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

Form S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Five Prime Therapeutics, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

26-0038620
(IRS employer
identification number)

111 Oyster Point Boulevard
South San Francisco, California 94080
(415) 365-5600
(Address of principal executive offices)

2013 Omnibus Incentive Plan
2013 Employee Stock Purchase Plan
(Full title of the Plan)

Aron M. Knickerbocker
President and Chief Executive Officer
Five Prime Therapeutics, Inc.
111 Oyster Point Boulevard
South San Francisco, California 94080
(415) 365-5600
(Name, address and telephone number of Agent for Service)

Copies to:

Laura A. Berezin
Jaime L. Chase
Cooley LLP
3175 Hanover Street
Palo Alto, California 94304
(650) 843-5000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or 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:

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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 the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share ⁽⁴⁾	Proposed Maximum Aggregate Offering Price ⁽⁴⁾	Amount of Registration Fee
2013 Omnibus Incentive Plan (Common stock, \$0.001 par value per share)	1,425,030 ⁽²⁾	\$11.34	\$16,159,840.20	\$1,958.57
2013 Employee Stock Purchase Plan (Common stock, \$0.001 par value per share)	300,000 ⁽³⁾	\$11.34	\$3,402,000.00	\$412.32
TOTAL	1,725,030	—	\$19,561,840.20	\$2,370.89

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “**Securities Act**”), this Registration Statement shall also cover any additional shares of common stock that become issuable under the above-named plans by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without receipt of consideration that results in an increase in the number of outstanding shares of common stock of Five Prime Therapeutics, Inc. (the “**Registrant**”).
- (2) Represents additional shares of the Registrant’s common stock reserved for future grant under the Registrant’s 2013 Omnibus Incentive Plan (the “**2013 Plan**”) as a result of the automatic increase in shares reserved thereunder on January 1, 2019 pursuant to the terms of the 2013 Plan.
- (3) Represents additional shares of the Registrant’s common stock reserved for issuance under the Registrant’s 2013 Employee Stock Purchase Plan (the “**ESPP**”) as a result of the automatic increase in shares reserved thereunder on January 1, 2019 pursuant to the terms of the ESPP.
- (4) Estimated pursuant to Rule 457(c) and Rule 457(h) solely for the purpose of calculating the registration fee. The proposed maximum offering price per share and proposed maximum aggregate offering price are based on the average of the high and low sale prices of the Registrant’s common stock as reported on The Nasdaq Global Select Market on May 3, 2019.

EXPLANATORY NOTE

The Registrant is filing this Registration Statement on Form S-8 for the purpose of registering an additional 1,425,030 shares of common stock under the Five Prime Therapeutics, Inc. 2013 Omnibus Incentive Plan and an additional 300,000 shares of common stock under the Five Prime Therapeutics, Inc. 2013 Employee Stock Purchase Plan, pursuant to the provisions of each plan, which provide for annual automatic increases in the number of shares of common stock reserved for issuance under each respective plan.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents filed by it with the Securities and Exchange Commission (the “**Commission**”):

- (a) the contents of the Registrant’s Registration Statements on Form S-8 relating to the 2013 Plan and the ESPP, previously filed with the Commission on [October 11, 2013](#) (File No. 333-191700), [March 26, 2014](#) (File No. 333-194820), [March 18, 2015](#) (File No. 333-202854), [May 6, 2016](#) (File No. 333-211216), [May 5, 2017](#) (File No. 333-217737) and [May 8, 2018](#) (File No. 333-224748);
- (b) the Registrant’s Annual Report on [Form 10-K](#) (File No. 001-36070) for the fiscal year ended December 31, 2018, filed with the Commission on February 26, 2019;
- (c) the Registrant’s Quarterly Report on Form 10-Q (File No. 001-36070) for the fiscal quarter ended March 31, 2019, filed with the Commission on [May 9, 2019](#);
- (d) the Registrant’s Current Reports on Form 8-K (File No. 001-36070) filed with the Commission on [January 15, 2019](#), [March 4, 2019](#), [March 18, 2019](#) and [May 8, 2019](#); and
- (e) the description of the Registrant’s common stock contained in the Registrant’s Registration Statement on [Form 8-A](#) (File No. 001-36070) filed with the Commission on September 16, 2013, under Section 12(b) of the Exchange Act of 1934, as amended (the “**Exchange Act**”), including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing such documents, except as to specific sections of such documents as set forth therein. The Registrant is not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed “filed” with the Commission, including any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 8. Exhibits.

The exhibits to this Registration Statement are listed below and are incorporated herein by reference.

Exhibit Number	Exhibit Description
4.1	<u>Specimen common stock certificate (incorporated herein by reference to Exhibit 4.1 to the Registrant's Amendment No. 3 to the Registration Statement on Form S-1 (File No. 333-190194), filed with the Commission on September 4, 2013).</u>
4.2	<u>2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 4.8 to the Registrant's Registration Statement on Form S-8 (File No. 333-191700), filed with the Commission on October 11, 2013).</u>
4.3	<u>Amendment No. 1 to the 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-36070), filed with the Commission on November 6, 2017).</u>
4.4	<u>Form of Incentive Stock Option Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.7 to the Registrant's Registration Statement on Form S-1 (File No. 333-190194), filed with the Commission on July 26, 2013).</u>
4.5	<u>Form of Non-Qualified Option Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.8 to the Registrant's Registration Statement on Form S-1 (File No. 333-190194), filed with the Commission on July 26, 2013).</u>
4.6	<u>Form of Restricted Stock Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.9 to the Registrant's Registration Statement on Form S-1 (File No. 333-193491), filed with the Commission on January 22, 2014).</u>
4.7	<u>Form of Restricted Stock Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.27 to the Registrant's Annual Report on Form 10-K (File No. 001-36070) for the fiscal year ended December 31, 2016, filed with the Commission on February 24, 2017).</u>
4.8	<u>2013 Employee Stock Purchase Plan (incorporated herein by reference to Exhibit 4.11 to the Registrant's Registration Statement on Form S-8 (File No. 333-191700), filed with the Commission on October 11, 2013).</u>
5.1	<u>Opinion of Cooley LLP.</u>
23.1	<u>Consent of Independent Registered Public Accounting Firm.</u>
23.2	<u>Consent of Cooley LLP (included in Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included on the signature page to this Registration Statement).</u>

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of South San Francisco, State of California on May 9, 2019.

Five Prime Therapeutics, Inc.

By: /s/ Aron M. Knickerbocker
Aron M. Knickerbocker
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Aron M. Knickerbocker and Francis W. Sarena, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Aron M. Knickerbocker</u> Aron M. Knickerbocker	President, Chief Executive Officer and Director (Principal Executive Officer)	May 9, 2019
<u>/s/ David V. Smith</u> David V. Smith	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	May 9, 2019
<u>/s/ David White</u> David White	Vice President, Finance (Principal Accounting Officer)	May 9, 2019
<u>/s/ William Ringo</u> William Ringo	Chairman of the Board	May 9, 2019
<u>/s/ Franklin M. Berger</u> Franklin M. Berger	Director	May 9, 2019
<u>/s/ Kapil Dhingra, M.B.B.S.</u> Kapil Dhingra, M.B.B.S.	Director	May 9, 2019
<u>/s/ Sheila Gujrathi, M.D.</u> Sheila Gujrathi, M.D.	Director	May 9, 2019

Signature	Title	Date
<u>/s/ Peder K. Jensen, M.D.</u> Peder K. Jensen, M.D.	Director	May 9, 2019
<u>/s/ Garry Nicholson</u> Garry Nicholson	Director	May 9, 2019
<u>/s/ Lewis T. Williams, M.D., Ph.D.</u> Lewis T. Williams, M.D., Ph.D.	Director	May 9, 2019



Laura A. Berezin
+1 650 843 5128
lberezin@cooley.com

May 9, 2019

Five Prime Therapeutics, Inc.
111 Oyster Point Boulevard
South San Francisco, CA 94080

Re: Registration on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Five Prime Therapeutics, Inc., a Delaware corporation (the "*Company*"), and you have requested our opinion in connection with the filing of a registration statement on Form S-8 (the "*Registration Statement*") with the Securities and Exchange Commission covering the offering of up to an aggregate of 1,725,030 shares of the Company's common stock, par value \$0.001 per share, consisting of (i) 1,425,030 shares (the "*OIP Shares*") pursuant to the Company's 2013 Omnibus Incentive Plan (the "*2013 OIP*") and (ii) 300,000 shares (the "*ESPP Shares*," and together with the OIP Shares, the "*Shares*") pursuant to the Company's 2013 Employee Stock Purchase Plan (the "*2013 ESPP*," and together with the 2013 OIP, the "*Plans*").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and related prospectuses, (b) the Plans, (c) the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, each as currently in effect, and (d) such other documents, records, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies thereof. As to certain factual matters, we have relied upon a certificate of officers of the Company and have not sought independently to verify such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the applicable Plan and the Registration Statement and related Prospectuses, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

[SIGNATURE PAGE FOLLOWS]

Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130
t: (650) 843-5000 f: (650) 849-7400 cooley.com



Five Prime Therapeutics, Inc.
May 9, 2019
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We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

COOLEY LLP

By: /s/ Laura A. Berezin
Laura A. Berezin

Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130
t: (650) 843-5000 f: (650) 849-7400 cooley.com

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2013 Omnibus Incentive Plan and the 2013 Employee Stock Purchase Plan of Five Prime Therapeutics, Inc. of our reports dated February 26, 2019, with respect to the financial statements of Five Prime Therapeutics, Inc. and the effectiveness of internal control over financial reporting of Five Prime Therapeutics, Inc. included in its Annual Report on Form 10-K for the year ended December 31, 2018, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Francisco, California
May 9, 2019