

**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): September 12, 2023

Applied Optoelectronics, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-36083
(Commission File Number)

76-0533927
(IRS Employer Identification
No.)

13139 Jess Pirtle Blvd.
Sugar Land, Texas
(Address of principal executive offices)

77478
(Zip Code)

(281) 295-1800
(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(s)	Trading Name of each exchange on which registered
Common Stock, Par value \$0.001	AAOI	NASDAQ Global 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.

On September 12, 2023, Applied Optoelectronics, Inc. (the “Company”) entered into Amendment No. 1 to the Equity Distribution Agreement (the “Amendment”) with Raymond James & Associates, Inc. (the “Sales Agent”), amending the Equity Distribution Agreement dated as of March 24, 2023 between the Company and the Sales Agent (the “Original Agreement” and, together with the Amendment, the “Equity Distribution Agreement”). Pursuant to the Equity Distribution Agreement, the Company may issue and sell shares of the Company’s common stock, par value \$0.001 per share (the “Shares”) having an aggregate offering price of up to \$70 million from time to time through the Sales Agent. As of September 12, 2023, the Company has sold 3,690,599 shares of Company’s common stock with an aggregate offering price of approximately \$24 million.

Upon delivery of a placement notice and subject to the terms and conditions of the Equity Distribution Agreement, sales of the Shares will be made through the Sales Agent in transactions that are deemed to be “at the market” offerings as defined in Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), including sales made through the facilities of the Nasdaq Global Market, the principal trading market for the Company’s common stock, on any other existing trading market for the Company’s common stock, to or through a market maker or as otherwise agreed by the Company and the Sales Agent. In the placement notice, the Company will designate the maximum number of Shares to be sold through the Sales Agent, the time period during which sales are requested to be made, the minimum price for the Shares to be sold, and any limitation on the number of Shares that may be sold in any one day. Subject to the terms and conditions of the Equity Distribution Agreement, the Sales Agent will use its commercially reasonable efforts to sell Shares on the Company’s behalf up to the designated amount specified in the placement notice. The Company has no obligation to sell any Shares under the Equity Distribution Agreement and may at any time suspend offers and sales of the Shares under the Equity Distribution Agreement.

The Equity Distribution Agreement provides that the Sales Agent will be entitled to compensation of up to 2% of the gross sales price of the Shares sold through the Sales Agent from time to time. The Company has also agreed to reimburse the Sales Agent for certain specified expenses in connection with the registration of Shares under state blue sky laws and any filing with, and clearance of the offering by, the Financial Industry Regulatory Authority Inc., not to exceed \$10,000 in the aggregate, and any associated application fees incurred. Additionally, if the Equity Distribution Agreement is terminated under certain circumstances, and the Company fails to sell a minimum amount of the Shares as set forth in the Equity Distribution Agreement, then the Company has agreed to reimburse the Sales Agent for reasonable out-of-pocket expenses, including the reasonable fees and disbursements of counsel incurred by the Sales Agent, up to a maximum of \$30,000 in the aggregate. The Company agreed to indemnify the Sales Agent against certain liabilities, including liabilities under the Securities Act, or to contribute to payments that the Sales Agent may be required to make because of any of those liabilities.

The offering pursuant to the Equity Distribution Agreement will terminate upon the sale of all Shares subject to the Equity Distribution Agreement. The Equity Distribution Agreement may also be terminated by the Company or by the Sales Agent at any time.

The Shares to be issued and sold have been registered under the Securities Act, pursuant to the Company’s shelf registration statement on Form S-3 (Registration No. 333-269132) (the “Registration Statement”), which was declared effective by the Securities and Exchange Commission on March 21, 2023, including the prospectus contained therein, as supplemented by the prospectus supplement filed with the Securities and Exchange Commission pursuant to Rule 424(b) under the Securities Act on March 24, 2023 and amendments to the prospectus supplement dated August 3, 2023 and September 12, 2023.

The foregoing description of the Equity Distribution Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Original Agreement, which was filed as [Exhibit 1.1](#) to the Current Report on Form 8-K filed on March 24, 2023, and the Amendment, which is filed as Exhibit 1.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
1.1	Amendment No. 1 to Equity Distribution Agreement, dated September 12, 2023, between Applied Optoelectronics, Inc. and Raymond James & Associates, Inc.
5.1	Opinion of Haynes and Boone, LLP.
23.1	Consent of Haynes and Boone, LLP (included in Exhibit 5.1).
104	Cover Page Interactive File (the cover page tags are embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

APPLIED OPTOELECTRONICS, INC.

Date: September 12, 2023

By: /s/ David C. Kuo

Name: David C. Kuo

Title: Chief Legal and Compliance Officer and Secretary

APPLIED OPTOELECTRONICS, INC.

AMENDMENT NO. 1 TO EQUITY DISTRIBUTION AGREEMENT

September 12, 2023

Raymond James & Associates, Inc.
880 Carillon Parkway
St. Petersburg, Florida 33716

Ladies and Gentlemen:

Reference is made to the Equity Distribution Agreement, dated March 24, 2023 (the "**Sales Agreement**"), by and between Applied Optoelectronics, Inc. a Delaware Corporation (the "**Company**"), and Raymond James & Associates, Inc. ("**Raymond James**"). Capitalized terms used herein but not otherwise defined are used herein as defined in the Sales Agreement.

The Company and Raymond James (collectively, the "**Parties**") wish to amend the Sales Agreement, pursuant to Section 17 of the Sales Agreement, on the terms and conditions set forth in this letter (this "**Amendment**"). Therefore, for and in consideration of the mutual covenants and agreements herein contained, and contained in the Sales Agreement, the Company, on the one hand, and Raymond James, on the other hand, the Parties therefore hereby agree as follows:

1. **Increase in the Aggregate Gross Proceeds of Shares.** The reference to "\$35,000,000" in Section 1 of the Sales Agreement regarding the aggregate gross proceeds of shares of the Company's common stock is hereby amended and replaced with "\$70,000,000."
2. **Definition of Prospectus Supplement.** The Parties agree that the definition of Prospectus Supplement under Section 1 of the Sales Agreement shall include the amendments to the prospectus supplement dated August 3, 2023 and September 12, 2023.
3. **Governing Law.** THIS AMENDMENT SHALL BE SUBJECT TO THE PROVISIONS REGARDING APPLICABLE LAW AND WAIVER OF JURY TRIAL SET FORTH IN SECTIONS 18 AND 19 OF THE SALES AGREEMENT, AND SUCH PROVISIONS ARE INCORPORATED HEREIN BY THIS REFERENCE, *MUTATIS MUTANDIS*.
4. **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 or electronic transmission.
5. **Agreement Remains in Effect.** Except as provided herein, all provisions, terms and conditions of the Sales Agreement shall remain in full force and effect. As amended hereby, the Sales Agreement is ratified and confirmed in all respects. On and after the date of this Amendment, each reference in the Sales Agreement to the "Agreement", "hereinafter", "herein", "hereinafter", "hereunder", "hereof", or words of like import shall mean and be a reference to the Sales Agreement as amended by this Amendment.

(Signature page follows.)

If the foregoing correctly sets forth the understanding between the Company and Raymond James, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and Raymond James.

Very truly yours,

APPLIED OPTOELECTRONICS, INC.

By: /s/ Chih-Hsiang (Thompson) Lin
Name: Chih-Hsiang (Thompson) Lin
Title: President, CEO & Chairman

The foregoing Amendment No. 1 to the Sales Agreement is hereby confirmed and accepted as of the date first written above.

RAYMOND JAMES & ASSOCIATES, INC.

By: /s/ Robert Flanagan
Name: Robert Flanagan
Title: Managing Director

September 12, 2023

Applied Optoelectronics, Inc.
13139 Jess Pirtle Blvd.
Sugar Land, TX 77478

Ladies and Gentlemen:

We have acted as counsel for Applied Optoelectronics, Inc., a Delaware corporation (the "**Company**"), in connection with the issuance and sale by the Company from time to time on a delayed continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "**Securities Act**"), of (i) securities, including shares of the Company's common stock, \$0.001 par value per share (the "**Common Stock**"), at an aggregate initial offering price not to exceed \$185,000,000 registered pursuant to the Registration Statement on Form S-3 (File No. 333-269132) (including the prospectus contained therein, the "**Registration Statement**") filed with the Securities and Exchange Commission (the "**Commission**"); and (ii) the prospectus supplement, dated March 24, 2023 and amendments to the prospectus supplement dated August 3, 2023 and September 12, 2023 filed with the Commission pursuant to Rule 424(b) under the Securities Act (the "**Prospectus Supplement**"), relating to the issuance and sale from time to time by the Company of shares of Common Stock with an aggregate offering price of up to \$70,000,000 (the "**Shares**"). The Shares are to be issued and sold by the Company pursuant to an Equity Distribution Agreement, dated March 24, 2023 and amended on September 12, 2023 (the "**Distribution Agreement**"), between the Company and Raymond James & Associates, Inc. The Distribution Agreement will be filed with the Commission as Exhibit 1.1 to the Company's Current Report on Form 8-K, dated September 12, 2023.

For purposes of the opinion we express below, we have examined originals, or copies certified or otherwise identified, of (i) the certificate of incorporation and bylaws, each as amended to date, of the Company (the "**Company Charter Documents**"); (ii) the Registration Statement and all exhibits thereto; (iii) the Prospectus Supplement and all exhibits thereto; (iv) the Distribution Agreement and all exhibits thereto; (v) the minutes and records of the corporate proceedings of the Company with respect to the filing of the Registration Statement and the Prospectus Supplement and the entering into of the Distribution Agreement; and (vi) such other corporate records of the Company as we have deemed necessary or appropriate for purposes of the opinion hereafter expressed.

As to questions of fact material to the opinion expressed below, we have, without independent verification of their accuracy, relied to the extent we deem reasonably appropriate upon the representations and warranties of the Company contained in such documents, records, certificates, instruments or representations furnished or made available to us by the Company.

In making the foregoing examination, we have assumed (i) the genuineness of all signatures, (ii) the authenticity of all documents submitted to us as originals, (iii) the conformity to original documents of all documents submitted to us as certified or photostatic copies, (iv) that all agreements or instruments we have examined are the valid, binding and enforceable obligations of the parties thereto, and (v) that all factual information on which we have relied was accurate and complete.

We have also assumed that (i) the Prospectus Supplement has been timely filed with the Commission; (ii) the Company will issue and deliver the Shares in the manner contemplated by the Registration Statement, the Prospectus Supplement and the Distribution Agreement; (iii) the Shares will be issued in compliance with applicable federal and state securities law; (iv) no stop orders of the Commission preventing or suspending the use of the Prospectus Supplement will have been issued; and (v) the Company will receive consideration for the issuance of the Shares that is at least equal to the par value of the Common Stock.

Based on the foregoing, and subject to the limitations and qualifications set forth herein, we are of the opinion that when issued and paid for in accordance with the terms and conditions of the Distribution Agreement, the Shares will be validly issued, fully paid and nonassessable.

The opinion expressed herein is limited to the Delaware General Corporation Law as in effect on the date hereof.

We hereby consent to the filing of this letter as Exhibit 5.1 to the Current Report on Form 8-K to be filed by the Company in connection with the issuance and sale of the Shares in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act and to the reference to our firm therein and in the Prospectus Supplement under the caption "Legal Matters." In giving this consent, we do not hereby admit we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Haynes and Boone, LLP
