

Onconova Therapeutics, Inc.
Form 8-K
April 30, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **April 27, 2018**

Onconova Therapeutics, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

001-36020
(Commission
File Number)

22-3627252
(I.R.S. Employer
Identification No.)

375 Pheasant Run
Newtown, PA 18940

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(267) 759-3680

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement

On April 27, 2018, Onconova Therapeutics, Inc. (the "Company") entered into an underwriting agreement (the "Underwriting Agreement") with H.C. Wainwright & Co., LLC ("HCW"), relating to the public offering (the "Offering") of 46,588,234 shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), pre-funded warrants ("Pre-Funded Warrants") to purchase an aggregate of 12,235,295 shares of Common Stock and preferred stock warrants ("Preferred Stock Warrants") to purchase up to an aggregate of 1,470,588.225 shares of the Company's Series B Convertible Preferred Stock, par value \$0.01 per share (the "Series B Preferred Stock"). Each share of Common Stock or Pre-Funded Warrant, as applicable, was sold together with a Preferred Stock Warrant to purchase a 0.025 share of Series B Preferred Stock at a combined public offering price of \$0.425 per share of Common Stock or \$0.415 per Pre-Funded Warrant, as applicable, and accompanying Preferred Stock Warrant. The Offering is expected to close on or about May 1, 2018.

The Company expects the net proceeds from the Offering will be approximately \$22.2 million after deducting underwriting discounts and commissions and other estimated offering expenses payable by the Company. The Company intends to use the net proceeds from the Offering for to fund the development of its clinical and preclinical programs, for other research and development activities and for general corporate purposes, which may include capital expenditures and funding its working capital needs.

The Pre-Funded Warrants are exercisable immediately at an exercise price of \$0.01 per share, may be exercised until they are exercised in full, and may be exercised on a cashless basis in certain circumstances specified therein.

The Preferred Stock Warrants will be exercisable immediately at an exercise price of \$0.425 per 0.025 share of Series B Preferred Stock (convertible into one share of Common Stock) and will expire on the 18-month anniversary of the date (the "Charter Amendment Date") on which the Company publicly announces through the filing of a Current Report on Form 8-K that the Charter Amendment (defined below) has been filed with the Secretary of State of the State of Delaware. The Preferred Stock Warrants may be exercised on a cashless basis in certain circumstances specified therein.

A summary description of the Series B Preferred Stock is set forth below under Item 5.03 of this Current Report on Form 8-K and is incorporated herein by reference.

The exercise price and number of shares of Common Stock or Series B Preferred Stock issuable upon exercise of the Pre-Funded Warrants or Preferred Stock Warrants, as the case may be, and the conversion price and number of shares of Common Stock issuable upon the conversion of Series B Preferred Stock, will be subject to adjustment in the event of any stock split, reverse stock split, stock dividend, recapitalization, reorganization or similar transaction, as described in the Pre-Funded Warrants, Preferred Stock Warrants and the Certificate of Designation of the Series B Preferred Stock, as applicable. The shares of Common Stock or Pre-Funded Warrants, as applicable, and the accompanying Preferred Stock Warrants could only be purchased together in the Offering but will be issued separately.

The Company has granted HCW a 30-day option to purchase up to 8,823,529 additional shares of Common Stock at a purchase price of \$0.415 per share and/or Preferred Stock Warrants to purchase up to an aggregate of 220,588.225 shares of Series B Preferred Stock at a purchase price of \$0.01 per Preferred Stock Warrant, less the underwriting discounts and commissions. On April 27, 2017, HCW fully exercised this option for 8,823,529 additional shares of Common Stock and Preferred Stock Warrants to purchase up to an aggregate of 220,588.225 shares of Series B Preferred Stock. The Company expects the additional net proceeds from the exercise of the option will be approximately \$3.4 million after deducting underwriting discounts and commissions and other estimated offering expenses payable by the Company.

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HCW acted as sole book-running manager for the Offering, which was a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 (Registration No. 333-224315) that was declared effective by the Securities and Exchange Commission (the SEC) on April 26, 2018. The Offering was made only by means of a prospectus forming a part of the effective registration statement. The Company will pay HCW a

commission equal to 8.0% of the gross proceeds of the Offering, a management fee equal to 1.0% of the gross proceeds of the Offering and other expenses.

The Underwriting Agreement contains customary representations, warranties, and agreements by the Company, and customary conditions to closing, indemnification obligations of the Company and the underwriter, including for liabilities under the Securities Act of 1933, as amended, other obligations of the parties, and termination provisions. Pursuant to the Underwriting Agreement, the Company agreed, subject to certain exceptions, not to offer, issue or sell any shares of Common Stock or securities convertible into or exercisable or exchangeable for shares of Common Stock for a period of one hundred and twenty (120) days following the Offering without the prior written consent of the Underwriter.

Company Lock-Up Waiver Agreement

In connection with the Company's underwritten public offering of securities closed on February 12, 2018 (the February 2018 Offering), the Company agreed to certain restrictions (the Company Lock-Up) set forth in Section 5(j) of the Underwriting Agreement dated as of February 8, 2018 (the February 2018 Underwriting Agreement) between the Company and HCW, as the underwriter for the February 2018 Offering. The Company Lock-Up, among other items, prohibited the Company, during a period of one hundred and thirty-five (135) days from February 8, 2018, without the prior written consent of HCW, from offering or selling any Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock. In order to receive HCW's waiver of the Company Lock-Up, in connection with the Offering, on April 16, 2018, the Company entered into a Lock-Up Waiver Agreement (the Lock-Up Waiver Agreement) with HCW and certain holders of the Company's preferred stock warrants issued in the February 2018 Offering (the February 2018 Preferred Stock Warrants), pursuant to which (i) HCW waived the Company Lock-Up solely with respect to the Offering, and (ii) the Company agreed to reduce the exercise price of the February 2018 Preferred Stock Warrants such that the exercise price of the February 2018 Preferred Stock Warrants shall be equal to 105% of the public offering price of Common Stock sold in the Offering (but only to the extent that such public offering price is lower than the current exercise price of the February 2018 Preferred Stock Warrants) and that such repricing shall be effective concurrently with the closing of the Offering. In accordance with the Lock-Up Waiver Agreements, the exercise price of the February 2018 Preferred Stock Warrants will be repriced from \$1.01 per 0.1 share of Series A Convertible Preferred Stock to \$0.44625 per 0.1 share of Series A Convertible Preferred Stock when the Offering closes on May 1, 2018.

The foregoing descriptions of the Underwriting Agreement, the Certificate of Designation, the Preferred Stock Warrants, the Pre-Funded Warrants and the Lock-Up Waiver Agreement are not complete and are qualified in their entirety by reference to the full text of the Underwriting Agreement, the Certificate of Designation, the forms of the Preferred Stock Warrant and Pre-Funded Warrant and the form of Lock-Up Waiver Agreement, copies of which are filed as Exhibits 1.1, 3.1, 4.1, 4.2 and 10.1, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Item 3.03. Material Modifications to Rights of Security Holders

The information about the Certificate of Designation of Series B Preferred Stock set forth under Item 5.03 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 3.03.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

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On April 27, 2018, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock (the "Certificate of Designation") with the Delaware Secretary of State. Each 0.025 share of Series B Preferred Stock will be convertible into one share of Common Stock. The Company does not currently have a sufficient number of authorized shares of Common Stock to cover the shares issuable upon the conversion of Series B Preferred Stock. As a result, before any shares of Series B Preferred Stock can be converted, the Company needs to receive stockholder approval of an amendment (the "Charter Amendment") to its Tenth Amended and Restated Certificate of Incorporation, as amended, to sufficiently increase the Company's authorized shares of Common Stock to cover the conversion of all outstanding shares of Series B Preferred Stock into Common Stock. The Company has agreed in the Underwriting Agreement to use reasonable efforts to obtain

such approval within forty-five (45) days from the date of the prospectus relating to the Offering, and the Company intends to seek such approval at a special meeting of stockholders or its 2018 annual meeting of stockholders. The Series B Preferred Stock is not convertible until the next business day after the Company files the Charter Amendment with the Secretary of State of the State of Delaware. The holder, however, will be prohibited from converting shares Series B Preferred Stock into shares of Common Stock if, as a result of such conversion, the holder, together with its affiliates, would own more than 4.99% of the shares of the Company's shares of common stock then issued and outstanding, which may be increased to 9.99% in certain circumstances. Shares of Series B Preferred Stock will generally have no voting rights, except as required by law and except that the consent of holders of a majority of the outstanding Series B Preferred Stock will be required to (i) alter or change adversely the powers, preferences or rights given to the Series B Preferred Stock or alter or amend the Certificate of Designation, (ii) amend any provision of the Company's certificate of incorporation that would have a materially adverse effect on the rights of the holders of the Series B Preferred Stock, (iii) increase the number of authorized shares of Series B Preferred Stock, or (iv) enter into any agreement with respect to the foregoing. Shares of Series B Preferred Stock will not be entitled to receive any dividends, unless and until specifically declared by the Company's board of directors, and will rank:

- on parity with the Company's common stock on an as-converted basis;
- senior to any class or series of the Company's capital stock created thereafter specifically ranking by its terms junior to the Series B Preferred Stock;
- on parity with the Company's Series A Convertible Preferred Stock and any other class or series of the Company's capital stock created thereafter specifically ranking by its terms on parity with the Series B Preferred Stock; and
- junior to any class or series of the Company's capital stock created thereafter specifically ranking by its terms senior to the Series B Preferred Stock.

A copy of the Certificate of Designation relating to the Series B Preferred Stock is filed as Exhibit 3.1 to this Current Report on Form 8-K. The foregoing summary of the terms of the Certificate of Designation is subject to, and qualified in its entirety by, such document, which is incorporated herein by reference.

Item 8.01. Other Events

On April 27, 2018, the Company issued a press release announcing the pricing of the Offering. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Forward-Looking Statements

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Some of the statements in Current Report on Form 8-K are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, Section 21E of the Securities Exchange Act of 1934, as amended, and the Private Securities Litigation Reform Act of 1995, which involve risks and uncertainties, including the use of proceeds from the Offering. These statements relate to future events and include, without limitation, the Company's expectation regarding the Offering, the Charter Amendment, the exercise of the Preferred Stock Warrants and the repricing of the February 2018 Preferred Stock Warrants. Although the Company believes that the expectations reflected in such forward-looking statements are reasonable as of the date made, expectations may prove to have been materially different from the results expressed or implied by such forward-looking statements. The Company has attempted to identify forward-looking statements by terminology including believes, estimates, anticipates, expects, plans, intends, may, could, might, will, should, approximately or other uncertainty of future events or outcomes. These statements are only predictions and involve known and unknown risks, uncertainties, and other factors, including the Company's need for additional financing and current plans and future needs to scale back operations if adequate financing is not obtained, the success and timing of the Company's clinical trials and regulatory approval of protocols, market conditions and those discussed under the heading Risk Factors in the Company's registration statement on Form S-1, as amended (File No. 333-224315), most recent Annual Report on Form 10-K and quarterly reports on Form 10-Q.

Any forward-looking statements contained in this release speak only as of its date. The Company undertakes no obligation to update any forward-looking statements contained in this release to reflect events or circumstances occurring after its date or to reflect the occurrence of unanticipated events.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

Exhibit No.	Exhibit
1.1	Underwriting Agreement, dated as of April 27, 2018
3.1	Certificate of Designation of Series B Convertible Preferred Stock
4.1	Form of Preferred Stock Warrant
4.2	Form of Pre-Funded Warrant
10.1	Form of Lock-Up Waiver Agreement
99.1	Press release dated April 27, 2018

EXHIBIT INDEX

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4.1	<u>Form of Preferred Stock Warrant</u>
4.2	<u>Form of Pre-Funded Warrant</u>
10.1	<u>Form of Lock-Up Waiver Agreement</u>
99.1	<u>Press release dated April 27, 2018</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: April 30, 2018

Onconova Therapeutics, Inc.

By:

/s/ Mark Guerin

Name: Mark Guerin

Title: Chief Financial Officer