

**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): October 1, 2021

Zymeworks Inc.

(Exact name of registrant as specified in its charter)

British Columbia, Canada
(State or other jurisdiction
of incorporation)

001-38068
(Commission
File Number)

98-1398788
(IRS Employer
Identification No.)

Suite 540, 1385 West 8th Avenue, Vancouver, British Columbia, Canada
(Address of principal executive offices)

V6H 3V9
(Zip Code)

(604) 678-1388
(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:

- 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 Shares, no par value per share	ZYME	New York Stock Exchange

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 October 1, 2021, Zymeworks Inc. (the “Company”) entered into an amendment (the “Amendment”) of its Open Market Sale AgreementSM, dated as of November 5, 2019, (as amended, the “Sales Agreement”) with Jefferies LLC (“Jefferies”) in connection with the Company’s filing of a new automatic shelf registration statement on Form S-3ASR (File No. 333-259970) (the “Registration Statement”), filed with the Securities and Exchange Commission (the “SEC”) on October 1, 2021. The Sales Agreement, as amended by the Amendment, provides for the offer and sale of the Company’s common shares from time to time through Jefferies as its sales agent, subject to the maximum aggregate dollar amount registered pursuant to the applicable prospectus supplement. Sales of common shares through Jefferies, if any, will be made 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, including without limitation sales made directly on the New York Stock Exchange or any other existing trading market for the common shares. The Company will pay Jefferies a commission of up to 3.0% of the gross sales proceeds of any common shares sold through Jefferies under the Sales Agreement. The Company has also provided Jefferies with customary indemnification and contribution rights.

In accordance with the Sales Agreement, Jefferies will use commercially reasonable efforts to sell the Company’s common shares from time to time, based upon instructions from the Company (including any price, time or size limits or other customary parameters or conditions the Company may impose). The Company is not obligated to make any sales of common shares under the Sales Agreement. The Sales Agreement may be terminated by the Company or Jefferies upon the written notice to the other party in accordance with the terms of the Sales Agreement. The offering of the common shares pursuant to the Sales Agreement will terminate upon the termination of the Sales Agreement in accordance with its terms.

The common shares are being offered and sold pursuant to the Registration Statement, including the prospectus, dated October 1, 2021, and the prospectus supplement, dated October 1, 2021.

The foregoing description of the Amendment is not complete and is qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed as Exhibit 1.1 hereto and incorporated herein by reference. The Amendment is also incorporated by reference into the Registration Statement.

A copy of the opinion of Blake, Cassels & Graydon LLP relating to the legality of the common shares issuable under the Sales Agreement is filed as Exhibit 5.1 to this Current Report on Form 8-K and is also incorporated by reference into the Registration Statement.

This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy the securities discussed herein, nor shall there be any sale of such securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits

In reviewing the agreement included as an exhibit to this report, please remember that it is included to provide you with information regarding its terms and is not intended to provide any other factual or disclosure information about the Company or the other parties to the agreement. The agreement contains representations and warranties made by the Company. These representations and warranties have been made solely for the benefit of the other party to the agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- may have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;

-
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
 - were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. Additional information about the Company may be found elsewhere in this report and the Company's other public filings, which are available without charge through the U.S. Securities and Exchange Commission's website at <http://www.sec.gov>.

Exhibit No.	Description
1.1	<u>Amendment No. 1 to the Open Market Sale AgreementSM, dated October 1, 2021, by and between Zymeworks Inc. and Jefferies LLC.</u>
5.1	<u>Legal Opinion of Blake, Cassels & Graydon LLP.</u>
23.1	<u>Consent of Blake, Cassels & Graydon LLP (included in Exhibit 5.1).</u>
104	Cover Page Interactive Data File (embedded as 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, thereunto duly authorized.

ZYMEWORKS INC.

(Registrant)

Date: October 1, 2021

By: /s/ Neil Klompas

Name: Neil Klompas

Title: Executive Vice President, Business Operations
and Chief Financial Officer

AMENDMENT NO. 1 TO THE OPEN MARKET SALE AGREEMENTSM

October 1, 2021

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

Ladies and Gentlemen:

This Amendment No. 1 to the Open Market Sale AgreementSM (this “**Amendment**”) is entered into as of the date first written above by Zymeworks Inc., a corporation continued under the *Business Corporations Act* (British Columbia) (the “**Company**”), and Jefferies LLC (“**Agent**”), that are parties to that certain Open Market Sale AgreementSM, dated November 5, 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. The preamble to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“Zymeworks Inc., a corporation continued under the Business Corporations Act (British Columbia) (the “**Company**”), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through Jefferies LLC, as sales agent and/or principal (collectively, the “**Agent**”), the Company’s common shares, without par value (the “**Common Shares**”), on the terms set forth in this agreement (this “**Agreement**”).”

2. Any references in the Original Agreement to “Skadden, Arps, Slate, Meagher & Flom LLP” as U.S. counsel to the Company shall be replaced with “Wilson Sonsini Goodrich & Rosati, P.C.”.

3. Section 8(d) to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“If to the Agent:

Jefferies LLC
520 Madison Avenue
New York, NY 10022
Attention: General Counsel

with a copy (which shall not constitute notice) to:

Cooley LLP
55 Hudson Yards
New York, NY 10001
Attention: Daniel I. Goldberg, Esq.
Email: dgoldberg@cooley.com

If to the Company:

Prior to February 1, 2022:
Zymeworks Inc.
540-1385 W 8th Ave
Vancouver, BC V6H 3V9, Canada
Attention: Executive Vice President, Business Operations and Chief Financial Officer
Email: nklompas@zymeworks.com

On or after February 1, 2022:
Zymeworks Inc.
Suite 800, 114 E 4th Ave
Vancouver, BC V5T 1G4, Canada
Attention: Executive Vice President, Business Operations and Chief Financial Officer
Email: nklompas@zymeworks.com

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati, P.C.
701 Fifth Avenue, Suite 5100
Seattle, WA 98104
Attention: Tony Jeffries, Esq. and Bryan King, Esq.
Email: tjeffries@wsgr.com; bking@wsgr.com

4. The Company agrees to pay the reasonable and documented fees and expenses of the Agent incurred in connection with the negotiation and execution of this Amendment, including but not limited to the reasonable and documented fees and disbursements of the counsel to the Agent, payable within three (3) business days after the receipt by the Company of the documentation of such fees and expenses, in an aggregate amount not to exceed \$40,000.

5. The Company represents and warrants to, and agrees with the Agent that: (a) this Amendment has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles; and (b) that on the date hereof, the Company will file a registration statement on Form S-3 and that delivery of a Issuance Notice after the effectiveness of such registration statement constitutes a Triggering Event Date.

6. This Amendment together with the Original Agreement (including all schedules and exhibits attached hereto and thereto and Issuance 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. Neither this Amendment nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Amendment. All references in the Original Agreement to the "Agreement" shall mean the Original Agreement as amended by this Amendment; *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.

7. This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Amendment or the transactions contemplated hereby ("**Related Proceedings**") may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "**Related Judgment**"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum. The provisions of this paragraph shall survive any termination of this Amendment.

8. 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 or by electronic delivery of a portable document format (PDF) file (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com).

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth the understanding between 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,

JEFFERIES LLC

By: /s/ Donald Lynaugh

Name: Donald Lynaugh

Title: Managing Director

ACCEPTED as of the date first-above written:

ZYMEWORKS INC.

By: /s/ Neil Klompas

Name: Neil Klompas

Title: Executive Vice President,
Business Operations and
Chief Financial Officer

[Signature Page to Amendment No. 1 to the Sales Agreement]



October 1, 2021

Reference: 99493/1

Zymeworks Inc.
540 – 1385 West 8th Avenue
Vancouver, BC V6H 3V9
Canada

RE: Registration Statement on Form S-3 of Zymeworks Inc.

We have acted as Canadian counsel to Zymeworks Inc. (the “**Company**”), a company continued under the laws of British Columbia, in connection with the offer and sale by the Company of up to US\$150,000,000 of common shares in the capital of the Company (the “**Shares**”), pursuant to a Registration Statement on Form S-3 (Registration No. 333-259970) (the “**Registration Statement**”), filed by the Company on October 1, 2021 with the Securities and Exchange Commission (the “**SEC**”) under the Securities Act of 1933, as amended (the “**Securities Act**”), the prospectus included in the Registration Statement (the “**Base Prospectus**”), and the prospectus supplement related to the Shares to be filed by the Company with the SEC pursuant to Rule 424(b) promulgated under the Securities Act (together with the Base Prospectus, the “**Prospectus**”).

The offer and sale of the Shares is being made pursuant to the Open Market Sale AgreementSM (the “**Sales Agreement**”), dated as of November 5, 2019, as amended on October 1, 2021, by and between the Company and Jefferies LLC.

In connection with giving this opinion, we have examined the Registration Statement (including exhibits thereto) and the Prospectus. We have also examined originals, certified or otherwise identified to our satisfaction, of such public and corporate records, certificates, instruments and other documents as we have considered necessary in order to express the opinion set out below. With respect to the accuracy of factual matters material to this opinion, we have relied upon certificates or comparable documents and representations of public officials and of officers and representatives of the Company.

In giving this opinion, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies, certified or otherwise identified to our satisfaction. We have also considered such questions of law as we have deemed relevant and necessary as a basis for the opinion hereinafter expressed.

The opinion expressed herein is limited to matters governed by the laws of the Province of British Columbia and the laws of Canada applicable therein.

Based and relying upon and subject to the foregoing, we are of the opinion that the offer and sale of the Shares has been duly authorized by the Company and, when the Shares are issued and paid for in accordance with the terms of the Sales Agreement, the Shares will be validly issued, fully paid and non-assessable shares in the capital of the Company.

We hereby consent to the reference to our firm under the captions “Legal Matters” and “Enforceability of Civil Liabilities” in the Prospectus and to the filing of this opinion letter as an exhibit to a Current Report on Form 8-K to be filed by the Company with the SEC for incorporation by reference into the Registration Statement. In giving this consent, we do not hereby agree that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

TORONTO

CALGARY

VANCOUVER

MONTRÉAL

OTTAWA

NEW YORK

LONDON



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

This opinion is effective as at the date hereof and is based upon laws in effect and facts in existence as at the date hereof. We express no opinion as to the effect of future laws or judicial decisions on the subject matter hereof, nor do we undertake any duty to modify this opinion to reflect subsequent facts or developments concerning the Company or developments in the law occurring after the date hereof.

Yours truly,

/s/ Blake, Cassels & Graydon LLP

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