

GALECTIN THERAPEUTICS INC
Form S-8
August 15, 2011

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)

7 Wells Avenue

Newton, Massachusetts 02459

(617) 559-0033

04-3562325
(IRS Employer

Identification Number)

(Address of Principal Executive Offices, Zip Code)

2009 INCENTIVE COMPENSATION PLAN

(Full Title of Plan)

Peter G. Traber, M.D.

Chief Executive Officer and President

Galectin Therapeutics Inc.

7 Wells Avenue

Newton, Massachusetts 02459

(617) 559-0033

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

With a copy to:

Jonathan C. Guest, Esq.

McCarter & English, LLP

265 Franklin Street

Boston, MA 02110

Tel. (617) 449-6500

Fax (617) 449-9200

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):

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Large accelerated filer ..
 Non-accelerated filer ..

Accelerated filer ..
 Smaller reporting company x

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 |
|---------------------------------------------|------------------------------------|--------------------------------------------------|--------------------------------------------------|-----------------------------------|
| Common Stock, par value \$.001 per share | 10,000,000(2) | \$0.88(3) | \$8,800,000 | |
| Total | 10,000,000 | | \$8,800,000 | \$1,021.68 |

- (1) This Registration Statement shall also cover any additional shares of common stock which become issuable under the registrant's 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) Represents 10,000,000 additional shares of the Registrant's common stock authorized to be issued under the Plan. Shares available for issuance under the Plan were initially registered on a Registration Statement on Form S-8 filed with the Securities and Exchange Commission on May 14, 2009 (File No. 333-159247).
- (3) Based on the average of the high and low price of the Registrant's common stock on August 11, 2011 as reported on the OTCBB, used solely for the purpose of calculating the registration fee pursuant to Rules 457(h) and (c) under the Securities Act of 1933.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

EXPLANATORY NOTE

Galectin Therapeutics Inc., a Nevada corporation (the Company), then 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 (the Prior Registration Statement). Pursuant to General Instruction E of Form S-8, this registration statement is filed by the Company solely to register an additional 10,000,000 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 26, 2011. Pursuant to General Instruction E, the contents of the Prior Registration Statement 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 Documents by Reference.

The following documents filed with the Securities and Exchange Commission (the Commission) by the Company pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference in this registration statement:

Our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 filed on March 15, 2011;

Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 filed on May 13, 2011, and the quarter ended June 30, 2011 filed on August 12, 2011;

Our Current Reports on Form 8-K filed on April 6, April 28, June 2, June 15 and July 5, 2011; and

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.

All 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 hereby 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 previously filed 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.

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.

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 omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action.

(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.

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

Item 9. Undertakings.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which it offers or sells securities, a post-effective amendment to this registration statement:

(a) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(b) 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 the 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

(c) 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) and (b) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in 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 the offering of the 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.

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 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.

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 Newton, State of Massachusetts on August 15, 2011.

GALECTIN THERAPEUTICS INC.

By: /s/ PETER G. TRABER
 Name: **Peter G. Traber, M.D.**
 Title: **Chief Executive Officer and President**

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Peter G. Traber, Anthony D. Squeglia and Maureen E. Foley as his true and lawful attorney-in-fact and agent, with full power of substitution and revocation, to sign on his behalf, individually and in each capacity stated below, all amendments and post-effective amendments to this Registration Statement and to file the same, with all exhibits thereto and any other documents in connection therewith, with the Securities and Exchange Commission under the Securities Act of 1933, granting unto each such attorney-in-fact and agent full power and authority to do an perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming each act that said attorney-in-fact and agent 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 stated.

| Signature | Title | Date |
|-----------------------------------------------------------|----------------------------------------------------------------------------------|-----------------|
| /s/ PETER G. TRABER Peter G. Traber, M.D. | Chief Executive Officer, President and Director (Principal Executive Officer) | August 15, 2011 |
| /s/ ANTHONY D. SQUEGLIA Anthony D. Squeglia | Chief Financial Officer (Principal Financial and Accounting Officer) | August 15, 2011 |
| /s/ JAMES C. CZIRR James C. Czirr | Executive Chairman and Director | August 15, 2011 |
| /s/ ROD D. MARTIN Rod D. Martin | Vice-Chairman and Director | August 15, 2011 |
| /s/ GILBERT AMELIO Gilbert Amelio, Ph.D. | Director | August 15, 2011 |

/s/ ARTHUR R. GREENBERG Director August 15, 2011

Arthur R. Greenberg

/s/ S. COLIN NEILL Director August 15, 2011

S. Colin Neill

/s/ STEVEN PRELACK Director August 15, 2011

Steven Prelack

/s/ JERALD K. ROME Director August 15, 2011

Jerald K. Rome

/s/ PAUL PRESSLER Director August 15, 2011

Paul Pressler

/s/ KEVIN D. FREEMAN Director August 15, 2011

Kevin D. Freeman

/s/ JOHN F. MAULDIN Director August 15, 2011

John F. Mauldin

Exhibit Index

Exhibit No.

- 4.1 Amended and Restated 2009 Incentive Compensation Plan (incorporated by reference to Exhibit A to the Registrant's Definitive Proxy Statement on Schedule 14A filed on April 12, 2011)
- 5.1 Opinion of McCarter & English, LLP (including the consent of such firm) regarding the legality of the securities being offered.
- 23.1 Consent of McGladrey & Pullen, LLP, an independent registered public accounting firm.
- 23.2 Consent of Caturano & Company, Inc., an independent registered public accounting firm.
- 23.3 Consent of McCarter & English, LLP (included as part of Exhibit 5.1 hereto).
- 24.1 Powers of Attorney (included on the signature page to this registration statement).