

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

CHECKPOINT THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

47-2568632

(I.R.S. Employer Identification No.)

**2 Gansevoort Street, 9th Floor
New York, New York 10014**

(Address, including Zip Code, of Principal Executive Offices)

Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan

(Full title of the plan)

Copy to:

**James F. Oliviero
President and Chief Executive Officer
Checkpoint Therapeutics, Inc.
2 Gansevoort Street, 9th Floor
New York, New York 10014
(781) 652-4500**

(Name, address and telephone number of agent for service)

**Mark McElreath
Alston & Bird LLP
90 Park Avenue, 12th Floor
New York, NY 10016
(212) 210-9595**

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. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒

Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

<u>Title of securities to be registered</u>	<u>Amount to be registered</u>	<u>Proposed maximum offering price per share</u>	<u>Proposed maximum aggregate offering price</u>	<u>Amount of registration fee</u>
Common Stock, \$0.0001 par value	2,000,000 (1)	\$1.85(2)	\$3,700,000 (2)	\$428.83

- (1) Amount to be registered consists of an aggregate of 2,000,000 shares of Checkpoint Therapeutics, Inc. Common Stock, par value \$0.0001 per share (the "Common Stock"), including any additional shares that may become issuable in accordance with the adjustment and anti-dilution provisions of the Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan.
- (2) Determined in accordance with Rule 457(h) under the Securities Act of 1933, as amended, the registration fee calculation for these shares is based on the book value of the Common Stock as of December 31, 2016.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

(a) The documents constituting Part I of this registration statement on Form S-8 (this “Registration Statement”) will be delivered to participants in the Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan (the “Plan”) as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

(b) Upon written or oral request, Checkpoint Therapeutics, Inc. (the “Company”) will provide, without charge, the documents incorporated by reference in Item 3 of Part II of this Registration Statement. The documents are incorporated by reference in the Section 10(a) prospectus. The Company will also provide, without charge, upon written or oral request, other documents required to be delivered to employees pursuant to Rule 428(b). Requests for the above mentioned information should be directed to Investor Relations at ir@checkpointtx.com.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, filed with the Securities and Exchange Commission (the “Commission”) by the Company, are incorporated herein by reference:

- (a) All reports filed by the Company pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) since September 9, 2016; and
- (b) The description of the Common Stock contained in the Form 10-12G filed with the Commission on July 11, 2016, pursuant to the Exchange Act, and any amendment or report filed for the purpose of further updating such description.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities that remain 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 incorporated or 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.

Under provisions of the amended and restated certificate of incorporation and bylaws of the Company, directors and officers will be indemnified for any and all judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees, in connection with threatened, pending or completed actions, suits or proceedings, whether civil, criminal, administrative or investigative in nature (other than an action arising by or in the right of the Company), if such director or officer has been wholly successful on the merits or otherwise, or is found to have acted in good faith and in a manner he or she reasonably believes to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. In addition, directors and officers will be indemnified for reasonable expenses in connection with threatened, pending or completed actions or suits by or in the right of Registrant if such director or officer has been wholly successful on the merits or otherwise, or is found to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, except in the case of certain findings by a court that such person is liable for negligence or misconduct in his or her duty to the Company unless such court or the Delaware Court of Chancery also finds that such person is nevertheless fairly and reasonably entitled to indemnity. The Registrant's certificate of incorporation also eliminates the liability of directors of the Company for monetary damages for breach of fiduciary duty to the fullest extent permissible under Delaware law.

Section 145 of the Delaware General Corporation Law states:

(a) A corporation shall have power 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, 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. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which 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 reasonable cause to believe that the person's conduct was unlawful.

(b) A corporation shall have power 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 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) 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 and 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.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See the Exhibit Index, which is incorporated herein by reference.

Item 9. Undertakings.

(a) The Company 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 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 Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(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

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8, and 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 Company pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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; and

(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.

(b) The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Section 13(a) or 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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 on following page)

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the Company 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 New York, state of New York, on this 21st day of March, 2017.

CHECKPOINT THERAPEUTICS, INC.

By: /s/ James F. Oliviero
James F. Oliviero
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW BY ALL MEN BY THESE PRESENT, that each person whose signature appears below constitutes and appoints James F. Oliviero, and each or any one of them, as true and lawful attorneys-in-fact and agents, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any 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, hereby ratifying and confirming all that said attorney-in-fact, or their substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

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.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael S. Weiss</u> Michael S. Weiss	Chairman of the Board	March 21, 2017
<u>/s/ James F. Oliviero</u> James F. Oliviero	Chief Executive Officer and President	March 21, 2017
<u>/s/ Garrett Gray</u> Garrett Gray	Principal Financial Officer	March 21, 2017
<u>/s/ Lindsay A. Rosenwald, M.D.</u> Lindsay A. Rosenwald, M.D.	Director	March 21, 2017
<u>/s/ Neil Herskowitz</u> Neil Herskowitz	Director	March 21, 2017
<u>/s/ Barry Salzman</u> Barry Salzman	Director	March 21, 2017
<u>/s/ Scott Boilen</u> Scott Boilen	Director	March 21, 2017

**EXHIBIT INDEX
TO
REGISTRATION STATEMENT ON FORM S-8**

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc. dated March 3, 2015 (incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-12G filed on July 11, 2016).
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc. dated August 31, 2015 (incorporated by reference to Exhibit 3.2 to the Registrant's Form 10-12G filed on July 11, 2016).
3.3	Bylaws of Checkpoint Therapeutics, Inc. dated November 10, 2014 (incorporated by reference to Exhibit 3.3 to the Registrant's Form 10-12G filed on July 11, 2016).
5.1	Opinion of Alston & Bird LLP (filed herewith).
10.1	Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan, dated December 18, 2015 (incorporated by reference to Exhibit 10.10 to the Registrant's Form 10-12G filed on July 11, 2016).
23.1	Consent of BDO, LLP, Independent Registered Accounting Firm (filed herewith).
23.2	Consent of EisnerAmper LLP, Independent Registered Accounting Firm (filed herewith).
23.3	Consent of Alston & Bird LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page of this registration statement).

ALSTON & BIRD

90 Park Avenue
New York, NY 10016

212-210-9400
Fax: 212-922-3995
www.alston.com

Mark F. McElreath

Direct Dial: 212-210-9595

Email: mark.mcelreath@alston.com

March 21, 2017

Checkpoint Therapeutics, Inc.
2 Gansevoort Street, 9th Floor
New York, NY 10014

Re: Registration Statement on Form S-8

Gentlemen:

We are acting as counsel to Checkpoint Therapeutics, Inc., a Delaware corporation (the “Company”) in connection with the registration statement (the “Registration Statement”) on Form S-8 filed today by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), covering 2,000,000 shares of the Company’s common stock, \$0.0001 par value per share (the “Shares”), to be issued and sold from time to time pursuant to Rule 428 under the Securities Act by the Company upon the grant or exercise of awards pursuant to the Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan (the “Plan”). This opinion is furnished to you at your request in accordance with the requirements of Item 8 of the Commission’s Form S-8 and Item 601(b)(5) of Regulation S-K promulgated under the Securities Act.

We have examined the Amended and Restated Certificate of Incorporation of the Company, the Bylaws of the Company, records of proceedings of the Board of Directors of the Company (the “Board of Directors”), or committees thereof, and records of proceedings of the stockholders, deemed by us to be relevant to this opinion letter and the Registration Statement. We also have made such further legal and factual examinations and investigations as we deemed necessary for purposes of expressing the opinion set forth herein.

As to certain factual matters relevant to this opinion letter, we have relied conclusively upon originals or copies, certified or otherwise identified to our satisfaction, of such records, agreements, documents and instruments, including certificates or comparable documents of officers of the Company and of public officials, as we have deemed appropriate as a basis for the opinion hereinafter set forth. Except to the extent expressly set forth herein, we have made no independent investigations with regard to matters of fact, and, accordingly, we do not express any opinion as to matters that might have been disclosed by independent verification.

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Our opinion set forth below is limited to the General Corporation Law of the State of Delaware, applicable provisions of the Constitution of the State of Delaware and reported judicial decisions interpreting such General Corporation Law and Constitution that, in our professional judgment, are normally applicable to transactions of the type contemplated by the Plan, and we do not express any opinion herein concerning any other laws.

This opinion letter is provided for use in connection with the transactions contemplated by the Registration Statement and may not be used, circulated, quoted or otherwise relied upon for any other purpose without our express written consent. The only opinion rendered by us consists of those matters set forth in the sixth paragraph hereof, and no opinion may be implied or inferred beyond the opinion expressly stated. This opinion letter is rendered as of the date hereof and we make no undertaking and expressly disclaim any duty to supplement or update the opinions rendered herein, if, after the date hereof, facts or circumstances come to our attention or changes in the law occur which could affect such opinions. We note specifically that the Shares may be issued from time to time hereafter, and our opinion is limited to the applicable laws, including the related rules and regulations, as in effect on the date hereof.

Based on the foregoing, it is our opinion that the Shares to be issued under the Plan are duly authorized, and, when issued by the Company in accordance with the terms of the Plan, will be validly issued, fully paid and non-assessable.

We consent to the filing of this opinion letter as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

ALSTON & BIRD LLP

By: /s/ Mark F. McElreath
Mark F. McElreath
Partner

Consent of Independent Registered Public Accounting Firm

Checkpoint Therapeutics, Inc.
New York, NY

We hereby consent to the incorporation by reference in the Prospectus constituting a part of this Registration Statement of our report dated March 17, 2017, relating to the financial statements of Checkpoint Therapeutics, Inc. appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2016.

/s/BDO USA, LLP
New York, NY

March 21, 2017

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement of Checkpoint Therapeutics, Inc. on Form S-8 to be filed on or about March 21, 2017 of our report dated July 11, 2016, on our audit of the balance sheet as of December 31, 2015 and the related statements of operations, stockholders' equity, and cash flows for the year ended December 31, 2015 and for the period from November 10, 2014 (inception) to December 31, 2014.

/s/ EISNERAMPER LLP

New York, NY
March 21, 2017
