

ESPERION THERAPEUTICS, INC.

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 02/20/18

Address	3891 RANCHERO DRIVE, SUITE 150 ANN ARBOR, MI, 48108
Telephone	734-887-3903
CIK	0001434868
Symbol	ESPR
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
 100 Northern Avenue
 Boston, Massachusetts 02210
 (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)
 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 (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value per share	657,616 shares (3)	\$ 68.77	\$ 45,224,252	\$ 5,630

- (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 13, 2018.
- (3) Represents an automatic increase to the number of shares available for issuance under the Plan, effective January 1, 2018. 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 February 22, 2017 (Registration No. 333-216169), 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).



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, 2018, the number of shares of Common Stock reserved and available for issuance under the Plan increased by 657,616. This Registration Statement registers these additional 657,616 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.

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1	<u>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.</u>
4.2	<u>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.</u>
4.3	<u>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.</u>
4.4	<u>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.</u>
4.5	<u>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.</u>
4.6	<u>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.</u>
4.7	<u>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.</u>
5.1*	<u>Opinion of Goodwin Procter LLP</u>
23.1*	<u>Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm</u>
23.2*	<u>Consent of Goodwin Procter LLP (included in Exhibit 5.1)</u>
24.1*	<u>Power of Attorney (included on signature page)</u>
99.1	<u>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).</u>

* Filed herewith.

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 20th day of February, 2018.

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)	February 20, 2018
<u>/s/ Richard B. Bartram</u> Richard B. Bartram	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 20, 2018
<u>/s/ Jeffrey Berkowitz, J.D.</u> Jeffrey Berkowitz, J.D.	Director	February 20, 2018
<u>/s/ Scott Braunstein, M.D.</u> Scott Braunstein, M.D.	Director	February 20, 2018
<u>/s/ Dov A. Goldstein, M.D.</u> Dov A. Goldstein, M.D.	Director	February 20, 2018
<u>/s/ Antonio M. Gotto, M.D., D.Phil</u> Antonio M. Gotto, M.D., D.Phil	Director	February 20, 2018
<u>/s/ Daniel Janney</u> Daniel Janney	Director	February 20, 2018
<u>/s/ Mark E. McGovern, M.D.</u> Mark E. McGovern, M.D.	Director	February 20, 2018

/s/ Roger S. Newton, Ph.D., FAHA, FACN Director February 20, 2018
Roger S. Newton, Ph.D., FAHA, FACN

/s/ Gilbert S. Omenn, M.D., Ph.D. Director February 20, 2018
Gilbert S. Omenn, M.D., Ph.D.

/s/ Nicole Vitullo Director February 20, 2018
Nicole Vitullo

February 20, 2018

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 657,616 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 20, 2018 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, 2017, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Detroit, Michigan
February 20, 2018
