

GALECTIN THERAPEUTICS INC

Form S-8

August 12, 2014

As filed with the U.S. Securities and Exchange Commission on August 12, 2014

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
(State or Other Jurisdiction of

Incorporation or Organization)

4960 Peachtree Industrial Blvd., Suite 240

04-3562325
(I.R.S. Employer

Identification No.)

Norcross, Georgia 30071

(678) 620-3186

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

Amended and Restated 2009 Incentive Compensation Plan

Peter G. Traber, M.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:

E. Terrell Gilbert, Jr., Esq.

Arnall Golden Gregory LLP

Suite 2100

171 17th Street, NW

Atlanta, Georgia 30363-1031

(404) 873-8500

Indicate by a 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 (Do not check if a smaller reporting company)

Smaller reporting company

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	1,400,000 Shares	\$5.395	\$7,553,000	\$972.83

- (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 1,400,000 shares, based upon the average of the high and low price of the Registrant's Common Stock on August 5, 2014 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.

Pursuant to General Instruction E of Form S-8, this Registration Statement is filed by the Company solely to register an additional 1,400,000 shares of the Company's common stock for issuance under the Plan. This increase was approved by the Company's shareholders at the Company's annual meeting of stockholders held on May 14, 2014. 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, 2013, filed with the SEC on March 21, 2014;
- (b) Our Quarterly Reports on Form 10-Q for the periods ended March 31, 2014 and June 30, 2014, filed with the SEC on May 15, 2014 and August 7, 2014, respectively;
- (c) Our Current Reports on Form 8-K filed with the SEC on January 10, 2014, January 13, 2014, January 15, 2014, January 27, 2014, February 3, 2014, March 31, 2014, May 16, 2014, May 20, 2014, July 22, 2014, and July 29, 2014;
- (d) All information in our proxy statement filed with the Securities and Exchange Commission on March 21, 2014 to the extent incorporated by reference in our Annual Report on Form 10-K for the year ended December 31, 2013;
- (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.

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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 he 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 him in connection with the action, suit or proceeding if he:

- (a) Is not liable pursuant to NRS 78.138; or
- (b) Acted in good faith and in a manner which he 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 his 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 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 had reasonable cause to believe that his 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 he 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 him in connection with the defense or settlement of the action or suit if he:

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

(b) Acted in good faith and in a manner which he 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.

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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 against expenses, including attorneys' fees, actually and reasonably incurred by him 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 he 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 his official capacity or an action in another

capacity while holding his 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 his acts or

- (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 | Amended and Restated Articles of Incorporation of Galectin Therapeutics Inc. (Incorporated by reference to the Company's Current Report on Form 8-K, as filed with the Commission on May 30, 2012). |
| 4.2 | Amended and Restated Bylaws of Galectin Therapeutics Inc. (Incorporated by reference to Company's Current Report on Form 8-K, as filed with the Commission on May 30, 2012). |
| 4.3 | Certificate of Designation of Preferences, Rights and Limitations of Series A 12% Convertible Preferred Stock of Pro Pharmaceuticals, Inc., as filed with the Secretary of State of the State of Nevada on October 5, 2007. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on October 9, 2007). |
| 4.4 | Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock and Series B-2 Convertible Preferred Stock of Pro Pharmaceuticals, Inc., as filed with the Secretary of State of the State of Nevada on February 11, 2009. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on February 8, 2009). |
| 4.5 | Certificate of Amendment to the Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock and Series B-2 Convertible Preferred Stock of Pro- Pharmaceuticals, Inc., as filed with the secretary of State of the State of Nevada on August 12, 2009. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the Commission on August 14, 2009). |
| 4.6 | Certificate of Amendment No. 2 to the Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock and Series B-2 Convertible Preferred Stock, as filed with the State of Nevada, on February 17, 2010. (Incorporated by reference to the Company's Current Report on Form 8-K as filed with the Commission on February 17, 2010.) (Incorporated by reference to the Company's Current Report on Form 8-K, as filed with the Commission on May 30, 2012). |
| 4.7 | Certificate of Amendment with respect to the Amended and Restated Certificate of Designation of Preferences, Rights and Limitation of Series B-1 Convertible Preferred Stock and Series B-2 Convertible Preferred Stock of Pro-Pharmaceuticals, Inc., as filed with the Secretary of State of the State of Nevada on January 26, 2011. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on January 27, 2011). |
| 4.8 | Certificate of Designation of Preferences, Rights and Limitation of Series C Super Dividend Convertible Preferred Stock of Pro-Pharmaceuticals, Inc., as filed with the Secretary of State of Nevada on December 30, 2010. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on January 6, 2011). |
| 4.9 | Certificate of Change as filed with the Nevada Secretary of State on March 1, 2012. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on March 23, 2012.) |

4.10 Specimen certificate for shares of common stock. (Incorporated by reference to the Company's Annual Report on Form 10-K as filed with the Commission on March 30, 2012).

5* Opinion of Arnall Golden Gregory LLP regarding legality

23.1* Consent of Arnall Golden Gregory LLP (included as part of Exhibit 5 hereto)

23.2* Consent of McGladrey LLP

24* Power of Attorney (included in the signature pages of this registration statement)

99.1* Amended and Restated 2009 Incentive Compensation Plan

* 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, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in this 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. 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.

6. 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 August 11, 2014.

GALECTIN THERAPEUTICS INC.

By: /s/ Peter G. Traber
 Peter G. Traber
 Chief Executive Officer, Chief Medical
 Officer and President

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Peter G. Traber 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/ PETER G. TRABER Peter G. Traber, M.D.	Chief Executive Officer, Chief Medical Officer, President and Director (Principal Executive Officer)	August 11, 2014
/s/ Jack W. Callicutt Jack W. Callicutt	Chief Financial Officer (Principal Financial and Accounting Officer)	August 11, 2014
/s/ James C. Czirr James C. Czirr	Executive Chairman and Director	August 11, 2014
/s/ Kevin D. Freeman Kevin D. Freeman	Director	August 11, 2014
/s/ Rod D. Martin Rod D. Martin	Vice-Chairman and Director	August 11, 2014
/s/ Gilbert F. Amelio, Ph.D.	Director	August 11, 2014

Gilbert F. Amelio, Ph.D

/s/ Arthur R. Greenberg
Arthur R. Greenberg

Director

August 11, 2014

/s/ John Mauldin
John Mauldin

Director

August 11, 2014

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/s/ H. Paul Pressler H. Paul Pressler	Director	August 11, 2014
/s/ Steve Prelack Steve Prelack	Director	August 11, 2014
/s/ Marc Rubin, M.D. Marc Rubin, M.D.	Director	August 11, 2014

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