

FIVE PRIME THERAPEUTICS INC

Form S-8

May 08, 2018

As filed with the Securities and Exchange Commission on May 8, 2018

Registration No. 333-

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

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

**Five Prime Therapeutics, Inc.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction of**  
**incorporation or organization)**

**111 Oyster Point Boulevard**

**South San Francisco, California 94080**

**26-0038620**  
**(IRS employer**  
**identification number)**

**(415) 365-5600**

**(Address of principal executive offices)**

**2013 Omnibus Incentive Plan**

**2013 Employee Stock Purchase Plan**

**(Full title of the Plan)**

**Aron M. Knickerbocker**

**President and Chief Executive Officer**

**Five Prime Therapeutics, Inc.**

**111 Oyster Point Boulevard**

**South San Francisco, California 94080**

**(415) 365-5600**

**(Name, address and telephone number of Agent for Service)**

*Copies to:*

**Laura A. Berezin**

**Jaime L. Chase**

**Cooley LLP**

**3175 Hanover Street**

**Palo Alto, California 94304**

**(650) 843-5000**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act:

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company)  Smaller reporting company   
 Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use 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 <sup>(1)</sup>	Proposed Maximum Offering Price Per Share <sup>(4)</sup>	Proposed Maximum Aggregate Offering Price <sup>(4)</sup>	Amount of Registration Fee
<b>2013 Omnibus Incentive Plan</b> (Common stock, \$0.001 par value per share)	1,159,282 <sup>(2)</sup>	\$17.05	\$19,765,758.10	\$2,460.84
<b>2013 Employee Stock Purchase Plan</b> (Common stock, \$0.001 par value per share)	289,821 <sup>(3)</sup>	\$17.05	\$4,941,448.05	\$615.21
<b>TOTAL</b>	<b>1,449,103</b>		<b>\$24,707,206.15</b>	<b>\$3,076.05</b>

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the **Securities Act**), this Registration Statement shall also cover any additional shares of common stock that become issuable under the above-named plans by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without receipt of consideration that results in an increase in the number of Five Prime Therapeutics, Inc.'s (the **Registrant**) outstanding shares of common stock.
- (2) Represents additional shares of the Registrant's common stock reserved for future grant under the Registrant's 2013 Omnibus Incentive Plan (the **2013 Plan**) as a result of the automatic increase in shares reserved thereunder on January 1, 2018 pursuant to the terms of the 2013 Plan.
- (3) Represents additional shares of the Registrant's common stock reserved for issuance under the Registrant's 2013 Employee Stock Purchase Plan (the **ESPP**) as a result of the automatic increase in shares reserved thereunder on January 1, 2018 pursuant to the terms of the ESPP.
- (4) Estimated pursuant to Rule 457(c) and Rule 457(h) solely for the purpose of calculating the registration fee. The proposed maximum offering price per share and proposed maximum aggregate offering price are based on the average of the high and low sale prices of the Registrant's common stock as reported on The Nasdaq Global Select Market on May 3, 2018.



## EXPLANATORY NOTE

The Registrant is filing this Registration Statement on Form S-8 for the purpose of registering an additional 1,159,282 shares of common stock under the Five Prime Therapeutics, Inc. 2013 Omnibus Incentive Plan and an additional 289,821 shares of common stock under the Five Prime Therapeutics, Inc. 2013 Employee Stock Purchase Plan, pursuant to the provisions of each plan, which provide for annual automatic increases in the number of shares of common stock reserved for issuance under each respective plan.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents filed by it with the Securities and Exchange Commission (the **Commission**):

- (a) the contents of the Registrant's Registration Statements on Form S-8 relating to the 2013 Plan and the ESPP, previously filed with the Commission on October 11, 2013 (File No. 333-191700), March 26, 2014 (File No. 333-194820), March 18, 2015 (File No. 333-202854), May 6, 2016 (File No. 333-211216) and May 5, 2017 (File No. 333-217737);
- (b) the Registrant's Annual Report on Form 10-K (File No. 001-36070) for the fiscal year ended December 31, 2017, filed with the Commission on February 27, 2018, as amended on March 12, 2018;
- (c) the Registrant's Quarterly Report on Form 10-Q (File No. 001-36070) for the fiscal quarter ended March 31, 2018, filed with the Commission on May 8, 2018;
- (d) the Registrant's Current Reports on Form 8-K (File No. 001-36070) filed with the Commission on January 23, 2018, January 25, 2018 (two reports), March 13, 2018, April 9, 2018, April 10, 2018 and April 17, 2018; and
- (e) the description of the Registrant's common stock contained in the Registrant's Registration Statement on Form 8-A (File No. 001-36070) filed with the Commission on September 16, 2013, under Section 12(b) of the Exchange Act of 1934, as amended (the **Exchange Act**), including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment that 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 into this Registration Statement and to be a part hereof from the date of filing such documents, except as to specific sections of such documents as set forth therein. The Registrant is not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed filed with the Commission, including any information furnished pursuant to Items 2.02 or 7.01 of

Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K. 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 in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement.

**Item 8. Exhibits.**

The exhibits to this Registration Statement are listed below, and are incorporated herein by reference.

**Exhibit**

<b>Number</b>	<b>Exhibit Description</b>
4.1	<u>Specimen common stock certificate (incorporated herein by reference to Exhibit 4.1 to the Registrant's Amendment No. 3 to the Registration Statement on Form S-1 (File No. 333-190194), filed with the Commission on September 4, 2013).</u>
4.2	<u>2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 4.8 to the Registrant's Registration Statement on Form S-8 (File No. 333-191700), filed with the Commission on October 11, 2013).</u>
4.3	<u>Amendment No. 1 to the Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-36070), filed with the Commission on November 6, 2017).</u>
4.4	<u>Form of Incentive Stock Option Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.7 to the Registrant's Registration Statement on Form S-1 (File No. 333-190194), filed with the Commission on July 26, 2013).</u>
4.5	<u>Form of Non-Qualified Option Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.8 to the Registrant's Registration Statement on Form S-1 (File No. 333-190194), filed with the Commission on July 26, 2013).</u>
4.6	<u>Form of Restricted Stock Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.9 to the Registrant's Registration Statement on Form S-1 (File No. 333-193491), filed with the Commission on January 22, 2014).</u>
4.7	<u>Form of Restricted Stock Agreement under 2013 Omnibus Incentive Plan (incorporated herein by reference to Exhibit 10.27 to the Registrant's Annual Report on Form 10-K (File No. 001-36070) for the fiscal year ended December 31, 2016, filed with the Commission on February 24, 2017).</u>
4.8	<u>2013 Employee Stock Purchase Plan (incorporated herein by reference to Exhibit 4.11 to the Registrant's Registration Statement on Form S-8 (File No. 333-191700), filed with the Commission on October 11, 2013).</u>
5.1	<u>Opinion of Cooley LLP.</u>
23.1	<u>Consent of Independent Registered Accounting Firm.</u>
23.2	<u>Consent of Cooley LLP (included in Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included on the signature page to this Registration Statement).</u>

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**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 South San Francisco, State of California on May 8, 2018.

**Five Prime Therapeutics, Inc.**

By: /s/ Aron M. Knickerbocker  
 Aron M. Knickerbocker  
 President and Chief Executive Officer

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Aron M. Knickerbocker and Francis W. Sarena, and each or any one of them, his or her true and lawful attorney-in-fact and agent, 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 connection therewith, as fully to all intents and purposes 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 substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Aron M. Knickerbocker	President, Chief Executive Officer and Director	May 8, 2018
<b>Aron M. Knickerbocker</b>	(Principal Executive Officer)	
/s/ Linda Rubinstein	Interim Chief Financial Officer	May 8, 2018
<b>Linda Rubinstein</b>	(Principal Financial and Accounting Officer)	
/s/ Lewis T. Williams, M.D., Ph.D.	Executive Chairman and Director	May 8, 2018
<b>Lewis T. Williams, M.D., Ph.D.</b>		
/s/ Franklin M. Berger	Director	May 8, 2018
<b>Franklin M. Berger</b>		



/s/ Fred E. Cohen, M.D., D.Phil.      Director

May 8, 2018

**Fred E. Cohen, M.D., D.Phil.**

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<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Kapil Dhingra, M.B.B.S.	Director	May 8, 2018
<b>Kapil Dhingra, M.B.B.S.</b>		
/s/ Sheila Gujrathi, M.D.	Director	May 8, 2018
<b>Sheila Gujrathi, M.D.</b>		
/s/ Peder K. Jensen, M.D.	Director	May 8, 2018
<b>Peder K. Jensen, M.D.</b>		
/s/ Mark D. McDade	Director	May 8, 2018
<b>Mark D. McDade</b>		
/s/ Garry Nicholson	Director	May 8, 2018
<b>Garry Nicholson</b>		
/s/ William Ringo	Director	May 8, 2018
<b>William Ringo</b>		