

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Evolus, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

46-1385614

(I.R.S. Employer
Identification No.)

**520 Newport Center Drive, Suite 1200
Newport Beach, California 92660
(949) 284-4555**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**David Moatazedi
President and Chief Executive Officer
Evolus, Inc.
520 Newport Center Drive, Suite 1200
Newport Beach, California 92660
(949) 284-4555**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Jeffrey J. Plumer
General Counsel
Evolus, Inc.
520 Newport Center Drive, Suite 1200
Newport Beach, California 92660
(949) 284-4555**

**Mark Peterson
Shelly Heyduk
O'Melveny & Myers LLP
610 Newport Center Drive, Suite 1700
Newport Beach, California 92660
(949) 823-6900**

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. 333-230466

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act of 1934.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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 7(a)(2)(B) of Securities Act.

CALCULATION OF REGISTRATION FEE

Title of each class of Securities to be registered	Proposed maximum aggregate offering price (1)	Amount of registration fee (2)
Common Stock, par value \$0.00001 per share	\$1,319,150	\$143.92

- (1) The Registrant previously registered (i) an indeterminate number of shares of common stock, preferred stock, debt securities, warrants, units and rights with an aggregate initial offering price not to exceed \$250,000,000 to be offered and sold by the Registrant and (ii) up to 15,700,376 shares of common stock to be offered and sold by selling securityholders, on a registration statement on Form S-3 (File No. 333-230466), as amended on April 10, 2019, which was declared effective on April 15, 2019 (the "Initial Registration Statement"), and for which a filing fee of \$74,161.52 was previously paid. Of the securities registered for offer and sale by the Registrant, a balance of \$97,005,850 of such securities remains available for offer and sale by the Registrant under the Initial Registration Statement as of the date hereof. In accordance with Rule 462(b) under the Securities Act of 1933, as amended, an additional indeterminate number of shares of common stock of the Registrant having a proposed maximum aggregate offering price of \$1,319,150 is hereby registered, representing no more than 20% of the maximum aggregate offering price of unsold securities remaining available for issuance by the Registrant under the Initial Registration Statement. The proposed maximum offering price per share will be determined from time to time by the Registrant in connection with, and at the time of, the issuance by the Registrant of the common stock registered hereunder.
- (2) Calculated pursuant to Rule 457(o) under the Securities Act. Represents the registration fee only for the additional amount of common stock being registered.

This Registration Statement shall become effective upon filing with the Securities and Exchange Commission in accordance with Rule 462(b) promulgated under the Securities Act.

EXPLANATORY NOTE

Evolus, Inc. (the “Company”) is filing this Registration Statement (“Registration Statement”) with the Securities and Exchange Commission (the “Commission”) pursuant to Rule 462(b) as promulgated under the Securities Act of 1933, as amended (the “Securities Act”). This Registration Statement relates to the Company’s Registration Statement on Form S-3 (File No. 333-230466), initially filed with the Commission on March 22, 2019 and amended on April 10, 2019. The Initial Registration Statement was declared effective by the Commission on April 15, 2019. This Registration Statement is being filed pursuant to Rule 462(b) of the Securities Act solely to register an additional indeterminate amount of shares of the Company’s common stock, par value \$0.00001 per share, having a maximum aggregate offering price of \$1,319,150, which amount does not exceed 20% of the maximum aggregate offering price of unsold securities remaining available for offer and sale by the Registrant under the Initial Registration Statement.

The Company hereby incorporates by reference into this Registration Statement the contents of the Initial Registration Statement, including each of the documents filed by the Company with the Commission and incorporated or deemed incorporated by reference therein and all exhibits thereto. The Initial Registration Statement continues and remains effective as to those securities registered thereunder. The required opinion and consents are listed in Part II, Item 16 “Exhibits” of this Registration Statement and are filed herewith.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
5.1	Opinion of O'Melveny & Myers LLP regarding the validity of the shares being registered (filed herewith)
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm (filed herewith)
23.2	Consent of O'Melveny & Myers LLP (included in Exhibit 5.1)

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets the requirements for filing this Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Newport Beach, State of California, on April 21, 2021.

EVOLUS, INC.

By: /s/ David Moatazedi
David Moatazedi
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ David Moatazedi</u> David Moatazedi	President, Chief Executive Officer and Member of the Board of Directors (Principal Executive Officer)	April 21, 2021
<u>/s/ Lauren P. Silvernail</u> Lauren P. Silvernail	Chief Financial Officer and Executive Vice President of Corporate Development (Principal Financial and Accounting Officer)	April 21, 2021
<u>/s/ Vikram Malik</u> Vikram Malik	Chairman of the Board of Directors	April 21, 2021
<u>/s/ Simone Blank</u> Simone Blank	Director	April 21, 2021
<u>/s/ Robert Hayman</u> Robert Hayman	Director	April 21, 2021
<u>/s/ David Gill</u> David Gill	Director	April 21, 2021
<u>/s/ Peter C. Farrell, Ph.D., AM.</u> Peter C. Farrell, Ph.D., AM.	Director	April 21, 2021
<u>/s/ Karah Parschauer</u> Karah Parschauer	Director	April 21, 2021

April 21, 2021

Evolus, Inc.
520 Newport Center Drive, Suite 1200
Newport Beach, CA 92660

Re: Registration Statement on Form S-3.

Ladies and Gentlemen:

We have acted as special counsel to Evolus, Inc., a Delaware corporation (the "**Company**"), in connection with the preparation of the registration statement on Form S-3 (the "**462(b) Registration Statement**") filed with the Securities and Exchange Commission (the "**Commission**") on the date hereof pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"). The 462(b) Registration Statement relates to the offer and sale of shares of the Company's common stock, par value \$0.00001 per share, having a maximum aggregate offering price of up to \$1,319,150 (the "**Shares**"). The 462(b) Registration Statement incorporates by reference the registration statement on Form S-3 (File No. 333-230466), including the amendment thereto (the "**Registration Statement**" and together with the 462(b) Registration Statement, the "**Registration Statements**"), initially filed by the Company with the Commission on March 22, 2019, amended on April 10, 2019 and declared effective by the Commission on April 15, 2019, including the prospectus which forms a part of the Registration Statement (the "**Prospectus**"), as supplemented from time to time by one or more prospectus supplements.

In our capacity as counsel, we have examined originals or copies, certified or otherwise identified to our satisfaction, of those corporate and other records and documents as we considered appropriate including, without limitation:

- (i) the 462(b) Registration Statement;
- (ii) the Registration Statement;
- (iii) the Amended and Restated Certificate of Incorporation of the Company, including all amendments thereto, as presently in effect (the "**Certificate of Incorporation**");
- (iv) the Amended and Restated Bylaws of the Company, including all amendments thereto, as presently in effect (the "**Bylaws**" and, together with the Certificate of Incorporation, the "**Organizational Documents**"); and
- (v) resolutions of the Board of Directors of the Company relating to the registration of the Shares, as applicable, and related matters.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original

documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. As to any facts material to the opinions expressed herein which were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company. In addition, we have obtained and relied upon those certificates of public officials we considered appropriate.

We have also assumed that, at or prior to the time of delivery of any Shares, (i) the effectiveness of the Registration Statements has not been terminated or rescinded, (ii) a prospectus supplement describing such Shares, to the extent required by applicable law and relevant rules and regulations of the Commission, will be timely filed with the Commission, (iii) the Company has been duly organized and is and will continue to be validly existing and in good standing under the laws of Delaware, (iv) the definitive terms of the issuance and sale of such Shares will have been duly established in accordance with the applicable authorizing resolutions of the Board of Directors of the Company (or an authorized committee thereof) and in conformity with the Organizational Documents and applicable law, (v) there has not occurred any change in law or further action by the Board of Directors of the Company affecting the validity of such Shares, and (vi) such Shares will be issued and sold in the manner contemplated by the Registration Statements and any applicable prospectus supplement. We have also assumed that neither the issuance and delivery of the Shares, nor the compliance by the Company with the terms of the Shares will violate any applicable law or public policy or result in a violation of any provision of any instrument or agreement then binding upon the Company or any restriction imposed by any court or governmental body having jurisdiction over the Company.

On the basis of such examination, our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that when an issuance of Shares has been duly authorized by all necessary corporate action of the Company, upon issuance, delivery and payment therefor in an amount not less than the par value thereof and in the manner contemplated by the Registration Statements and/or the Prospectus and applicable prospectus supplement(s) and by such corporate action, such Shares will be validly issued, fully paid and nonassessable.

The law covered by this opinion is limited to the present General Corporation Law of the State of Delaware. We express no opinion as to the laws of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction.

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statements, the prospectus included in the Registration Statements or any prospectus supplement, other than as expressly stated herein with respect to the Shares.

This opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters. This letter speaks only as of the date hereof and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances that arise after the date of this opinion and come to our attention, or any future changes in laws.

We hereby consent to the use of this opinion as an exhibit to the 462(b) Registration Statement and to the reference to this firm under the heading "Legal Matters" in a prospectus supplement to the prospectus constituting part of the Registration Statement.

Respectfully submitted,

/s/ O'Melveny & Myers LLP

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related Prospectus of Evolus, Inc. for the registration of shares of its common stock and to the incorporation by reference therein of our report dated March 25, 2021, with respect to the financial statements of Evolus, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2020, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Irvine, California
April 21, 2021