

ZIOPHARM ONCOLOGY INC

Form S-8

October 14, 2014

As filed with the Securities and Exchange Commission on October 14, 2014

Registration No. 333-

**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)**

**One First Avenue**

**84-1475672**  
**(I.R.S. Employer**  
**Identification No.)**

**02129**

**Parris Building 34  
Navy Yard Plaza**

**Boston, Massachusetts  
(Address of principal executive offices)**

**(Zip Code)**

**ZIOPHARM Oncology, Inc. 2012 Equity Incentive Plan**

**(Full title of the plan)**

**Caesar Belbel**

**Chief Legal Officer**

**ZIOPHARM ONCOLOGY, INC.**

**One First Avenue, Building 34**

**Boston, Massachusetts 02129**

**(617) 259-1970**

**(Name, address and telephone number, including area code, of agent for service)**

*With a copy to:*

**Marc Recht**

**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, 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  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered(1)(2)</b>	<b>Proposed maximum offering price per share</b>	<b>Proposed maximum aggregate offering price</b>	<b>Amount of registration fee</b>
Common stock, par value \$0.001 per share	5,000,000 shares	\$2.45(3)	\$12,250,000(3)	\$1,423.45

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) This registration statement registers an additional 5,000,000 shares issuable under the ZIOPHARM Oncology, Inc. 2012 Equity Incentive Plan (the 2012 Plan ). These 5,000,000 shares represent an increase in the number of shares of Common Stock reserved for issuance under the 2012 Plan, which increase was approved by the Company s stockholders on June 18, 2014 at the Company s 2014 Annual Meeting of Stockholders. We have previously registered 4,000,000 shares issuable under the 2012 Plan on our Registration Statement on Form S-8 (File No. 333-185433) as filed with the Securities and Exchange Commission on December 12, 2012.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and (h) under the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the registrant s common stock as reported on the NASDAQ Capital Market on October 10, 2014.

**EXPLANATORY NOTE; INCORPORATION BY REFERENCE OF CONTENTS OF  
REGISTRATION STATEMENT ON FORM S-8 (NO. 333-185433)**

This Registration Statement registers additional securities of the same class as other securities for which a registration statement filed on Form S-8 relating to the ZIOPHARM Oncology, Inc. 2012 Equity Incentive Plan (the 2012 Plan ) is already effective. Pursuant to Instruction E to Form S-8, we incorporate by reference into this Registration Statement the contents of the registration statement that we filed on Form S-8 (File No. 333-185433) with the Securities and Exchange Commission on December 12, 2012 in its entirety and including exhibits thereto, relating to the registration of 4,000,000 shares of our Common Stock, par value \$0.001 per share, authorized for issuance under the 2012 Plan. This Registration Statement provides for the registration of an additional 5,000,000 shares of Common Stock to be issued under the 2012 Plan. These 5,000,000 shares represent an increase in the number of shares of Common Stock reserved for issuance under the 2012 Plan, which increase was approved by the Company s stockholders on June 18, 2014 at the Company s 2014 Annual Meeting of Stockholders.

**EXHIBITS**

Exhibit No.	Description of Document
4.1	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 (SEC File No. 000-32353) filed April 26, 2006)
4.2	Bylaws, as amended to date (incorporated by reference to Exhibit 3.3 to the registrant's Current Report on Form 8-K (SEC File No. 000-32353) filed September 19, 2005)
4.3	Specimen common stock certificate (incorporated by reference to Exhibit 4.1 to the registrant's Registration Statement on Form SB-2 (SEC File No. 333-129020) filed October 14, 2005)
5.1	Legal opinion of Cooley LLP
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Cooley LLP (included as part of Exhibit 5.1)
24.1	Power of Attorney (included on the signature page to this Registration Statement)
99.1	ZIOPHARM Oncology, Inc. 2012 Equity Incentive Plan, as amended (incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K (SEC File No. 001-33038) filed June 19, 2014)
99.2	Form of Restricted Stock Agreement Granted Under the ZIOPHARM Oncology, Inc. 2012 Equity Incentive Plan (incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K (SEC File No. 001-33038) filed June 26, 2012)
99.3	Form of Option Agreement Granted Under the ZIOPHARM Oncology, Inc. 2012 Equity Incentive Plan (incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K (SEC File No. 001-33038) filed June 26, 2012)

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**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 Boston, Commonwealth of Massachusetts, as of October 14, 2014.

**ZIOPHARM Oncology, Inc.**

By: /s/ Kevin G. Lafond

Name: Kevin G. Lafond

Title: Vice President, Chief Accounting Officer and Treasurer

**POWER OF ATTORNEY AND SIGNATURES**

Each person whose signature appears below hereby constitutes and appoints Jonathan Lewis, Caesar J. Belbel and Kevin G. Lafond, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his 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 and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or his substitutes or substitute, 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.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Jonathan Lewis	Director and Chief Executive	October 14, 2014
Jonathan Lewis	Officer (Principal Executive Officer)	
/s/ Kevin G. Lafond	Vice President, Chief Accounting Officer and Treasurer (Principal Accounting and Financial Officer)	October 14, 2014
Kevin G. Lafond		
/s/ Murray Brennan	Director	October 14, 2014
Murray Brennan		
/s/ James Cannon	Director	October 14, 2014
James Cannon		
/s/ Wyche Fowler, Jr.	Director	October 14, 2014
Wyche Fowler, Jr.		

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/s/ Randal J. Kirk	Director	October 14, 2014
Randal J. Kirk		
/s/ Timothy McInerney	Director	October 14, 2014
Timothy McInerney		
/s/ Michael Weiser	Director	October 14, 2014
Michael Weiser		

**EXHIBIT INDEX**

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