

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

FORM 8-K/A

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

Date of Report (Date of earliest event reported): August 14, 2023

Astra Space, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-39426
(Commission
File Number)

85-1270303
(IRS Employer
Identification No.)

1900 Skyhawk Street
Alameda, California
(Address of Principal Executive Offices)

94501
(Zip Code)

Registrant's Telephone Number, Including Area Code: (866) 278-7217

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
Class A common stock, par value \$0.0001 per share	ASTR	NASDAQ Capital 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.

EXPLANATORY NOTE

Astra Space, Inc. (the “Company”) is filing this Current Report on Form 8-K/A in order to correct an error in the Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2023 (the “Original 8-K”). The Original 8-K referenced that the Agreement and Plan of Merger (the “Merger Agreement”), among the Company, Apollo Fusion, Inc. (“Apollo”), Artemis First Merger Sub, Inc., Apollo Fusion, LLC and Fortis Advisors LLC, pursuant to which the Company acquired Apollo was dated June 5, 2023, which was an error. The Merger Agreement was dated June 5, 2021. The Company filed an amendment to the Original 8-K on October 2, 2023 (the “Amended 8-K”) to provide information about the settlement payment option elected by the Company as well as to disclose an amendment to the Settlement Agreement and General Release, dated August 14, 2023, between the Company and Fortis Advisors LLC described in the Original 8-K, but did not correct the error regarding the Merger Agreement date. The Company hereby amends and restates in its entirety the Amended 8-K to correct the error. This report does not otherwise amend, modify or update any of the disclosures contained in the Original 8-K.

Item 1.01 Entry into a Material Agreement

On August 14, 2023, we entered into a Settlement Agreement and General Release (the “Settlement Agreement”) with Fortis Advisors, LLC (the “Representative”), acting solely in its capacity as representative of the certain holders (the “Apollo Holders”) as specified in that certain Agreement and Plan of Merger (the “Merger Agreement”), dated June 5, 2021, among the Company, Apollo Fusion, Inc. (“Apollo”), Artemis First Merger Sub, Inc., Apollo Fusion, LLC and the Representative, pursuant to which the Company acquired Apollo (the “Transaction”). Under the terms of the Merger Agreement, the Apollo Holders were entitled to earnout payments in connection with the achievement of certain milestones on or before December 31, 2023. Under the Settlement Agreement, we have the option to pay to the Apollo Holders, in the sole discretion of the board of directors of the Company (the “Board”), either: (i) a cash payment in the amount of \$2.0 million in immediately available funds, plus that number of immediately freely tradeable shares of Class A Common Stock, rounded up to the nearest whole share, determined by dividing \$8.0 million by the 10-day volume weighted average price of the Class A Common Stock (the “VWAP Calculation) as calculated in accordance with the Settlement Agreement (“Option 1”); or (ii) a cash payment of \$7.0 million (“Option 2”). On September 29, 2023, the Board elected to settle its obligations to the Apollo Holders through the issuance of shares of the Company’s Class A Common Stock and the payment of \$2.0 million in cash on October 2, 2023.

Under Nasdaq Listing Rule 5635(d), stockholder approval is required for a transaction other than a public offering involving the sale or issuance by an issuer of shares of common stock if the number of shares to be issued is or may be equal to 20% or more of the number of shares of common stock outstanding before the issuance, at a price that is less than the “minimum price,” defined as the lower of the closing price immediately preceding the signing of the binding agreement or the average closing price of the shares of common stock for the five trading days immediately preceding the signing of the binding agreement. Under the VWAP Calculation, the number of shares of Class A Common Stock that are required to be issued under the Settlement Agreement is 4,519,085. Because the issuance of 4,519,085 shares of Class A Common Stock under the Settlement Agreement would violate Nasdaq Listing Rule 5635(d) without prior stockholder approval, the Company and the Representative entered into an amendment (the “Amendment”) to the Settlement Agreement on October 2, 2023.

The Amendment provides that, on October 2, 2023, the Company will issue 3,708,520 shares (the “Settlement Shares”) to the Apollo Holders and pay the Apollo Holders \$2.0 million in cash. The Amendment further provides the Company a period of 60 days to obtain stockholder approval to issue shares of Class A Common Stock having an aggregate value of \$866,661.78, plus interest accruing at a rate of 6.0% per annum (such aggregate amount being the “Shortfall Value”). The number of shares of Class A Common Stock to be issued will be determined by dividing the Shortfall Value by the 10-day volume weighted average price of the Class A Common Stock.

The Settlement Shares are registered under our registration statement on Form S-3 (Registration No. 333-271589) filed with the SEC on May 2, 2023, as amended by Pre-Effective Amendment No. 1 filed with the SEC on May 4 2023, and Pre-Effective Amendment No. 2 filed with the SEC on May 8, 2023 and declared effective on May 16, 2023.

The foregoing summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the copy of the Amendment filed herewith as Exhibit 10.1, which is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.**(d) Exhibits**

<u>Exhibit No.</u>	<u>Description</u>
5.1	Legal Opinion of Cozen O'Connor PC
10.1	Amendment to Settlement Agreement
23.1	Consent of Cozen O'Connor PC (included in Exhibit 5.1)
104	Cover Page Interactive Data File (embedded with the Inline XBRL document)

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 thereunto duly authorized.

Date: October 3, 2023

Astra Space, Inc.

By: /s/ Axel Martinez

Name: Axel Martinez

Title: Chief Financial Officer



October 2, 2023

Astra Space, Inc.
1900 Skyhawk Street
Alameda, CA 94501

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel for Astra Space, Inc., a Delaware corporation (the "**Company**"), in connection with the registration and issuance of 3,708,520 shares (the "**Shares**") of the Company's Class A common stock, par value \$0.0001 per share (the "**Class A Common Stock**") pursuant to: (a) that certain Settlement Agreement and General Release (the "**Settlement Agreement**") dated as of August 14, 2023, as amended by that certain Amendment to Settlement Agreement and General Release dated as of October 2, 2023 (the "**Amendment**"), each entered into by and between the Company and Fortis Advisors, LLC (the "**Representative**"), acting solely in its capacity as representative of certain converting holders (the "**Investors**") as specified in that certain Agreement and Plan of Merger, dated June 5, 2021, among the Company, Apollo Fusion, Inc. ("**Apollo**"), Artemis First Merger Sub, Inc., Apollo Fusion, LLC and the Representative, pursuant to which the Company acquired Apollo; and (b) the Company's Registration Statement on Form S-3 (File No. 333-271589) filed by the Company with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933 (the "**Securities Act**") on May 2, 2023, as amended by Pre-Effective Amendment No. 1 to the Registration Statement on Form S-3, filed with the Commission on May 4, 2023, as further amended by Pre-Effective Amendment No. 2 to the Registration Statement on Form S-3, filed with the Commission on May 8, 2023, and declared effective by the Commission on May 16, 2023 (the "**Registration Statement**"), and the prospectus dated May 16, 2023, and forming a part of the Registration Statement with respect to the offer and sale of the Shares, which was included as part of the Registration Statement at the time it became effective on May 16, 2023 (such prospectus, including the documents specifically or deemed to be incorporated therein, the "**Base Prospectus**").

In rendering the opinions set forth below, we examined and relied upon such certificates, corporate records, agreements, instruments and other documents, and examined such matters of law, that we considered necessary or appropriate as a basis for the opinions. In rendering the opinions set forth below, we have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of (a) the Second Amended and Restated Certificate of Incorporation of the Company, as in effect on the date hereof, together with all amendments thereto adopted through the date hereof as filed in and certified by the office of the Delaware Secretary of State as of September 15, 2023 (b) the Amended and Restated Bylaws of the Company, as in effect on the date hereof, (c) the Registration Statement, the Base Prospectus, the prospectus supplement dated and filed with the Commission on October 2, 2023 pursuant to Rule 424(b) promulgated under the Securities Act (such prospectus supplement including the documents specifically or deemed to be incorporated therein, individually and collectively the "**Prospectus Supplement**"), (d) the Settlement Agreement, (e) the Amendment, (f) the resolutions of the Board of Directors of the Company relating to, among other matters, the filing of the Prospectus Supplement and the issuance of the Shares; and (g) such other documents as we have deemed necessary or appropriate as a basis for the opinions set forth below. 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 or photostatic copies, the authenticity of the

33 South 6th Street Suite 3800 Minneapolis, MN 55402
612.260.9000 612.260.9080 Fax cozen.com

originals of such letter documents, that all parties to such documents had the power, corporate or other, to enter into and perform all obligations thereunder and all such documents have been duly authorized by all requisite action, corporate or other, and duly executed and delivered by all parties thereto. As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon oral or written statements and representations of officers and other representatives of the Company and others.

Based upon the foregoing, and subject to the qualifications expressed herein, it is our opinion that the Shares have been duly authorized by all necessary corporate action of the Company and upon issuance and delivery by the Company in the manner contemplated by the Settlement Agreement and the Amendment, the Shares will be validly issued, fully paid and non-assessable.

We are opining herein as to the General Corporation Law of the State of Delaware, including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing, and we express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or, in the case of Delaware, any other laws, or as to any matters of municipal law or the laws of any local agencies within any state.

This opinion is for your benefit in connection with the Registration Statement, the Base Prospectus and the Prospectus Supplement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Securities Act. This opinion letter is limited to the matters stated herein, and no opinion may be implied or inferred beyond the matters expressly stated in this opinion letter.

This opinion letter is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in the law, including judicial or administrative interpretations thereof, that occur which could affect the opinions contained herein.

We hereby consent to the filing of this opinion as an exhibit to the Current Report on Form 8-K/A to be filed on October 2, 2023 by the Company and incorporated by reference in the Registration Statement and to the reference to our firm's name under the heading "Legal Matters" in the Prospectus Supplement. 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 Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

COZEN O'CONNOR

/s/ Cozen O'Connor

**AMENDMENT TO
SETTLEMENT AGREEMENT AND GENERAL RELEASE**

THIS AMENDMENT (“**Amendment**”) is dated as of October 2, 2023 (“**Amendment Date**”) and is entered into by and between ASTRA SPACE, INC., a Delaware corporation (“**Astra**”) and FORTIS ADVISORS, LLC, a Delaware limited liability company (“**Fortis**”), acting solely in its capacity as Holders’ Representative on behalf of the Converting Holders, and amends that certain SETTLEMENT AGREEMENT AND GENERAL RELEASE (this “**Settlement Agreement**”) dated as of August 14, 2023 (the “**Effective Date**”). Astra and Fortis may be referred to as the “**Parties**”, or each individually as “**Party**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement Agreement.

RECITALS

A. **WHEREAS**, pursuant to the Settlement Agreement, Astra has the option to pay to the Converting Holders, in Astra’s discretion, either: (i) a cash payment in the amount of \$2.0 million in immediately available funds, plus that number of immediately freely tradeable shares of Class A Common Stock, rounded up to the nearest whole share, determined by dividing \$8.0 million by the 10-day volume weighted average price of the Class A Common Stock as calculated in accordance with the Settlement Agreement; or (ii) a cash payment of \$7.0 million.

B. **WHEREAS**, Astra has elected to satisfy its obligations under the Settlement Agreement by making a cash payment in the amount of \$2.0 million in immediately available funds, plus that number of immediately freely tradeable shares of Class A Common Stock, rounded up to the nearest whole share, determined by dividing \$8.0 million by the 10-day volume weighted average price (“**VWAP**”) of the Class A Common Stock as calculated in accordance with the Settlement Agreement.

C. **WHEREAS**, Astra and Fortis have agreed that the VWAP is \$1.9235 and that the number of shares of Class A Common Stock Astra is obligated to issue and distribute to the Converting Holders is 4,159,085 shares.

D. **WHEREAS**, because Astra believes that the issuance of 4,159,085 of Class A Common Stock under the Settlement Agreement may violate Nasdaq Listing Rule 5635(d) (the “**Listing Rule**”) without prior stockholder approval or the issuance by Nasdaq of an exception to the Listing Rule, Astra and Fortis have agreed to this Amendment whereby Astra will: (1) pay the full \$2.0 million in cash and issue and distribute 3,708,520 shares on October 2, 2023, and (2) defer the issuance of the shares that exceed the number permitted to be issued in accordance with the Listing Rule for up to sixty (60) days from the Amendment Date while the Company seeks stockholder approval or an exception to the Listing Rule, with interest accruing on the value of such excess shares at an annual rate of 6% from the Amendment Date.

AGREEMENT

In consideration of the above recitals, which are mutually agreed and incorporated into this Agreement by this reference, as well as the promises and covenants below, and for other valuable consideration, the receipt and sufficiency which the Parties acknowledge, the Parties agree as follows:

1. **Cash Payment.** On October 2, 2023, Astra shall pay or cause to be paid to either Acquiom Financial LLC, as Paying Agent for the Converting Holders, or to certain Converting Holders directly, the cash amount of \$2.0 million in immediately available funds, to be allocated and distributed in accordance with the instructions provided to Astra by Fortis.

2. **Immediate Issuance of Shares.** On October 2, 2023, Astra will deliver instructions to its stock transfer agent causing such stock transfer agent to issue and deliver 3,708,520 freely tradeable, registered shares of Class A Common Stock to the Converting Holders, to be allocated and distributed in accordance with the instructions provided by Fortis.

3. **Stockholder Approval or Listing Rule Exception.** Within sixty (60) days from the Amendment Date, Astra will take steps necessary to obtain stockholder approval (and/or such other corporate approval as may be required) or an exception to the Listing Rule to permit Astra to issue and deliver that number of additional immediately freely tradeable shares, rounded up to the nearest whole share, of Astra Class A common stock determined by dividing (1) the Excess Share Dollar Amount (as defined below) by (2) the 10-Day VWAP (the number of freely tradeable, registered shares of Astra Class A common stock determined by dividing (1) by (2) being referred to as the “**Additional Shares**”). On or before such sixty (60) day deadline from the Amendment Date, Astra shall issue the Additional Shares to the Converting Holders, to be allocated and distributed in accordance with the instructions provided by Fortis.

4. **Excess Share Dollar Amount.** The “Excess Share Dollar Amount” shall be Eight Hundred Sixty Six Thousand, Six Hundred Sixty One Dollars and Seventy Eight Cents (\$866,661.78), plus interest from the Amendment Date, calculated on a daily basis based on thirty day months and the actual number of days elapsed, at the annual rate of six percent (6%).

5. **Calculation of 10-Day VWAP.** As used herein, the term “10-Day VWAP” means the volume weighted average price of the shares of Astra Class A Common Stock traded on the Nasdaq Capital Market, or any other national securities exchange on which the shares of common stock are then traded, for the ten (10) trading days ending on the second trading day immediately preceding the date of determination of the 10-Day VWAP, as reported by Bloomberg through its “HP” function (set to weighted average) or, if the foregoing does not apply, the dollar volume-weighted average price of the Astra Class A Common Stock in the over-the-counter market on the electronic bulletin board for such shares during the foregoing specified period, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for the Astra Class A Common Stock by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for the foregoing period as reported by OTC Markets Group Inc. If the 10-Day VWAP cannot be calculated for the Astra Class A Common Stock on any of the foregoing bases, the 10-Day VWAP of such security shall be determined based upon the mutual agreement of the Parties.

6. **Effectiveness of Release.** The releases provided for in the Settlement Agreement shall become effective only upon the full performance of all of Astra’s obligations in accordance with the Settlement Agreement and this Amendment, including the issuance and delivery of the Additional Shares.

7. **General Provisions.** Except as expressly amended by this Amendment, all other terms and conditions of the Settlement Agreement remain in full force and effect. The general and miscellaneous provisions of the Settlement Agreement are incorporated into this Amendment by this reference, including without limitation, governing law, forum selection and consent to jurisdiction and the waiver of jury trial.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Date.

ASTRA SPACE, INC.

By: /s/ Axel Martinez
Name: Axel Martinez
Title: Chief Financial Officer

FORTIS ADVISORS, LLC

By: /s/ Ryan Simkin
Name: Ryan Simkin
Title: MD