

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

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Outlook Therapeutics, Inc.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of Incorporation or organization)

38-3982704

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

7 Clarke Drive

Cranbury, New Jersey

(Address of principal executive offices)

08512

(Zip code)

2015 Equity Incentive Plan

(Full title of the plan)

Lawrence A. Kenyon

President, Chief Executive Officer and Chief Financial Officer

Outlook Therapeutics, Inc.

7 Clarke Drive

Cranbury, New Jersey 08512

(Name and address of agent for service)

(609) 619-3990

(Telephone number, including area code, of agent for service)

Copies to:

Yvan-Claude Pierre

Marianne C. Sarrazin

Pia Kaur

Cooley LLP

55 Hudson Yards

New York, New York 10001

(212) 479-6000

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.

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
Common Stock, par value \$0.01 per share, reserved for issuance pursuant to the 2015 Equity Incentive Plan, as amended	1,152,928 ⁽²⁾⁽³⁾	\$ 1.02	\$ 1,175,986.56	\$ 152.64

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of common stock, par value \$0.01 (the "Common Stock") of Outlook Therapeutics, Inc. (the "Registrant"), that become issuable under the 2015 Equity Incentive Plan, as amended ("2015 EIP"), set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected that results in an increase to the number of outstanding shares of Common Stock.
- (2) Represents 1,152,928 shares of Common Stock reserved for future issuance under the 2015 EIP by reason of the automatic increase provision of the 2015 EIP.
- (3) The number of shares of Common Stock reserved for issuance under the 2015 EIP automatically increases on January 1st each year, starting on

January 1, 2017 and continuing through January 1, 2026, by the lesser of (A) 3% of the total number of shares of Common Stock outstanding on December 31st of the immediately preceding calendar year, (B) 1,760,000 and (C) a number determined by the Registrant's board of directors.

(4) Estimated in accordance with Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee on the basis of the average of the high (\$1.03) and low (\$1.00) sale prices of the Registrant's Common Stock as reported on The Nasdaq Capital Market on February 10, 2020, which is a date within five business days prior to filing this Registration Statement.

EXPLANATORY NOTE

The Registrant is filing this registration statement on Form S-8 (the “**Registration Statement**”) for the purpose of registering an additional 1,152,928 shares of its Common Stock issuable to eligible persons under the 2015 EIP, which Common Stock is in addition to the shares of Common Stock registered on the Registrant’s Form S-8s filed on May 13, 2016 (File No. 333-211362), February 15, 2017 (File No. 333-216081), February 15, 2018 (File No. 333-223064), February 14, 2019 (File No. 333-229685), and September 30, 2019 (File No. 333-234024) (the “**Prior Form S-8s**”).

PART II

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

Pursuant to General Instruction E to Form S-8, the contents of the Prior Form S-8s filed by the Registrant are incorporated by reference herein. In addition, the following documents filed by the Registrant with the Securities and Exchange Commission (“**SEC**”) are incorporated by reference into this Registration Statement:

- (a) The Registrant’s latest annual report on Form 10-K, filed with the SEC on [December 19, 2019](#);
- (b) The Registrant’s quarterly report on Form 10-Q, filed with the SEC on [February 14, 2020](#);
- (c) The Registrant’s current reports on Form 8-K, filed with the SEC on [December 6, 2019](#), [December 19, 2019](#), [December 23, 2019](#), [January 23, 2020](#), and [January 31, 2020](#);
- (d) The description of the Registrant’s Common Stock contained in the Registrant’s registration statement on Form 8-A filed with the SEC on [April 29, 2016](#), including any [amendments](#) or reports filed for the purpose of updating such description; and
- (e) All documents, reports and definitive proxy or information statements filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. 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 herein or in any subsequently filed document that also 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

Exhibit Number	Description
4.1	Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's current report on Form 8-K, filed with the SEC on May 19, 2016).
4.2	Certificate of Designation of Series A-1 Convertible Preferred Stock of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's current report on Form 8-K filed with the SEC on July 19, 2018).
4.3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's current report on Form 8-K filed with the SEC on December 6, 2018).
4.4	Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's current report on Form 8-K, filed with the SEC on May 19, 2016).
4.5	Amendment to the Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's current report on Form 8-K, filed with the SEC on November 29, 2016).
5.1	Opinion of Cooley LLP
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Cooley LLP (included in Exhibit 5.1)
24.1	Power of Attorney (see signature page hereto)
99.1	2015 Equity Incentive Plan, as amended (incorporated by reference to Exhibit 99.1 to the Registrant's current report on Form 8-K filed with the SEC on September 13, 2019).
99.2	Forms of agreements and award grant notices under 2015 Equity Incentive Plan, as amended (incorporated by reference to Exhibit 10.4 to the Registrant's registration statement on Form S-1 (File No. 333-209011), filed with the SEC on January 15, 2016).

ITEM 9. UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Cranbury, New Jersey, on February 14, 2020.

Outlook Therapeutics, Inc.

By: /s/ Lawrence A. Kenyon
Lawrence A. Kenyon
President, Chief Executive Officer and Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Lawrence A. Kenyon and Ralph H. Thurman, and each 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 each of them, or their or his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ralph H. Thurman</u> Ralph H. Thurman	Executive Chairman	February 14, 2020
<u>/s/ Lawrence A. Kenyon</u> Lawrence A. Kenyon	President and Chief Executive Officer, Chief Financial Officer, Treasurer, Secretary and Director <i>(Principal Executive and Accounting and Financial Officer)</i>	February 14, 2020
<u>/s/ Yezan Haddadin</u> Yezan Haddadin	Director	February 14, 2020
<u>/s/ Kurt J. Hilzinger</u> Kurt J. Hilzinger	Director	February 14, 2020
<u>/s/ Faisal Sukhtian</u> Faisal Sukhtian	Director	February 14, 2020



Yvan-Claude Pierre
+1 212 479 6721
ypierre@cooley.com

February 14, 2020

Outlook Therapeutics, Inc.
7 Clarke Drive
Cranbury, New Jersey 08512

Ladies and Gentlemen:

We have represented Outlook Therapeutics, 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 1,152,928 shares (the “**2015 Plan Shares**”) of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), pursuant to the Company’s 2015 Equity Incentive Plan, as amended (the “**Plan**”).

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the related prospectuses, (b) the Company’s Amended and Restated Certificate of Incorporation, as amended, and the Company’s Amended and Restated Bylaws, as amended, each as currently in effect as of the date hereof, (c) the Plan and (d) 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 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 an officer 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 Plan, the Registration Statement and the related prospectus, 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/Yvan-Claude Pierre
Yvan-Claude Pierre

55 Hudson Yards, New York, NY 10001-2157, Phone: (212) 479-6000, Fax: (212) 479-6275

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Outlook Therapeutics, Inc.:

We consent to the use of our report incorporated by reference herein.

Our report dated December 19, 2019 contains an explanatory paragraph that states that Outlook Therapeutics, Inc. has incurred recurring losses and negative cash flows from operations since inception and has a stockholders' deficit of \$16.1 million, \$6.7 million of convertible senior secured notes that become due on December 22, 2019, \$3.6 million of unsecured indebtedness due on demand and \$1.0 million of unsecured indebtedness also due on demand, but subject to a forbearance agreement through March 2020, that raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ KPMG LLP

Philadelphia, Pennsylvania
February 14, 2020
