counterparts. This Agreement may be executed in counterparts, any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement. Any counterpart or other signature delivered by facsimile or e-mail (or other electronic means) shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

7.3 Entire Agreement. This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way. The Recitals to this Agreement are incorporated by reference and made a part of this Agreement.

7.4 Governing Law. This Agreement shall in all respects be construed in accordance with and governed by the substantive laws of the State of New York, without reference to its choice of law rules that would cause the application of the laws of any jurisdiction other than the laws of the State of New York.

7.5 Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be mailed by first-class registered or certified airmail, email (provided that an automated response is not received indicating that such email was not delivered to the recipient), confirmed facsimile or nationally recognized overnight express courier postage prepaid, and shall be deemed given when so mailed and shall be delivered as follows:

The Company:

OPKO Health, Inc.

4400 Biscayne Blvd.

Miami, FL 33137

Steve Rubin, Executive Vice President –Administration

Email: [_____]

Facsimile: [_____]

The Noteholder:

To the Address under the Noteholder's name
on Schedule A attached hereto

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Exchange Agreement on the date first written above.

OPKO HEALTH, INC.

Name: Adam Logal

Title: Senior Vice President, CFO

[NOTEHOLDER]

Name:

Title:

[Signature Page to Exchange Agreement]

SCHEDULE A

Name and Address of Noteholder

Principal Amount of Notes

SCHEDULE B

The Exchanged Shares shall be calculated in accordance with the following definitions:

“Bond Reference Price” means \$1,320.00.

“Daily Exchange Price” means the sum of (i) the product of (A) the difference between (a) the applicable Daily Reference Price during the VWAP Period and (b) Share Reference Price, multiplied by (B) the Existing Conversion Ratio, multiplied by (C) the Hedge Ratio, plus (ii) the Bond Reference Price, such resulting amount of clauses (i) and (ii) then divided by 4.

“Daily Exchange Ratio” means the quotient resulting from (i) the applicable Daily Exchange Price for the applicable trading day during the VWAP Period, divided by (ii) the Daily Reference Price for such trading day during the VWAP Period.

“Daily Reference Price” means the greater of (i) the Daily VWAP and (ii) \$3.50.

“Daily VWAP” means, with respect to any Trading Day (as defined in the 2025 Indenture) during the VWAP Period, the per share volume-weighted average price of the Common Stock on the Nasdaq Global Select Market (during standard market hours from 9:30 am to 4:00 pm) as displayed under the heading “Bloomberg VWAP” on Bloomberg page “OPK <equity> AQR” (or its equivalent successor if such page is not available) with respect to such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day determined, using a volume weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “Daily VWAP” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

“Exchange Ratio” means the sum of each Daily Exchange Ratio during the VWAP Period.

“Exchanged Shares” means the product of (i) the principal amount of the Notes set forth on Schedule A to the Agreement divided by 1,000, and (ii) the Exchange Ratio.

“Existing Conversion Ratio” means 236.7424.

“Hedge Ratio” means 70%.

“Share Reference Price” means \$4.09.

“VWAP Period” means the four (4) Trading Day (as defined in the 2025 Indenture) period beginning on and including the Trading Day immediately following the date of this Agreement.

[Schedule B continues on next page]

SCHEDULE B

Name(s) into which Exchanged Shares will be Issued: _____

If an entity, state of incorporation or formation: _____

Taxpayer ID or Social Security Number: _____

Address: _____

DWAC Instructions:

Number of Exchanged Shares to be Delivered: _____

Amount of Exchanged Cash to be Delivered: \$ _____

Wire Transfer Instructions for Exchanged Cash:

Bank of New York

ABA #

A/C

A/C

Further Credit to:

SCHEDULE C

[Company's Instructions]