

GALECTIN THERAPEUTICS INC
Form S-8
June 26, 2018

Registration Statement No.

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

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

GALECTIN THERAPEUTICS INC.

(Exact name of registrant as specified in its charter)

Nevada	04-3562325
(State or Other Jurisdiction of	(I.R.S. Employer
Incorporation or Organization)	Identification No.)
4960 Peachtree Industrial Blvd., Suite 240	
Norcross, Georgia 30071	
(678) 620-3186	

(Address, including zip code, of registrant's principal executive offices)

Amended and Restated 2009 Incentive Compensation Plan

Harold H. Shlevin, Ph.D.

Chief Executive Officer and President

Galectin Therapeutics Inc.

4960 Peachtree Industrial Blvd., Suite 240

Norcross, Georgia 30071

(678) 620-3186

(Name and address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

Robert E. Tritt, Esq.

Dentons US LLP

303 Peachtree Street, NE

Suite 5300

Atlanta, GA 30308

(404) 527-8130

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

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use 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	Proposed maximum aggregate offering price	Amount of registration fee(2)(3)
Common Stock, \$0.001 par value	2,000,000 Shares	\$7.755	\$15,510,000	\$1,931.00

- (1) The Registration Statement shall also cover any additional shares of common stock which become issuable under the Registrant's Amended and Restated 2009 Incentive Compensation Plan (the "Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of outstanding shares of the Registrant's common stock.
- (2) Calculated pursuant to Rules 457(c) and 457(h) under the Securities Act of 1933, as amended, as follows: with respect to 2,000,000 shares, based upon the average of the high and low price of the Registrant's Common Stock on June 21, 2018 as reported on NASDAQ.
- (3) Registrant currently has a balance with the Securities and Exchange Commission relating to unutilized filing fees. Pursuant to Rule 457(p) under the Securities Act, such unutilized filing fee may be applied to any filing fees payable pursuant to this registration statement. Accordingly, the entire amount due as a filing fee with respect to this Registration Statement is offset by the unutilized filing fee and the balance remains available for future registration fees.

EXPLANATORY NOTE

Galectin Therapeutics Inc., a Nevada corporation (the **Company** or the **Registrant**), previously known as Pro-Pharmaceuticals, Inc., previously registered 10,000,000 shares of its common stock to be issued under the Company's 2009 Incentive Compensation Plan (the **Plan**) pursuant to a Registration Statement on Form S-8, Registration No. 333-159247, filed with the Securities and Exchange Commission on May 14, 2009, and an additional 10,000,000 shares of its common stock to be issued under the Plan pursuant to a Registration Statement on Form S-8, Registration No. 333-176306, filed with the Securities and Exchange Commission on August 15, 2011. On March 23, 2012, the Company effected a one-for-six reverse split of its common stock. After adjusting for the reverse split, 3,333,334 shares were registered under the Plan prior to the filing of this Registration Statement. The Company subsequently registered 1,400,000 shares of its common stock to be issued under the Plan pursuant to a Registration Statement on Form S-8, Registration No. 333-198070, filed with the Securities and Exchange Commission on August 12, 2014. Pursuant to General Instruction E of Form S-8, this Registration Statement is filed by the Company solely to register an additional 2,000,000 shares of the Company's common stock for issuance under the Plan. An increase of 1,000,000 shares was approved by the Company's shareholders at the Company's annual meeting of stockholders held on December 14, 2017, followed by an increase of an additional 1,000,000 shares that was approved by the Company's shareholders at the Company's annual meeting of stockholders held on May 22, 2018. Pursuant to General Instruction E, the contents of the prior registration statements referenced above are hereby incorporated by reference into this registration statement to the extent not otherwise amended or superseded by the contents hereof.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

The following documents are incorporated by reference in the Registration Statement:

- (a) Our Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on March 29, 2018;
- (b) Our Quarterly Report on Form 10-Q for the period ended March 31, 2018, filed with the SEC on May 11, 2018;
- (c) Our Current Reports on Form 8-K filed with the SEC on April 16, 2018, May 14, 2018, May 29, 2018, June 12, 2018 and June 15, 2018;
- (d) All information in our proxy statement filed with the Securities and Exchange Commission on April 11, 2018, to the extent incorporated by reference in our Annual Report on Form 10-K for the year ended December 31, 2017;
- (e) The description of our common stock contained in our registration statement on Form 8-A filed with the SEC on September 9, 2003, including any amendments or reports filed for the purpose of updating that description, including Amendment No 1 to Form 8-A filed with the SEC on March 22, 2012.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a 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 other subsequently filed document which also is or is deemed to be incorporated by

reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The registrant's By-laws, as amended to date, provide for indemnification of officers and directors to the fullest extent permitted by Section 7502 of Chapter 78 of the Nevada Revised Statutes (NRS) (as from time to time amended), provided such officer or director acts in good faith and in a manner which such person reasonably believes to be in or not opposed to the best interests of the registrant, and with respect to any criminal matter, had no reasonable cause to believe such person's conduct was unlawful.

NRS 78.7502 states:

1. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the person:

(a) Is not liable pursuant to NRS 78.138; or

(b) Acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the person is liable pursuant to NRS 78.138 or did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, or that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that the conduct was unlawful.

2. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit if the person:

(a) Is not liable pursuant to NRS 78.138; or

(b) Acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation.

Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of

the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

3. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense.

The registrant's By-laws also provide that to the fullest extent permitted by NRS 78.751 (as from time to time amended), the registrant shall pay the expenses of officers and directors of the Corporation incurred in defending a civil or criminal action, suit or proceeding, as they are incurred and in advance of the final disposition of such matter, upon receipt of an undertaking in form and substance acceptable to the board of directors for the repayment of such advances if it is ultimately determined by a court of competent jurisdiction that the officer or director is not entitled to be indemnified.

NRS 78.751 states:

1. Any discretionary indemnification pursuant to NRS 78.7502, unless ordered by a court or advanced pursuant to subsection 2, may be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made:

- (a) By the stockholders;
- (b) By the board of directors by majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding;
- (c) If a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding so orders, by independent legal counsel in a written opinion; or
- (d) If a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

2. The articles of incorporation, the bylaws or an agreement made by the corporation may provide that the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that the director or officer is not entitled to be indemnified by the corporation. The provisions of this subsection do not affect any rights to advancement of expenses to which corporate personnel other than directors or officers may be entitled under any contract or otherwise by law.

3. The indemnification pursuant to NRS 78.7502 and advancement of expenses authorized in or ordered by a court pursuant to this section:

- (a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, for either an action in the person's official capacity or an action in another capacity while holding office, except that indemnification, unless ordered by a court pursuant to NRS 78.7502 or for the advancement of expenses made pursuant to subsection 2, may not be made to or on behalf of any director or officer if a final adjudication establishes that the director's or officer's acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action. A right to indemnification or to advancement of expenses arising under a provision of the

articles of incorporation or any bylaw is not eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

- (b) Continues for a person who has ceased to be a director, officer, employee or agent and inures to the benefit of the heirs, executors and administrators of such a person.

In addition, the registrant maintains directors and officers liability insurance which insures against liabilities that its directors and officers may incur in such capacities.

Reference is made to Undertakings, below, for the registrant's undertakings in this registration statement with respect to indemnification of liabilities arising under the Securities Act of 1933, as amended (the Securities Act).

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

No.	Exhibit
4.1	<u>Form of Class A-1 Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on February 18, 2009.)</u>
4.2	<u>Form of Class A-2 Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on February 18, 2009.)</u>
4.3	<u>Form of Class B Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on February 18, 2009.)</u>
4.4	<u>Amended Form of Class A-1 Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on January 27, 2011.)</u>
4.5	<u>Amended Form of Class A-2 Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on January 27, 2011.)</u>
4.6	<u>Amended Form of Class B Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on January 27, 2011.)</u>
4.7	<u>Form of Warrant Agreement between Galectin Therapeutics Inc. and Continental Stock Transfer and Trust Company, as warrant agent (including form of warrant certificate) (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on March 23, 2012.)</u>
4.8	<u>Form of Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on November 20, 2015.)</u>
4.9	<u>Form of Class B-3 Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on September 27, 2016.)</u>
4.10	<u>Form of Lock-Up Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on September 27, 2016.)</u>
4.11	<u>Form of Common Stock Purchase Warrant (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on December 29, 2016.)</u>
4.12	<u>Form of Common Stock Purchase Warrant issued to Richard E. Uihlein (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on December 19, 2017.)</u>
5*	<u>Opinion of Dentons US LLP regarding legality</u>
23.1*	<u>Consent of Dentons US LLP (included as part of Exhibit 5 hereto)</u>
23.2*	<u>Consent of Cherry Bekaert LLP</u>
24*	<u>Power of Attorney (included in the signature pages of this registration statement)</u>
99.1*	<u>Amended and Restated 2009 Incentive Compensation Plan, as amended.</u>

* Filed herewith.

Item 9. Undertakings.

The undersigned registrant hereby undertakes:

1. 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 SEC 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; and

(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 (1)(i), (1)(ii) and (1)(iii) of this section 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 Securities Exchange Act of 1934, as amended (the Exchange Act), that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

2. 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 therein, and this offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

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

4. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

5. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 6, 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 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 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 Norcross, State of Georgia on June 26, 2018.

GALECTIN THERAPEUTICS INC.

By: /s/ Harold H. Shlevin, Ph.D.
Harold H. Shlevin, Ph.D.
Chief Executive Officer and President

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Harold H. Shlevin and Jack W. Callicutt and each of them, his or her true and lawful attorneys-in-fact and agents, 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 and about the premises, 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 or her substitute or substitutes, 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.

PRINCIPAL EXECUTIVE, FINANCIAL & ACCOUNTING OFFICERS AND DIRECTORS:

Name	Title	Date
/s/ Harold H. Shlevin, Ph.D. Harold H. Shlevin, Ph.D.	Chief Executive Officer and President (Principal Executive Officer)	June 26, 2018
/s/ Jack W. Callicutt Jack W. Callicutt	Chief Financial Officer (Principal Financial and Accounting Officer)	June 26, 2018
Gilbert F. Amelio, Ph.D.	Director	June 26, 2018
James C. Czirr	Director	June 26, 2018
/s/ Kary Eldred Kary Eldred	Director	June 26, 2018
/s/ Kevin D. Freeman, CFA Kevin D. Freeman, CFA	Director	June 26, 2018

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/s/ Joel Lewis Joel Lewis	Director	June 26, 2018
/s/ Gilbert S. Omenn, M.D., Ph.D. Gilbert S. Omenn, M.D., Ph.D.	Director	June 26, 2018
/s/ Marc Rubin, M.D. Marc Rubin, M.D.	Director	June 26, 2018
/s/ Stephen Shulman Stephen Shulman	Director	June 26, 2018
/s/ Richard E. Uihlein Richard E. Uihlein	Director	June 26, 2018