

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

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



**EXELIXIS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**04-3257395**

(I.R.S. Employer Identification Number)

**1851 Harbor Bay Parkway  
Alameda, CA 94502**

(Address of Principal Executive Offices, including Zip Code)

**2017 EQUITY INCENTIVE PLAN**

(Full Title of the Plans)

**Michael M. Morrissey  
President and Chief Executive Officer  
Exelixis, Inc.**

**1851 Harbor Bay Parkway  
Alameda, CA 94502  
(650) 837-7000**

(Name, Address, and Telephone Number, including Area Code, of Agent for Service)

*Copies to:*

**Jeffrey J. Hessekiel  
Executive Vice President and General Counsel  
Exelixis, Inc.  
1851 Harbor Bay Parkway  
Alameda, CA 94502**

**Chadwick L. Mills  
Cooley LLP  
101 California Street, 5th Floor  
San Francisco, CA 94111**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an 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 | <input checked="" type="checkbox"/>                                    | Accelerated filer         | <input type="checkbox"/> |
| Non-accelerated filer   | <input type="checkbox"/> (Do not check if a smaller reporting company) | Smaller reporting company | <input type="checkbox"/> |
| Emerging growth company | <input type="checkbox"/>   |                           |                          |

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 (1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock (par value \$0.001 per share)	1,028,913	\$21.47 (2)	\$22,090,763 (2)	\$2,751

- (1) This Registration Statement covers the offer and sale of 1,028,913 shares of Common Stock of Exelixis, Inc. (the “Registrant” or the “Company”) under the Exelixis, Inc. 2017 Equity Incentive Plan (the “2017 Plan”). These shares of Common Stock were previously subject to grants of equity awards under the Exelixis, Inc. 2014 Equity Incentive Plan, the Exelixis, Inc. 2011 Equity Incentive Plan, the Exelixis, Inc. 2000 Equity Incentive Plan, as amended and restated, the Exelixis, Inc. 2000 Non-Employee Directors’ Stock Option Plan, or the Exelixis, Inc. 2016 Inducement Award Plan (collectively, the “Prior Plans”) on May 24, 2017, the effective date of the 2017 Plan (the “Effective Date”). When equity awards granted under the Prior Plans (a) expire or terminate for any reason prior to exercise or settlement, (b) are forfeited, cancelled or otherwise returned to the Registrant because of the failure to meet a contingency or condition required to vest the underlying shares, or (c) other than with respect to outstanding options and stock appreciation rights granted under the Prior Plans with respect to which the exercise or strike price is at least one hundred percent (100%) of the fair market value of the Common Stock subject to the option or stock appreciation right on the date of grant, are reacquired or withheld (or not issued) by the Registrant to satisfy a tax withholding obligation in connection with a stock award, then in each such event set forth in (a), (b) and (c) above, such underlying shares of Common Stock become available for issuance under the 2017 Plan, and are no longer available for issuance under the respective Prior Plans. All of the shares of Common Stock subject to this Registration Statement have become available for issuance under the 2017 Plan as a result of such events. Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s Common Stock that become issuable under the 2017 Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant’s Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act. The offering price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant’s Common Stock on July 27, 2018, as reported on the Nasdaq Global Select Market.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by Exelixis, Inc. (the "Company") with the Securities and Exchange Commission (the "Commission") are incorporated by reference into this registration statement:

- The Company's Annual Report on Form 10-K for the fiscal year ended December 29, 2017 (the "Form 10-K"), filed on February 26, 2018;
- The information specifically incorporated by reference Part III of the Form 10-K from the Company's proxy statement on Schedule 14A filed April 12, 2018;
- The Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 30, 2018, filed on May 2, 2018;
- The Company's Quarterly Report on Form 10-Q for the fiscal quarter ended June 29, 2018, filed on August 1, 2018;
- The Company's Current Reports on Form 8-K filed on February 16, 2018, April 9, 2018, and May 24, 2018; and
- The description of the Company's common stock that is contained in the Company's Registration Statement on Form 8-A (File No. 000-30235), filed with the Commission on April 6, 2000, pursuant to Section 12 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of 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 after the date of this registration statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this registration statement from the date of the filing of such reports and 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 that also is or is 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 Company's amended and restated certificate of incorporation provides that the Company must indemnify the Company's directors to the fullest extent under applicable law. Pursuant to Delaware law, this includes elimination of liability for monetary damages for breach of the directors' fiduciary duty of care to the Company and its stockholders. However, directors of the Company may be personally liable for liability:

- for any breach of duty of loyalty to the Company or to its stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- for unlawful payment of dividends or unlawful stock repurchases or redemptions under Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derived an improper personal benefit.

In addition, the Company's amended and restated bylaws provide that:

- the Company is required to indemnify directors and executive officers of the Company to the fullest extent not prohibited by Delaware law or any other applicable law, subject to limited exceptions;
- the Company may indemnify other officers, employees and other agents of the Company as set forth in Delaware law;
- the Company is required to advance expenses to directors and executive officers of the Company as incurred in connection with legal proceedings against them for which they may be indemnified; and
- the rights conferred in the amended and restated bylaws are not exclusive.

The Company has also provided for liability insurance for each director and officer for certain losses arising from claims or charges made against them while acting in their capacities as directors or officers of the Company.

The Company has entered into indemnification agreements with each of the directors and certain officers of the Company. These agreements, among other things, require the Company to indemnify each director and officer to the fullest extent permitted by Delaware law, including indemnification for expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or officer in any action or proceeding, including any action by or in the right of the Company, arising out of the person's services as a director or officer of the Company, any subsidiary of the Company or any other company or enterprise to which the person provides services at the Company's request. At present, the Company is not aware of any pending or threatened litigation or proceeding involving any of the directors, officers, employees or agents of the Company in which indemnification would be required or permitted. The Company believes that the charter provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

#### **ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED**

Not applicable.

**ITEM 8. EXHIBITS**

Exhibit Number	Exhibit Description	Incorporation by Reference				Filed Herewith
		Form	File Number	Exhibit/ Appendix Reference	Filing Date	
4.1	<u>Amended and Restated Certificate of Incorporation of Exelixis, Inc.</u>	10-K	000-30235	3.1	3/10/2010	
4.2	<u>Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc.</u>	10-K	000-30235	3.2	3/10/2010	
4.3	<u>Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc.</u>	8-K	000-30235	3.1	5/25/2012	
4.4	<u>Certificate of Ownership and Merger Merging X-Ceptor Therapeutics, Inc. with and into Exelixis, Inc.</u>	8-K	000-30235	3.2	10/15/2014	
4.5	<u>Certificate of Change of Registered Agent and/or Registered Office of Exelixis, Inc.</u>	8-K	000-30235	3.1	10/15/2014	
4.6	<u>Amended and Restated Bylaws of Exelixis, Inc.</u>	8-K	000-30235	3.1	12/5/2011	
4.7	<u>Specimen Common Stock Certificate.</u>	S-1, as amended	333-96335	4.1	4/7/2000	
5.1	<a href="#">Opinion of Cooley LLP.</a>					X
23.1	<a href="#">Consent of Independent Registered Public Accounting Firm</a>					X
23.2	<a href="#">Consent of Cooley LLP. (see Exhibit 5.1)</a>					X
24.1	<a href="#">Power of Attorney (contained on signature page)</a>					X
99.1	<a href="#">Exelixis, Inc. 2017 Equity Incentive Plan</a>	10-K	000-30235	10.20	2/26/2018	

**ITEM 9. UNDERTAKINGS**

1. The undersigned registrant hereby undertakes:

(a) 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;
- (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 a 20% 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 paragraphs (a)(i) and (a)(ii) do not apply if 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 registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

- (b) 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
  - (c) 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.
  - (d) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
    - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
    - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
    - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
    - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
2. 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 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
3. 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 Securities and Exchange 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.



Signature	Title	Date
<hr/> <i>/s/ ALAN M. GARBER</i> <b>Alan M. Garber, M.D., Ph.D.</b>	Director	August 1, 2018
<hr/> <i>/s/ VINCENT T. MARCHESI</i> <b>Vincent T. Marchesi, M.D., Ph.D.</b>	Director	August 1, 2018
<hr/> <i>/s/ GEORGE POSTE</i> <b>George Poste, D.V.M., Ph.D., FRS</b>	Director	August 1, 2018
<hr/> <i>/s/ GEORGE A. SCANGOS</i> <b>George A. Scangos, Ph.D.</b>	Director	August 1, 2018
<hr/> <i>/s/ JULIE ANNE SMITH</i> <b>Julie Anne Smith</b>	Director	August 1, 2018
<hr/> <i>/s/ LANCE WILLSEY</i> <b>Lance Willsey, M.D.</b>	Director	August 1, 2018
<hr/> <i>/s/ JACK L. WYSZOMIERSKI</i> <b>Jack L. Wyszomierski</b>	Director	August 1, 2018





Chadwick L. Mills  
+1 650 843 5654  
cmills@cooley.com

August 1, 2018

Exelixis, Inc.  
1851 Harbor Bay Parkway  
Alameda, CA 94502

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have acted as counsel to Exelixis, Inc., a Delaware corporation (the "**Company**"), and you have requested our opinion in connection with the filing of a registration statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to 1,028,913 shares of the Company's Common Stock, \$0.001 par value (the "**Shares**"), pursuant to the Company's 2017 Equity Incentive Plan (the "**2017 Plan**"), that were previously available for issuance under the Company's 2014 Equity Incentive Plan, 2011 Equity Incentive Plan, 2000 Equity Incentive Plan, as amended and restated, 2000 Non-Employee Directors' Stock Option Plan and 2016 Inducement Award Plan (collectively, the "**Prior Plans**"), but have become available for issuance under the 2017 Plan, and are no longer available for issuance under the respective Prior Plans, as described in the Registration Statement.

In connection with this opinion, we have examined and relied upon the Registration Statement and related Prospectus, the Company's Amended and Restated Certificate of Incorporation and Bylaws, as currently in effect, the 2017 Plan and the originals or copies certified to our satisfaction of such other records, documents, certificates, memoranda and other instruments as we deem necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as copies thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not sought independently to verify such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the 2017 Plan, the Registration Statement and related Prospectus, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.



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Sincerely,

COOLEY LLP

By: /s/ CHADWICK L. MILLS

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Chadwick L. Mills

Cooley LLP 101 California Street, 5th Floor, San Francisco, CA 94111-5800  
t: (415) 693-2000 f: (415) 693-2222 cooley.com

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2017 Equity Incentive Plan of Exelixis, Inc. of our reports dated February 26, 2018, with respect to the consolidated financial statements of Exelixis, Inc. and the effectiveness of internal control over financial reporting of Exelixis, Inc. included in its Annual Report (Form 10-K) for the year ended December 29, 2017, filed with the Securities and Exchange Commission

/s/ Ernst & Young LLP

Redwood City, California  
August 1, 2018