

ESPERION THERAPEUTICS, INC.

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 02/22/17

Address	3891 RANCHERO DRIVE, SUITE 150 ANN ARBOR, MI 48108
Telephone	734-887-3903
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SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

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

FORM S-8

**REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

ESPERION THERAPEUTICS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

26-1870780
(I.R.S. Employer Identification No.)

Esperion Therapeutics, Inc.
3891 Ranchero Drive, Suite 150
Ann Arbor, MI 48108
(Address of Principal Executive Offices)

Amended and Restated Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan
(Full Title of the Plans)

Tim M. Mayleben
President and Chief Executive Officer
Esperion Therapeutics, Inc.
3891 Ranchero Drive, Suite 150
Ann Arbor, MI 48108
(Name and Address of Agent For Service)

(734) 887-3903
(Telephone Number, Including Area Code, of Agent For Service)

Copy to:

Mitchell S. Bloom, Esq.
Arthur R. McGivern, Esq.
Goodwin Procter LLP
Exchange Place
53 State Street
Boston, Massachusetts 02109
(617) 570-1000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value per share	563,885 shares (3)	\$ 20.78	\$ 11,717,530	\$ 1,358

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall also cover any additional shares of common stock which become issuable under the Registrant's Amended and Restated 2013 Stock Option and Incentive Plan (the "Plan") by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of the Registrant's outstanding shares of common stock.

- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) of the Securities Act, and based on the average of the high and low sale prices of the Registrant's common stock, as quoted on the Nasdaq Global Market, on February 15, 2017.
 - (3) Represents an automatic increase to the number of shares available for issuance under the Plan, effective January 1, 2017. Shares available for issuance under the Plan were previously registered on registration statements on Form S-8 filed with the Securities and Exchange Commission on December 22, 2015 (Registration No. 333-208702), August 6, 2015 (Registration No. 333-206180), January 6, 2015 (Registration No. 333-201387), March 13, 2014 (Registration No. 333-194536), and July 1, 2013 (Registration No. 333-189738).
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EXPLANATORY NOTE

This Registration Statement on Form S-8 registers additional shares of Common Stock under the Registrant's Amended and Restated 2013 Stock Option and Incentive Plan (the "Plan"). The number of shares of Common Stock reserved and available for issuance under the Plan is subject to an automatic annual increase on each January 1, beginning in 2016, by an amount equal to two and a half percent of the number of shares of Common Stock issued and outstanding on the immediately preceding December 31 or such lesser number of shares of Common Stock as determined by the Administrator (as defined in the Plan). Accordingly, on January 1, 2017, the number of shares of Common Stock reserved and available for issuance under the Plan increased by 563,885. This Registration Statement registers these additional 563,885 shares of Common Stock. The additional shares are of the same class as other securities relating to the Plan for which the Registrant's registration statement filed on Form S-8 (Registration No. 333-189738) on July 1, 2013, is effective. The information contained in the Registrant's registration statement on Form S-8 (Registration No. 333-189738) is hereby incorporated by reference pursuant to General Instruction E.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits.

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this registration statement on Form S-8, which Exhibit Index is incorporated herein by reference.

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 Ann Arbor, State of Michigan, on the 22nd day of February, 2017.

ESPERION THERAPEUTICS, INC.

By: /s/ Tim M. Mayleben
Tim M. Mayleben
President, Chief Executive Officer and Director

POWER OF ATTORNEY AND SIGNATURES

We, the undersigned officers and directors of Esperion Therapeutics, Inc., hereby severally constitute and appoint Tim M. Mayleben and Richard B. Bartram, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him or her and in his or her name, place and stead, and in any and all capacities, to sign for us and in our names in the capacities indicated below any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, 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 or necessary to be done in and about the premises, as full to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, 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 date indicated below.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Tim M. Mayleben</u> Tim M. Mayleben	President, Chief Executive Officer and Director (Principal Executive Officer and Principal Financial Officer)	February 22, 2017
<u>/s/ Richard B. Bartram</u> Richard B. Bartram	Vice President, Finance (Principal Accounting Officer)	February 22, 2017
<u>/s/ Scott Braunstein, M.D.</u> Scott Braunstein, M.D.	Director	February 22, 2017
<u>/s/ Dov A. Goldstein, M.D.</u> Dov A. Goldstein, M.D.	Director	February 22, 2017
<u>/s/ Antonio M. Gotto, Jr., M.D., D.Phil</u> Antonio M. Gotto, Jr., M.D., D.Phil	Director	February 22, 2017
<u>/s/ Daniel Janney</u> Daniel Janney	Director	February 22, 2017
<u>/s/ Mark E. McGovern, M.D.</u> Mark E. McGovern, M.D.	Director	February 22, 2017

/s/ Roger S. Newton, Ph.D., FAHA, FACN
Roger S. Newton, Ph.D., FAHA, FACN

Director

February 22, 2017

/s/ Gilbert Omenn, M.D., Ph.D.
Gilbert Omenn, M.D., Ph.D.

Director

February 22, 2017

/s/ Nicole Vitullo
Nicole Vitullo

Director

February 22, 2017

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1	Specimen common stock certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-188595)) filed on June 12, 2013.
4.2	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-188595)) filed on June 12, 2013.
4.3	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.4 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-188595)) filed on June 7, 2013.
4.4	Form of Warrant to Purchase Preferred Stock dated September 4, 2012 (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-188595)) filed on May 14, 2013.
4.5	Investor Rights Agreement by and between the Registrant and certain of its stockholders dated April 28, 2008 (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-188595)) filed on May 14, 2013.
4.6	Amendment No. 1 to Investor Rights Agreement by and between the Registrant and certain of its stockholders dated April 11, 2013 (incorporated by reference to Exhibit 4.5 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-188595)) filed on May 14, 2013.
4.7	Registration Rights and Securityholder Agreement by and between the Registrant and Pfizer Inc. dated April 28, 2008 (incorporated by reference to Exhibit 4.6 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-188595)) filed on May 14, 2013.
5.1*	Opinion of Goodwin Procter LLP
23.1*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
23.2	Consent of Goodwin Procter LLP (included in Exhibit 5.1)
24.1*	Power of Attorney (included on signature page)
99.1	Amended and Restated 2013 Stock Option and Incentive Plan and forms of agreements thereunder (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q, filed on November 3, 2016).

* Filed herewith.

February 22, 2017

Esperion Therapeutics, Inc.
3891 Rancho Drive, Suite 150
Ann Arbor, MI 48108

Re: Securities Being Registered under Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-8 (the "Registration Statement") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), on or about the date hereof relating to an aggregate of 563,885 shares (the "Shares") of Common Stock, \$0.001 par value per share, of Esperion Therapeutics, Inc., a Delaware corporation (the "Company"), that may be issued pursuant to the Company's Amended and Restated 2013 Stock Option and Incentive Plan (the "Plan").

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

The opinion set forth below is limited to the Delaware General Corporation Law.

For purposes of the opinion set forth below, we have assumed that a sufficient number of authorized but unissued shares of the Company's Common Stock will be available for issuance when the Shares are issued.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, upon issuance and delivery against payment therefor in accordance with the terms of the Plans, will be validly issued, fully paid and nonassessable.

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Registration Statement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ GOODWIN PROCTER LLP

GOODWIN PROCTER LLP

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 Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan of our reports dated February 22, 2017 with respect to the financial statements of Esperion Therapeutics, Inc. and the effectiveness of internal control over financial reporting of Esperion Therapeutics, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2016, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Detroit, Michigan
February 22, 2017
