

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

**FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

TRACON PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

34-2037594
(I.R.S. Employer Identification No.)

4350 La Jolla Village Drive, Suite 800
San Diego, California
(Address of Principal Executive Offices)

92122
(Zip Code)

Amended and Restated 2015 Equity Incentive Plan
Amended and Restated 2015 Employee Stock Purchase Plan
(Full titles of the plans)

Charles P. Theuer, M.D., Ph.D.
President and Chief Executive Officer
TRACON Pharmaceuticals, Inc.
4350 La Jolla Village Drive, Suite 800
San Diego, California 92122
(858) 550-0780
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Scott B. Brown, CPA
Chief Financial Officer
TRACON Pharmaceuticals, Inc.
4350 La Jolla Village Drive, Suite 800
San Diego, California 92122
(858) 550-0780

Matthew T. Browne
Cooley LLP
4401 Eastgate Mall
San Diego, California 92121
(858) 550-6000

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.

Large accelerated filer
Non-accelerated filer

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 the Securities Act.

EXPLANATORY NOTE

This Registration Statement on Form S-8 (the “**Registration Statement**”) is being filed by TRACON Pharmaceuticals, Inc. (the “**Registrant**”) for the purpose of registering (i) an additional 972,295 shares of Registrant’s Common Stock, par value \$0.001 per share (“**Common Stock**”), under the Registrant’s Amended and Restated 2015 Equity Incentive Plan, as amended (the “**2015 Plan**”), pursuant to the provisions of the 2015 Plan providing for an automatic increase in the number of shares of Common Stock reserved and available for issuance under the 2015 Plan, and (ii) 194,459 additional shares of Common Stock under the Registrant’s Amended and Restated 2015 Employee Stock Purchase Plan, as amended (the “**2015 ESPP**”) pursuant to the provisions of the 2015 ESPP providing for an automatic increase in the number of shares of Common Stock reserved and available for issuance under the 2015 ESPP. These additional shares of Common Stock are securities of the same class as other securities for which a registration statement of the Registrant on Form S-8 relating to the 2015 Plan and 2015 ESPP are effective. In accordance with General Instruction E to Form S-8, the contents of the Registrant’s registration statements on Form S-8 filed with the Securities and Exchange Commission (the “**Commission**”) on [January 30, 2015](#) (File No. 333-201808), [February 19, 2016](#) (File No. 333-209592), [March 1, 2017](#) (File No. 333-216347), [March 1, 2018](#) (File No. 333-223333), [March 1, 2019](#) (File No. 333-229988), [February 28, 2020](#) (File No. 333-236732), [February 25, 2021](#) (File No. 333-253546) and [July 22, 2021](#) (File No. 333-258077) are hereby incorporated by reference.

INCORPORATION OF DOCUMENTS BY REFERENCE

Item 3. Incorporation of Certain Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed by the Registrant with the Commission:

(a) the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2021, filed with the Commission on [March 15, 2022](#); and

(b) the description of the Registrant’s Common Stock contained in the Registrant’s Registration Statement on Form 8-A (File No. 001-36818), filed with the Commission under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) on [January 27, 2015](#), including any amendments or reports filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities 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 of such documents. Notwithstanding the foregoing, unless specifically stated to the contrary, none of the information that the Registrant discloses under Items 2.02 or 7.01 of any Current Report on Form 8-K (and corresponding information furnished under Item 9.01 or included as an exhibit thereto or incorporated therein by reference) that it may from time to time furnish to the Commission will be incorporated by reference into, or otherwise included in, this Registration Statement.

Any statement, including financial statements, 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 herein or therein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 8.

Exhibits.

<u>Exhibit Number</u>	<u>Description of Document</u>
4.1(1)	<u>Amended and Restated Certificate of Incorporation.</u>
4.2(2)	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation of TRACON Pharmaceuticals, Inc.</u>
4.3(3)	<u>Amended and Restated Bylaws.</u>
4.4(4)	<u>Form of Common Stock Certificate.</u>
4.5(5)	<u>Registration Rights Agreement, dated October 18, 2019, by and between the Registrant and Aspire Capital Fund, LLC.</u>
4.6(6)	<u>First Amendment to Common Stock Purchase Agreement, dated April 29, 2020 between TRACON Pharmaceuticals, Inc. and Aspire Capital Fund, LLC.</u>
4.8(7)	<u>Securities Purchase Agreement, dated August 26, 2020, by and between TRACON Pharmaceuticals, Inc. and the purchaser listed on Exhibit A thereto (including the form of Pre-Funded Warrant).</u>
4.9(8)	<u>Securities Purchase Agreement, dated August 28, 2020, by and between TRACON Pharmaceuticals, Inc. and the purchasers listed on Exhibit A thereto (including the form of Pre-Funded Warrant).</u>
4.10(9)	<u>Securities Purchase Agreement, dated December 21, 2020, by and between TRACON Pharmaceuticals, Inc. and the purchasers listed on Exhibit A thereto.</u>
4.11(10)	<u>Securities Purchase Agreement, dated December 28, 2020, by and between TRACON Pharmaceuticals, Inc. and the purchaser listed on Exhibit A thereto.</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 signature page).</u>
99.1(11)	<u>TRACON Pharmaceuticals, Inc. 2015 Equity Incentive Plan and Forms of Stock Option Grant Notice, Stock Option Agreement, Notice of Exercise and Restricted Stock Unit Agreement thereunder, as amended June 28, 2021.</u>
99.2(12)	<u>TRACON Pharmaceuticals, Inc. Amended and Restated 2015 Employee Stock Purchase Plan, as amended June 10, 2021.</u>
107	<u>Filing Fee Table.</u>

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- (1) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on February 4, 2015.
 - (2) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on December 9, 2020.
 - (3) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on February 4, 2015.
 - (4) Incorporated by reference to the Registrant's Registration Statement on Form S-1 (File No. 333-201280), as amended.
 - (5) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on October 21, 2019.
 - (6) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on May 4, 2020.
 - (7) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on August 27, 2020.
 - (8) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on August 31, 2020.
 - (9) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on December 22, 2020.
 - (10) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on December 29, 2020.
 - (11) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on June 30, 2021.
 - (12) Incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on June 11, 2021.
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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 San Diego, State of California, on this 15th day of March, 2022.

TRACON PHARMACEUTICALS, INC.

By: /s/ Charles P. Theuer, M.D., Ph.D.
Charles P. Theuer, M.D., Ph.D.
President and Chief Executive Officer

POWER OF ATTORNEY

Know All Persons By These Presents, that each person whose signature appears below constitutes and appoints Dr. Charles P. Theuer, M.D., Ph.D., and Scott B. Brown, CPA, and each of them, as his or her true and lawful attorneys-in-fact and agents, each 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his 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 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/ Charles P. Theuer, M.D., Ph.D.</u> Charles P. Theuer, M.D., Ph.D.	President, Chief Executive Officer and Member of the Board of Directors <i>(Principal Executive Officer)</i>	March 15, 2022
<u>/s/ Scott B. Brown, CPA</u> Scott B. Brown, CPA	Chief Financial Officer <i>(Principal Accounting and Financial Officer)</i>	March 15, 2022
<u>/s/ Lisa Johnson-Pratt, M.D.</u> Lisa Johnson-Pratt, M.D.	Member of the Board of Directors	March 15, 2022
<u>/s/ Carol Lam, J.D.</u> Carol Lam, J.D.	Member of the Board of Directors	March 15, 2022
<u>/s/ William R. LaRue</u> William R. LaRue	Member of the Board of Directors	March 15, 2022
<u>/s/ Martin A. Mattingly, Pharm.D.</u> Martin A. Mattingly, Pharm.D.	Member of the Board of Directors	March 15, 2022
<u>/s/ Sandra Pelletier</u> Sandra Pelletier	Member of the Board of Directors	March 15, 2022
<u>/s/ J. Rainer Twiford, J.D., Ph.D.</u> J. Rainer Twiford, J.D., Ph.D.	Member of the Board of Directors	March 15, 2022
<u>/s/ Stephen T. Worland, Ph.D.</u> Stephen T. Worland, Ph.D.	Member of the Board of Directors	March 15, 2022



March 15, 2022

TRACON Pharmaceuticals, Inc.
4350 La Jolla Village Drive, Suite 800
San Diego, California 92122

Ladies and Gentlemen:

You have requested our opinion, as counsel to TRACON PHARMACEUTICALS, INC., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to 1,166,754 shares (the "**Shares**") of the Company's Common Stock, par value \$0.001 per share ("**Common Stock**"), consisting of (i) 972,295 shares of Common Stock issuable pursuant to the Company's Amended and Restated 2015 Equity Incentive Plan (the "**Incentive Plan**") and (ii) 194,459 shares of Common Stock issuable pursuant to the Company's Amended and Restated 2015 Employee Stock Purchase Plan (together with the Incentive Plan, the "**Plans**").

In connection with this opinion, we have examined and relied upon the Registration Statement and related prospectuses, the Plans, the Company's Certificate of Incorporation and Bylaws, each as currently in effect, and originals or copies certified to our satisfaction of such records, documents, 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 of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials, and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness of such documents. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified 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 Plans, 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).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Matthew Browne
Matthew Browne

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Amended and Restated 2015 Equity Incentive Plan and Amended and Restated 2015 Employee Stock Purchase Plan of TRACON Pharmaceuticals, Inc. of our report dated March 15, 2022, with respect to the consolidated financial statements of TRACON Pharmaceuticals, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2021, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Diego, California
March 15, 2022

Calculation of Filing Fee Table

Form S-8 (Form Type)

TRACON Pharmaceuticals, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.001 par value per share, to be issued pursuant to the Amended and Restated 2015 Equity Incentive Plan	Other ⁽²⁾	972,295 ⁽⁴⁾	\$2.45 ⁽²⁾	\$2,382,122.75	.0000927	\$220.82
Equity	Common Stock, \$0.001 par value per share, to be issued pursuant to the Amended and Restated 2015 Employee Stock Purchase Plan	Other ⁽³⁾	194,459 ⁽⁵⁾	\$2.08 ⁽³⁾	\$404,960.87	.0000927	\$37.54
Total Offering Amounts							—
Total Fees Previously Paid							—
Total Fee Offsets							—
Net Fee Due							\$258.36

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement includes such indeterminable number of additional shares of the registrant’s common stock, par value \$0.001 (the “Common Stock”), as may be issued as a result of an adjustment to the shares by reason of a stock split, stock dividend or similar capital adjustment, as required by the plans.
- (2) Estimated in accordance with Rules 457(c) and 457(h) promulgated under the Securities Act solely for purposes of calculating the registration fee. The proposed maximum aggregate offering price per share and proposed maximum aggregate offering price are calculated using the average of the high and low prices of the Common Stock as reported on the Nasdaq Capital Market on March 9, 2022.
- (3) Estimated in accordance with Rules 457(c) and 457(h) promulgated under the Securities Act solely for purposes of calculating the registration fee. The proposed maximum aggregate offering price per share and proposed maximum aggregate offering price are calculated using the average of the high and low prices of the Common Stock as reported on the Nasdaq Capital Market on March 9, 2022, multiplied by 85%.
- (4) Represents 972,295 shares of Common Stock that were automatically added to the shares authorized for issuance under the TRACON Pharmaceuticals, Inc. Amended and Restated 2015 Equity Incentive Plan, as amended June 28, 2021 (the “2015 EIP”), on January 1, 2022, pursuant to an “evergreen” provision contained in the 2015 EIP. Pursuant to such provision, on January 1 of each year until (and including) January 1, 2031, the number of shares authorized for issuance under the 2015 EIP is automatically increased by a number equal to: (a) 5.0% of the total number of shares of capital stock outstanding on December 31 of the preceding calendar year; or (b) a number of shares of Common Stock that may be determined each year by the registrant’s board of directors that is less than the preceding clause (a).
- (5) Represents 194,459 shares of Common Stock that were automatically added to the shares authorized for issuance under the TRACON Pharmaceuticals, Inc. Amended and Restated 2015 Employee Stock Purchase Plan, as amended June 10, 2021 (the “2015 ESPP”), on January 1, 2022, pursuant to an “evergreen” provision contained in the 2015 ESPP. Pursuant to such provision, on January 1 of each year until (and including) January 1, 2031, the number of shares authorized for issuance under the 2015 ESPP is automatically increased by a number equal to the least of: (a) 1.0% of the total number of shares of capital stock outstanding on December 31 of the preceding calendar year; (b) 250,000 shares of Common Stock; or (c) a number of shares of Common Stock that may be determined each year by the registrant’s board of directors that is less than the preceding clauses (a) and (b).