

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): **December 21, 2020**

TRACON Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-36818

(Commission File Number)

34-2037594

(IRS Employer Identification No.)

**4350 La Jolla Village Drive, Suite 800
San Diego, California**

(Address of principal executive offices)

92122

(Zip Code)

Registrant's telephone number, including area code: (858) 550-0780

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 Securities Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	TCON	The Nasdaq Stock Market LLC

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 8.01. Other Events.

On December 21, 2020, TRACON Pharmaceuticals, Inc. (the “Company”) entered into a securities purchase agreement (the “Purchase Agreement”) with certain institutional investors relating to the issuance and sale (the “Offering”) of 1,092,553 shares of its common stock, par value \$0.0001 per share (“Common Stock”) at a price per share of \$8.06. The aggregate gross proceeds to the Company from the Offering are expected to be approximately \$8.8 million. The Company did not engage an underwriter or placement agent in connection with the Offering.

The Offering is being made pursuant to an effective registration statement on Form S-3 (Registration Statement No. 333-229990), as previously filed with the Securities and Exchange Commission (the “SEC”), and a related prospectus.

The Purchase Agreement contains customary representations, warranties and agreements by the Company and customary conditions to closing. The representations, warranties and covenants contained in the Purchase Agreement were made only for purposes of the Purchase Agreement and as of a specific date, were solely for the benefit of the parties to the Purchase Agreement, and may be subject to limitations agreed upon by the parties.

The Purchase Agreement is filed as Exhibit 99.1 and the description of the terms of the Purchase Agreement is qualified in its entirety by reference to such exhibit. A copy of the opinion of Cooley LLP relating to the legality of the issuance and sale of the shares of Common Stock is attached as Exhibit 5.1 hereto.

Statements in this report that are not strictly historical in nature are forward-looking statements. These statements include but are not limited to statements related to the expected proceeds from and timing of the closing of the Offering. These statements are only predictions based on current information and expectations and involve a number of risks and uncertainties. Actual events or results may differ materially from those projected in any of such statements due to various factors, including the Company’s ability to satisfy the conditions to closing the Offering. For a discussion of these and other factors, please refer to the Company’s annual report on Form 10-K for the year ended December 31, 2019 as well as the Company’s subsequent filings with the SEC. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement and the Company undertakes no obligation to revise or update this report to reflect events or circumstances after the date hereof, except as required by law.

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

Exhibit No.	Description
5.1	Opinion of Cooley LLP
23.1	Consent of Cooley LLP (contained in Exhibit 5.1)
99.1	Securities Purchase Agreement, dated December 21, 2020, by and between TRACON Pharmaceuticals, Inc. and the purchasers listed on Exhibit A thereto

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 hereunto duly authorized.

TRACON Pharmaceuticals, Inc.

Dated: December 21, 2020

By: /s/ Charles P. Theuer, M.D., Ph.D.

Charles P. Theuer, M.D., Ph.D.

President and Chief Executive Officer



Sean M. Clayton
+1 858 550 6034
sclayton@cooley.com

December 21, 2020

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**"), with respect to certain matters in connection with the offering by the Company of 1,092,553 shares (the "**Shares**") of the Company's common stock, par value \$0.001, pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-229990) (the "**Registration Statement**"), filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**Act**"), the prospectus included within the Registration Statement (the "**Base Prospectus**"), and the prospectus supplement dated December 21, 2020, filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations of the Act (together with the Base Prospectus, the "**Prospectus**." The Shares are to be sold by the Company as described in the Registration Statement and the Prospectus.

In connection with this opinion, we have examined and relied upon the Registration Statement and Prospectus, the Company's Certificate of Incorporation and Bylaws, each as currently in effect, and the 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; and 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 by the Company where authorization, execution and delivery are a prerequisite to the effectiveness thereof. 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 herein is expressed solely 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 Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.



TRACON Pharmaceuticals, Inc.
December 21, 2020
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We consent to the reference to our firm under the caption “Legal Matters” in the Prospectus and to the filing of this opinion as an exhibit to a Current Report on Form 8-K to be filed with the Commission for incorporation by reference into the Registration Statement.

This opinion is expressed as of the date hereof, and we disclaim any responsibility to advise you of any changes in the facts stated or assumed herein or of any changes in applicable law.

Sincerely,

Cooley LLP

By: /s/ Sean M. Clayton
Sean M. Clayton

COOLEY LLP 4401 EASTGATE MALL SAN DIEGO, CA 92121
T: (858) 550-6000 F: (858) 550-6420 COOLEY.COM

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this “*Agreement*”), dated as of December 21, 2020, is made by and among TRACON PHARMACEUTICALS, INC., a Delaware corporation (the “*Company*”), and the Purchasers listed on Exhibit A hereto, together with their permitted transferees (each, a “*Purchaser*” and collectively, the “*Purchasers*”). The capitalized terms used herein and not otherwise defined have the meanings given them in Article 6.

AGREEMENT

In consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Purchasers (severally and not jointly) hereby agree as follows:

ARTICLE 1

PURCHASE AND SALE OF SECURITIES

1.1 Purchase and Sale of Securities. At the Closing, the Company will issue and sell to each Purchaser, and each Purchaser will, severally and not jointly, purchase from the Company, the number of shares of Common Stock (the “*Shares*” or “*Securities*”) set forth opposite such Purchaser’s name on Exhibit A hereto, at a purchase price of \$8.06 per Share (the “*Share Purchase Price*”). Each Purchaser’s aggregate purchase price for the Securities purchased by such Purchaser hereunder is referred to as the “*Aggregate Purchase Price*.”

1.2 Payment. At the Closing, each Purchaser will pay the Aggregate Purchase Price set forth opposite its name on Exhibit A hereto by wire transfer of immediately available funds in accordance with wire instructions provided by the Company to the Purchasers prior to the Closing. The Company will instruct its transfer agent to credit each Purchaser the number of Shares set forth on Exhibit A to each applicable Purchaser against delivery of the Aggregate Purchase Price promptly following the Closing Date.

1.3 Closing Date. The closing of the transaction contemplated by this Agreement (the “*Closing*”) will take place on December 22, 2020 (the “*Closing Date*”) and will be held remotely via the exchange of documents and signatures or at such other time and place as shall be agreed upon by the Company and the Purchasers hereunder of a majority in interest of the aggregate Shares to be purchased at the Closing.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as specifically contemplated by this Agreement or as disclosed in the Registration Statement and the Prospectus, the Company hereby represents and warrants to the Purchasers that:

2.1 Registration. The Company meets the requirements for use of Form S-3 under the Securities Act and has filed with the SEC a registration statement on such form (Registration File No. 333-229990), which became effective on October 8, 2019, for the registration under the Securities Act of the Securities. Such registration statement meets the requirements set forth in Rule 415(a)(1)(x) under the Securities Act and complies with said rule. The Company will file with the SEC pursuant to Rule 424(b) under the Securities Act, and the rules and regulations of the SEC promulgated thereunder, a prospectus supplement within the time period prescribed by Rule 424. Such registration statement, including the exhibits thereto, as amended at the date of this Agreement, is hereinafter called the “*Registration Statement*”; such prospectus in the form filed with the SEC on October 3, 2020, is hereinafter called the “*Base Prospectus*”; and the form of prospectus supplement, in the form in which it will be filed with the SEC pursuant to Rule 424(b) (including the Base Prospectus as so supplemented) related to the offer

of the Securities is hereinafter called the “**Prospectus Supplement**.” The Base Prospectus, as supplemented by the Prospectus Supplement, is hereinafter called the “**Prospectus**”. Any reference herein to the Registration Statement, the Base Prospectus, the Prospectus Supplement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein (the “**Incorporated Documents**”) pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the date of this Agreement, or the issue date of the Base Prospectus or the Prospectus Supplement, as the case may be; and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the date of this Agreement, or the issue date of the Base Prospectus or the Prospectus Supplement, as the case may be, deemed to be incorporated therein by reference. All references in this Agreement to financial statements and schedules and other information which is “contained,” “included,” “described,” “set forth” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be. No stop order suspending the effectiveness of the Registration Statement or the use of the Base Prospectus or the Prospectus Supplement has been issued, and no proceeding for any such purpose is pending or has been initiated or, to the Company’s knowledge, is threatened by the SEC.

2.2 Registration Statement and Prospectus. The Registration Statement contains all exhibits and schedules as required by the Securities Act and the rules and regulations of the SEC thereunder. Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the Securities Act and the Exchange Act and the applicable rules and regulations of the SEC and did not and, as amended or supplemented, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Base Prospectus and the Prospectus Supplement, each as of its respective date, complied in all material respects with the Securities Act and the Exchange Act and the applicable rules and regulations of the SEC. Each of the Base Prospectus and the Prospectus Supplement, as amended or supplemented, did not and will not contain as of the date thereof any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Incorporated Documents, when they were filed with the SEC, conformed in all material respects to the requirements of the Exchange Act and the applicable rules and regulations of the SEC and none of such Incorporated Documents, when they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, the Company makes no representations or warranties as to information, if any, contained in or omitted from the Prospectus Supplement or any amendment thereof or supplement thereto in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Purchaser specifically for use in the Registration Statement or the Prospectus Supplement.

2.3 Organization and Qualification. The Company is duly incorporated, validly existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to conduct its business as currently conducted as disclosed in the Registration Statement and Prospectus. The Company is duly qualified to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not reasonably be expected to have a Material Adverse Effect.

2.4 Authorization; Enforcement. The Company has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement, to consummate the transactions contemplated hereby and to issue the Securities in accordance with the terms hereof. The execution, delivery and performance of this Agreement by the Company and the consummation by it of the transactions contemplated hereby (including the issuance of the Securities) have been duly authorized by the Company’s Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its stockholders is required. This Agreement has been duly executed by the Company and constitutes a legal, valid and binding obligation of the Company enforceable

against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity and except as rights to indemnity and contribution may be limited by state or federal securities laws or public policy underlying such laws.

2.5 Capitalization. The authorized capital stock of the Company consists of 40,000,000 shares of Common Stock, \$0.001 par value per share, and 10,000,000 shares of Preferred Stock, \$0.001 par value per share. As of December 21, 2020, 13,684,753 shares of Common Stock were issued and outstanding and no shares of Preferred Stock were issued or outstanding. All of the issued and outstanding shares of Common Stock have been duly authorized, validly issued, fully paid, and nonassessable. Options to purchase an aggregate of 601,481 shares of Common Stock were outstanding as of December 21, 2020. The Company does not have outstanding any options to purchase, or any preemptive rights or other rights to subscribe for or to purchase, any securities or obligations convertible into, or any contracts or commitments to issue or sell, shares of its capital stock or any such options, rights, convertible securities or obligations other than awards and purchase rights granted under the Company's stock option plans and its employee stock purchase plan and warrants to purchase Common Stock described in the Registration Statement and Prospectus. The Company's Amended and Restated Certificate of Incorporation, as amended (the "**Certificate of Incorporation**"), as in effect on the date hereof, and the Company's Amended and Restated Bylaws (the "**Bylaws**") as in effect on the date hereof, are each filed as exhibits to the Registration Statement or Incorporated Documents.

2.6 Issuance of Securities. The Shares are duly authorized and, upon issuance in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable and will not be subject to preemptive rights or other similar rights of stockholders of the Company.

2.7 No Conflicts; Government Consents and Permits.

(a) The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby (including the issuance of the Securities) will not (i) conflict with or result in a violation of any provision of its Certificate of Incorporation or Bylaws or require the approval of the Company's stockholders, (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default under, any agreement, indenture, or instrument to which the Company is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including United States federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company, except in the case of clauses (ii) and (iii) only, for such conflicts, breaches, defaults, and violations as would not reasonably be expected to have a Material Adverse Effect.

(b) The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self-regulatory agency in order for it to execute, deliver or perform any of its obligations under this Agreement in accordance with the terms hereof, or to issue and sell the Securities in accordance with the terms hereof other than such as have been made or obtained, and except for any filings required to be made under federal or state securities laws after the date hereof, and any required filings or notifications regarding the issuance or listing of additional shares with Nasdaq.

(c) The Company has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it and as currently proposed to be conducted as disclosed in the Registration Statement and Prospectus, except for such franchise, permit, license or similar authority, the lack of which would not reasonably be expected to have a Material Adverse Effect. The Company has not received any actual notice of any proceeding relating to revocation or modification of any such franchise, permit, license, or similar authority except where such revocation or modification would not reasonably be expected to have a Material Adverse Effect.

2.8 Financial Statements; Material Agreements. As of their respective dates, the Financial Statements and the related notes compiled as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. The Financial Statements and the related notes have been prepared in accordance with accounting principles generally accepted in the United States, consistently applied, during the periods involved (except (a) as may be otherwise indicated in the Financial Statements or the notes thereto, or (b) in the case of unaudited interim statements, to the extent they may not include footnotes, may be condensed or summary statements or may conform to the SEC's rules and instructions for Quarterly Reports on Form 10-Q) and fairly present in all material respects the consolidated financial position of the Company as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments). All material agreements that were required to be filed as exhibits to Company's most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K under Item 601(b)(10) of Regulation S-K (collectively, the "**Material Agreements**") to which the Company or any Subsidiary of the Company is a party, or the property or assets of the Company or any Subsidiary of the Company are subject, have been filed as exhibits to the Registration Statement or the Incorporated Documents. All Material Agreements are valid and enforceable against the Company in accordance with their respective terms, except (i) as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting creditors' and contracting parties' rights generally, and (ii) as enforceability may be subject to general principles of equity and except as rights to indemnity and contribution may be limited by state or federal securities laws or public policy underlying such laws. The Company is not in breach of or default under any of the Material Agreements, and to the Company's knowledge, no other party to a Material Agreement is in breach of or default under such Material Agreement, except in each case, for such breaches or defaults as would not reasonably be expected to have a Material Adverse Effect. The Company has not received a notice of termination nor is the Company otherwise aware of any threats to terminate any of the Material Agreements.

2.9 Disclosure Controls and Procedures. The Company has established and maintains disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and the Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by the most recently filed quarterly or annual periodic report under the Exchange Act (such date, the "**Evaluation Date**"). Since the Evaluation Date, there have been no significant changes in the Company's internal control over financial reporting (as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal control over financial reporting.

2.10 Accounting Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management's general or specific authorization, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets, (c) access to assets is permitted only in accordance with management's general or specific authorization, and (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

2.11 Absence of Litigation. As of the date hereof, there is no action, suit, proceeding or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the Company's knowledge, threatened against the Company that if determined adversely to the Company would reasonably be expected to have a Material Adverse Effect or would reasonably be expected to impair the ability of the Company to perform its obligations under this Agreement. To the knowledge of the Company, there is not pending or contemplated any investigation by the SEC of the Company or any director or executive officer of the Company. The Company has not received any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Securities Act and, to the Company's knowledge, the SEC has not issued any such order.

2.12 Intellectual Property Rights. The Company owns or possesses, or has a reasonable basis on which it believes it can obtain on reasonable terms, licenses or sufficient rights to use all patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights necessary to enable it to conduct its business as conducted as of the date hereof and, to its knowledge, as proposed to be conducted as described in the Registration Statement and Prospectus. As used in this Agreement, the “**Intellectual Property**” means all patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights necessary to enable the Company to conduct its business as conducted as of the date hereof and, to its knowledge, as proposed to be conducted as described in the Registration Statement and Prospectus. To the Company’s knowledge, the Company has not infringed the intellectual property rights of third parties and no third party, to the Company’s knowledge, is infringing the Intellectual Property, in each case, which could reasonably be expected to result in a Material Adverse Effect. There are no material options, licenses or agreements relating to the Intellectual Property that are not described in the Registration Statement and Prospectus, nor is the Company bound by or a party to any material options, licenses or agreements relating to the patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names or copyrights of any other Person that are not described in the Registration Statement and Prospectus. There is no material claim or action or proceeding pending or, to the Company’s knowledge, threatened that challenges any of the rights of the Company in or to, or otherwise with respect to, any Intellectual Property.

2.13 Investment Company. The Company is not and, after giving effect to the offering and sale of the Securities, will not be an “investment company” as such term is defined in the Investment Company Act of 1940, as amended (the “**Investment Company Act**”). The Company has no commitments or plans with respect to operating its business that would cause it to become subject to the Investment Company Act.

2.14 No Material Adverse Change. Since December 31, 2019, except as described or referred to in the Registration Statement and Prospectus and except for cash expenditures in the ordinary course of business, there has not been any change in the assets, business, properties, financial condition or results of operations of the Company that would reasonably be expected to have a Material Adverse Effect. Since December 31, 2019, (a) there has not been any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, (b) the Company has not sustained any material loss or interference with the Company’s business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, and (c) the Company has not incurred any material liabilities except in the ordinary course of business.

2.15 The Nasdaq Capital Market. The Common Stock is listed on The Nasdaq Capital Market, and to the Company’s knowledge, there are no proceedings to revoke or suspend such listing. The Company is in material compliance with the requirements of Nasdaq for continued listing of the Common Stock thereon and any other Nasdaq listing and maintenance requirements.

2.16 Accountants. Ernst & Young LLP, which has expressed its opinion with respect to the audited financial statements included as a part of the Registration Statement and Prospectus, are independent accountants as required by the Securities Act.

2.17 Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary for a company (a) in the businesses and location in which the Company is engaged, (b) with the resources of the Company, and (c) at a similar stage of development as the Company. The Company has not received any written notice that the Company will not be able to renew its existing insurance coverage as and when such coverage expires. The Company believes it will be able to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business.

2.18 Foreign Corrupt Practices. Since January 1, 2017, neither the Company, nor to the Company's knowledge, any director, officer, agent, employee or other Person acting on behalf of the Company has, in the course of its actions for, or on behalf of, the Company (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity, (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (c) violated or is in violation of in any material respect any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or (d) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

2.19 Taxes. The Company has filed (or has obtained an extension of time within which to file) all necessary federal, state and foreign income and franchise tax returns and has paid all taxes shown as due on such tax returns, except where the failure to so file or the failure to so pay would not reasonably be expected to have a Material Adverse Effect.

2.20 Real and Personal Property. The Company has good and marketable title to, or has valid rights to lease or otherwise use, all items of real and personal property that are material to the business of the Company free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (a) do not materially interfere with the use of such property by the Company or (b) would not reasonably be expected to have a Material Adverse Effect.

2.21 No Manipulation of Stock. The Company has not taken, directly or indirectly, any action designed to stabilize or manipulate the price of the Common Stock or any security of the Company to facilitate the sale or resale of any of the Shares.

2.22 Related Party Transactions. Except with respect to the transactions (a) that are not required to be disclosed and (b) contemplated hereby, all transactions that have occurred between or among the Company, on the one hand, and any of its officers or directors, or any affiliate or affiliates of any such officer or director, on the other hand, prior to the date hereof have been disclosed in the Registration Statement and Prospectus to the extent required to be disclosed by the Securities Act or Exchange Act, as the case may be.

ARTICLE 3

PURCHASER'S REPRESENTATIONS AND WARRANTIES

Each Purchaser represents and warrants to the Company, severally and not jointly, with respect to itself and its purchase hereunder, that:

3.1 Governmental Review. The Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities or an investment therein.

3.2 Authorization; Enforcement. The Purchaser has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The Purchaser has taken all necessary action to authorize the execution, delivery and performance of this Agreement. Upon the execution and delivery of this Agreement, this Agreement shall constitute a valid and binding obligation of the Purchaser enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity and except as rights to indemnity and contribution may be limited by state or federal securities laws or public policy underlying such laws.

3.3 Residency. Unless the Purchaser has otherwise notified the Company in writing, the Purchaser is a resident of the jurisdiction set forth immediately below such Purchaser's name on the signature pages hereto.

3.4 Foreign Purchasers. If any Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended) or is a U.S. subsidiary or affiliate of a foreign parent company (a "**Foreign Purchaser**"), each such Foreign Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (a) the legal requirements within its jurisdiction for the purchase of the Securities, (b) any foreign exchange restrictions applicable to such purchase, (c) any government or other consents that may need to be obtained, and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Securities. Each Foreign Purchaser further represents that either (i) it does not now, nor will it after the Closing, hold 10% or greater, directly or indirectly, of the voting interest in the Company or (ii) if it does or will, such Foreign Purchaser shall notify the Company and shall provide such information as the Company may reasonably request to comply with state, federal, or local regulations. The Company's offer and sale and the Foreign Purchaser's subscription and payment for and continued beneficial ownership of the Securities will not violate any applicable securities or other laws of the Foreign Purchaser's jurisdiction.

3.5 Purchaser Ownership. Assuming that the Company's representations in Section 2.5 with respect to the number of outstanding shares of Common Stock are accurate as of the Closing, the Purchaser will not beneficially own more than 19.99% of the Common Stock immediately following the Closing. For purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act.

ARTICLE 4

COVENANTS

4.1 Expenses. The Company and each Purchaser is liable for, and will pay, its own expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement, including, without limitation, attorneys' and consultants' fees and expenses.

4.2 Financial Information. The financial statements of the Company to be included in any documents filed with the SEC will be prepared in accordance with accounting principles generally accepted in the United States, consistently applied (except (a) as may be otherwise indicated in such financial statements or the notes thereto, or (b) in the case of unaudited interim statements, to the extent they may not include footnotes, may be condensed or summary statements or may conform to the SEC's rules and instructions for Quarterly Reports on Form 10-Q), and will fairly present in all material respects the consolidated financial position of the Company and consolidated results of its operations and cash flows as of, and for the periods covered by, such financial statements (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments).

4.3 Securities Laws Disclosure. On or before 9:00 a.m., New York local time, on the Business Day following the date hereof, the Company shall issue a press release and/or Current Report on Form 8-K announcing the signing of this Agreement and describing the material terms of the transactions contemplated by this Agreement.

ARTICLE 5

CONDITIONS TO CLOSING

5.1 Conditions to Obligations of the Company. The Company's obligation to complete the purchase and sale of the Securities to be purchased and sold at the Closing and deliver such Securities to each Purchaser is subject to the waiver by the Company or fulfillment as of the Closing Date of the following conditions:

(a) **Receipt of Funds.** The Company shall have received immediately available funds in the full amount of the Aggregate Purchase Price for the Securities being purchased hereunder as set forth opposite such Purchaser's name on **Exhibit A** hereto.

(b) **Representations and Warranties.** The representations and warranties made by each Purchaser in Article 3 shall be true and correct in all respects as of the Closing Date.

(c) **Covenants.** All covenants, agreements and conditions contained in this Agreement to be performed by the Purchasers on or prior to the Closing Date shall have been performed or complied with in all material respects.

(d) **Nasdaq Qualification.** The Shares to be issued shall be duly authorized for listing by Nasdaq, subject to official notice of issuance, to the extent required by the rules of Nasdaq.

(e) **Absence of Litigation.** No proceeding challenging this Agreement or the transactions contemplated hereby, or seeking to prohibit, alter, prevent or materially delay the Closing, shall have been instituted or be pending before any court, arbitrator, governmental body, agency or official.

(f) **No Governmental Prohibition.** The sale of the Securities by the Company shall not be prohibited by any law or governmental order or regulation.

5.2 **Conditions to Purchasers' Obligations at the Closing.** Each Purchaser's obligation to complete the purchase and sale of the Securities is subject to the waiver by such Purchaser or fulfillment as of the Closing Date of the following conditions:

(a) **Representations and Warranties.** The representations and warranties made by the Company in Article 2 shall be true and correct in all material respects as of the Closing Date.

(b) **Covenants.** All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with in all material respects.

(c) **Nasdaq Qualification.** The Shares shall be duly authorized for listing by Nasdaq, subject to official notice of issuance, to the extent required by the rules of Nasdaq.

(d) **Absence of Litigation.** No proceeding challenging this Agreement or the transactions contemplated hereby, or seeking to prohibit, alter, prevent or materially delay the Closing, shall have been instituted or be pending before any court, arbitrator, governmental body, agency or official.

(e) **No Governmental Prohibition.** The sale of the Securities by the Company shall not be prohibited by any law or governmental order or regulation.

ARTICLE 6

DEFINITIONS

6.1 **"Aggregate Purchase Price"** has the meaning set forth in Section 1.1.

6.2 **"Agreement"** has the meaning set forth in the preamble.

6.3 “**Affiliate**” means, with respect to any Person, any other Person controlling, controlled by or under direct or indirect common control with such Person (for the purposes of this definition “**control**,” when used with respect to any specified Person, shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” shall have meanings correlative to the foregoing).

6.4 “**Base Prospectus**” has the meaning set forth in Section 2.1

6.5 “**Business Day**” means a day Monday through Friday on which banks are generally open for business in New York City.

6.6 “**Bylaws**” has the meaning set forth in Section 2.5.

6.7 “**Certificate of Incorporation**” has the meaning set forth in Section 2.5.

6.8 “**Closing**” has the meaning set forth in Section 1.3.

6.9 “**Closing Date**” has the meaning set forth in Section 1.3.

6.10 “**Common Stock**” means the common stock, par value \$0.001 per share, of the Company.

6.11 “**Company**” means TRACON Pharmaceuticals, Inc.

6.12 “**Evaluation Date**” has the meaning set forth in Section 2.9.

6.13 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

6.14 “**Financial Statements**” means the financial statements of the Company included in the Incorporated Documents.

6.15 “**Financing**” has the meaning set forth in Section 7.13.

6.16 “**Foreign Purchaser**” has the meaning set forth in Section 3.4.

6.17 “**Incorporated Documents**” has the meaning set forth in Section 2.1.

6.18 “**Intellectual Property**” has the meaning set forth in Section 2.12.

6.19 “**Investment Company Act**” has the meaning set forth in Section 2.13.

6.20 “**Material Adverse Effect**” means a material adverse effect on (a) the business, operations, assets or financial condition of the Company, taken as a whole, or (b) the ability of the Company to perform its obligations pursuant to the transactions contemplated by this Agreement.

6.21 “**Material Agreements**” has the meaning set forth in Section 2.8.

6.22 “**Nasdaq**” means The Nasdaq Stock Market LLC.

6.23 “**Person**” means any person, individual, corporation, limited liability company, partnership, trust or other nongovernmental entity or any governmental agency, court, authority or other body (whether foreign, federal, state, local or otherwise).

- 6.24 “**Prospectus**” has the meaning set forth in Section 2.1.
- 6.25 “**Prospectus Supplement**” has the meaning set forth in Section 2.1.
- 6.26 “**Purchasers**” mean the Purchasers whose names are set forth on the signature pages of this Agreement, and their permitted transferees.
- 6.27 “**Registration Statement**” has the meaning set forth in Section 2.1.
- 6.28 “**SEC**” means the United States Securities and Exchange Commission.
- 6.29 “**Securities**” has the meaning set forth in Section 1.1.
- 6.30 “**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute.
- 6.31 “**Share Purchase Price**” has the meaning set forth in Section 1.1.
- 6.32 “**Shares**” has the meaning set forth in Section 1.1.
- 6.33 “**Subsidiary**” of any Person shall mean any corporation, partnership, limited liability company, joint venture or other legal entity of which such Person (either above or through or together with any other subsidiary) owns, directly or indirectly, more than 50% of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

ARTICLE 7

GOVERNING LAW; MISCELLANEOUS

7.1 **Governing Law; Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New York without regard to the principles of conflict of laws.

7.2 **Counterparts; Signatures by Facsimile.** This Agreement may be executed in two or more counterparts, all of which are considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other parties. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile or e-mail transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

7.3 **Headings.** The headings of this Agreement are for convenience of reference only, are not part of this Agreement and do not affect its interpretation.

7.4 **Severability.** If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision will be deemed modified in order to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law will not affect the validity or enforceability of any other provision hereof.

7.5 **Entire Agreement; Amendments.** This Agreement (including all schedules and exhibits hereto) constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the

subject matter hereof. This Agreement and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the Company and either (a) Purchasers holding Securities representing a majority of the number of shares of Common Stock issued or issuable pursuant to this Agreement; *provided, however*, that such modification, amendment or waiver is made with respect to all Purchasers and does not adversely affect the Purchaser in a manner different than all other holders of Securities, or (b) the Purchaser to be charged with enforcement of such modification, amendment or waiver. Any amendment or waiver by a party effected in accordance with this Section 7.5 shall be binding upon such party, including with respect to any Securities purchased under this Agreement at the time outstanding and held by such party (including securities into which such Securities are convertible and for which such Securities are exercisable) and each future holder of all such securities.

7.6 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed email, telex or facsimile if sent during normal business hours of the recipient, if not, then on the next Business Day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one Business Day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. The addresses for such communications are:

If to the Company: TRACON Pharmaceuticals, Inc.
4350 La Jolla Village Drive
Suite 800
San Diego, CA 92122
Attn: Chief Executive Officer

With a copy to Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Attn: Sean Clayton

If to a Purchaser: To the address set forth immediately below such Purchaser's name on the signature pages hereto. Each party will provide ten days' advance written notice to the other parties of any change in its address.

7.7 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. The Company will not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers, and no Purchaser may assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company.

7.8 Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto, their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

7.9 Further Assurances. Each party will do and perform, or cause to be done and performed, all such further acts and things, and will execute and deliver all other agreements, certificates, instruments and documents, as another party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

7.10 No Strict Construction. The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

7.11 Equitable Relief. The Company recognizes that, if it fails to perform or discharge any of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the Purchasers. The Company therefore agrees that the Purchasers are entitled to seek temporary and permanent injunctive relief in any

such case. Each Purchaser also recognizes that, if it fails to perform or discharge any of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the Company. Each Purchaser therefore agrees that the Company is entitled to seek temporary and permanent injunctive relief in any such case.

7.12 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement. Nothing contained herein and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group, or are deemed affiliates with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

7.13 Waiver of Conflicts. Each Purchaser acknowledges that Cooley LLP, outside general counsel to the Company, has in the past performed and is or may now or in the future represent one or more Purchasers or their affiliates in matters unrelated to the transactions contemplated by this Agreement (the "**Financing**"), including representation of such Purchasers or their affiliates in matters of a similar nature to the Financing. The applicable rules of professional conduct require that Cooley LLP inform the Purchasers hereunder of this representation and obtain their consent. Cooley LLP has served as outside general counsel to the Company and has negotiated the terms of the Financing solely on behalf of the Company. Each Purchaser hereby (a) acknowledges that they have had an opportunity to ask for and have obtained information relevant to such representation, including disclosure of the reasonably foreseeable adverse consequences of such representation, (b) acknowledges that with respect to the Financing, Cooley LLP has represented solely the Company, and not any Purchaser or any stockholder, director or employee of the Company or any Purchaser, and (c) gives its informed consent to Cooley LLP's representation of the Company in the Financing.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Securities Purchase Agreement to be duly executed as of the date first above written.

TRACON Pharmaceuticals, Inc.

By: /s/ Charles P. Theuer, M.D., Ph.D.

Name: Charles P. Theuer, M.D., Ph.D.

Title: President and Chief Executive Officer

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, the undersigned has caused this Securities Purchase Agreement to be duly executed as of the date first above written.

PURCHASER:

OPALEYE MANAGEMENT INC.

By: /s/ James Silverman

Name: James Silverman

Title: Founder/Partner

PURCHASER:

FIVET CAPITAL

By: /s/ Johannes Minho Roth

Name: Johannes Minho Roth

Title: Authorized Person

PURCHASER:

ASPIRE CAPITAL FUND, LLC

By: /s/ Steven G. Martin

Name: Steven G. Martin

Title: President, SGM Holdings CORP,
Managing Member, Aspire Capital Partners, LLC,
Managing Member, Aspire Capital Fund, LLC

PURCHASER:

WATERMILL ASSET MANAGEMENT CORP.

By: /s/ Robert W. Postma

Name: Robert W. Postma

Title: President

[Signature Page to Securities Purchase Agreement]

EXHIBIT A

SCHEDULE OF PURCHASERS

Purchaser	Shares	Aggregate Purchase Price
Opaley Management Inc.	496,277	\$3,999,992.62
FiveT Capital	248,138	1,999,992.28
Aspire Capital Fund, LLC	248,138	1,999,992.28
Watermill Asset Management Corp.	100,000	806,000.00
Total	1,092,553	\$8,805,977.18