

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

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

ZIOPHARM Oncology, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

84-1475642
(I.R.S. Employer
Identification No.)

**One First Avenue
Parris Building 34
Navy Yard Plaza
Boston, Massachusetts**
(Address of principal executive offices)

02129
(Zip Code)

ZIOPHARM Oncology, Inc. 2020 Equity Incentive Plan
(Full title of the plan)

Laurence J.N. Cooper, M.D., Ph.D.
Chief Executive Officer
ZIOPHARM Oncology, Inc.
One First Avenue, Building 34, Navy Yard Plaza
Boston, Massachusetts 02129
(617) 259-1970
(Name, address and telephone number of agent for service)

Copies to:

Robert Hadfield
General Counsel
ZIOPHARM Oncology, Inc.
One First Avenue, Parris Building 34,
Navy Yard Plaza
Boston, Massachusetts 02129
(617) 259-1970

Marc A. Recht
Joshua D. Rottner
Courtney T. Thorne
Cooley LLP
500 Boylston Street, 14th Floor
Boston, Massachusetts 02116
(617) 937-2300

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	<input checked="" type="checkbox"/>		Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>		Smaller reporting company	<input type="checkbox"/>
			Emerging growth company	<input type="checkbox"/>

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)(2)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

Common stock, par value \$0.001 per share	5,750,000	\$3.18(3)	\$18,285,000.00(3)	\$2,373.40
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- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall be deemed to cover any additional shares of common stock that may become issuable under the ZIOPHARM Oncology, Inc. 2020 Equity Incentive Plan from time to time by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's common stock.
 - (2) Represents 5,750,000 shares reserved for future issuance under the Registrant's 2020 Equity Incentive Plan.
 - (3) Estimated in accordance with Rule 457(c) and (h) solely for the purpose of calculating the registration fee on the basis of the average of the high and low prices of the Registrant's common stock as reported on The Nasdaq Global Select Market on (August 4, 2020).
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act. The documents containing the information specified in Item 1 and Item 2 of Part I of Form S-8 will be delivered to the participant in the plan covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

PART II

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed by the Registrant with the U.S. Securities and Exchange Commission (the "Commission") are incorporated by reference to this Registration Statement (File No. 001-33038):

(a) The Registrant's Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2019, filed with the Commission on March 2, 2020, as amended by Amendment No. 1 to the Annual Report on Form [10-K/A](#), filed with the Commission on April 29, 2020;

(b) The Registrant's Quarterly Report on Form 10-Q for the quarters ended March 31, 2020 and June 30, 2020, filed with the Commission on [May 7, 2020](#) and [August 6, 2020](#), respectively;

(c) The Registrant's Current Reports on Form 8-K filed with the Commission on [January 14, 2020](#), [February 5, 2020](#), (to the extent filed under Items 8.01 and 9.01) [February 6, 2020](#), [May 29, 2020](#), [July 1, 2020](#) and [July 24, 2020](#); and

(d) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on [Form 8-A](#) filed with the Commission on September 20, 2006, under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of updating such description.

All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (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 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 herein and to be a part of this Registration Statement from the date of the filing of such reports and 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 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 is incorporated under the laws of the State of Delaware. Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (“DGCL”), empowers a corporation to indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than 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 such action, suit or proceeding if the person acted in good faith and in a manner the person 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 person’s conduct was unlawful.

Subsection (b) of Section 145 of the DGCL empowers a corporation to 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 acted in any of the capacities set forth above, against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL further provides that to the extent a director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and the indemnification provided for by Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person’s heirs, executors and administrators. Section 145 also empowers the corporation to purchase and maintain insurance on behalf of any person who 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 any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145.

Section 102(b)(7) of the DGCL provides that a corporation’s certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

The Registrant’s amended and restated certificate of incorporation provides for indemnification of the Registrant’s directors to the maximum extent permitted by applicable law, and the Registrant’s bylaws, as amended, provide for indemnification of the Registrant’s directors, officers, employees and other agents to the maximum extent permitted by law.

The Registrant has entered into indemnification agreements with the Registrant’s directors and officers, whereby the Registrant has agreed to indemnify the Registrant’s directors and officers to the fullest extent permitted by the Delaware General Corporation Law, including advancement of expenses incurred in legal proceedings to which the director or officer was, or is threatened to be made, a party by reason of the fact that (i) such director or officer is or was a director or officer of the Registrant, (ii) such director or officer acted while a director, officer, employee or agent of the Registrant, or (iii) such director or officer was serving at the request of the Registrant as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. At present, there is no pending litigation or proceeding involving a director or officer of the Registrant regarding which indemnification is sought, nor is the Registrant aware of any threatened litigation that may result in claims for indemnification.

The Registrant maintains a directors’ and officers’ liability insurance policy that indemnifies the Registrant’s directors and officers against various liabilities arising under the Securities Act and the Exchange Act that might be incurred by any director or officer in his capacity as such.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
4.1	<u>Amended and Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on April 26, 2006 (incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K (File No. 000-32353) filed with the Commission on April 26, 2006 and incorporated herein by reference).</u>
4.2	<u>Bylaws, as amended to date (incorporated by reference to Exhibit 3.3 to the registrant's Current Report on Form 8-K (File No. 000-32353) filed with the Commission on September 19, 2005 and incorporated herein by reference).</u>
4.3	<u>Specimen common stock certificate (incorporated by reference to Exhibit 4.1 to the registrant's Registration Statement on Form SB-2 (File No. 333-129020) filed with the Commission on October 14, 2005 and incorporated herein by reference).</u>
5.1*	<u>Opinion of Cooley LLP.</u>
23.1*	<u>Consent of RSM US LLP.</u>
23.2*	<u>Consent of Cooley LLP (included in Exhibit 5.1 and incorporated herein by reference).</u>
24.1*	<u>Power of Attorney (included on the signature page of this Registration Statement).</u>
99.1	<u>ZIOPHARM Oncology, Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K (File No. 001-33038) filed with the Commission on June 29, 2020 and incorporated herein by reference).</u>

* Filed herewith

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 of 1933;
 - (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 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent 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 (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 this 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 the 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 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 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 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.
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 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, 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 Boston, Commonwealth of Massachusetts, on the 6th day of August, 2020.

ZIOPHARM ONCOLOGY, INC.

By: /s/ Robert Hadfield

Robert Hadfield
Executive Vice President, General Counsel, Secretary
and Chief Compliance Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Laurence J.N. Cooper, Robert Hadfield and Satyavrat Shukla, jointly and severally, as 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 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 hereby ratifying and confirming all that said attorneys-in-fact and agents, 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, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Laurence J.N. Cooper</u> Laurence J.N. Cooper	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	August 6, 2020
<u>/s/ Satyavrat Shukla</u> Satyavrat Shukla	Executive Vice President and Chief Financial Officer <i>(Principal Financial Officer)</i>	August 6, 2020
<u>/s/ Kevin G. Lafond</u> Kevin G. Lafond	Senior Vice President Finance, Chief Accounting Officer and Treasurer <i>(Principal Accounting Officer)</i>	August 6, 2020
<u>/s/ Christopher Bowden</u> Christopher Bowden	Director	August 6, 2020
<u>/s/ Scott Braunstein</u> Scott Braunstein	Director	August 6, 2020
<u>/s/ Elan Z. Ezickson</u> Elan Z. Ezickson	Director	August 6, 2020
<u>/s/ Heidi Hagen</u> Heidi Hagen	Director	August 6, 2020

Signature	Title	Date
<u>/s/ James Huang</u> James Huang	Director	August 6, 2020
<u>/s/ Douglas W. Pagán</u> Douglas W. Pagán	Director	August 6, 2020
<u>Scott Tarriff</u> /s/ Scott Tarriff	Director	August 6, 2020



Marc A. Recht
T: +1 617 937 2316
mrecht@cooley.com

August 6, 2020

ZIOPHARM Oncology, Inc.
One First Avenue, Parris Building 34, Navy Yard Plaza
Boston, Massachusetts 02129

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by ZIOPHARM Oncology, Inc., a Delaware corporation (the "**Company**"), of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission under the Securities Act of 1933, as amended, covering the offering of up to 5,750,000 shares of the Company's common stock, \$0.001 par value per share (the "**Shares**"), issuable pursuant to the Company's 2020 Equity Incentive Plan (the "**Plan**").

In connection with this opinion, we have examined and relied upon the Registration Statement and related prospectuses, the Company's Restated Certificate of Incorporation and Amended and Restated By-Laws, each as currently in effect, the Plan, and originals, or copies certified to our satisfaction, of such other documents, records, 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 of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof, the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery by all persons other than the Company of all documents where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified 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 issued and sold in accordance with the Plan, the Registration Statement and the related prospectuses, will be validly issued, fully paid and nonassessable (except as to Shares issued pursuant to certain deferred payment arrangements under the Plan, 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/ Marc A. Recht
Marc A. Recht

Cooley LLP 500 Boylston St. Boston, MA 02116
t: (617) 937-2300 f: (617) 937-2400 cooley.com

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 of ZIOPHARM Oncology, Inc. of our reports dated March 2, 2020, relating to the financial statements and the effectiveness of internal control over financial reporting of ZIOPHARM Oncology, Inc., appearing in the Annual Report on Form 10-K of ZIOPHARM Oncology, Inc. for the year ended December 31, 2019.

Our report dated March 2, 2020, on the effectiveness of internal control over financial reporting as of December 31, 2019, expressed an opinion that ZIOPHARM Oncology, Inc. had not maintained effective internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013.

Boston, Massachusetts

August 6, 2020