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

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

IN8BIO, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

82-5462585
(I.R.S. Employer
Identification No.)

350 5th Avenue, Suite 5330
New York, New York
(Address of Principal Executive Offices)

10118
(Zip Code)

2020 Employee Stock Purchase Plan
Amended and Restated 2023 Equity Incentive Plan
(Full titles of the plans)

William Ho
President and Chief Executive Officer
IN8bio, Inc.
350 5th Avenue, Suite 5330, New York, New York 10118
(Name and address of agent for service)

(646) 600-6438
(Telephone number, including area code, of agent for service)

Copies to:

Joshua A. Kaufman
Jaime L. Chase
Cooley LLP
55 Hudson Yards
New York, New York 10001

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" 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.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Pursuant to General Instruction E of Form S-8, IN8bio, Inc. (the “Registrant”) is filing this Registration Statement with the Securities and Exchange Commission (the “Commission”) to register an additional 400,000 shares of common stock under the Registrant’s 2020 Employee Stock Purchase Plan and an additional 2,164,366 shares of common stock under the Registrant’s 2023 Amended and Restated Equity Incentive 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.

In accordance with the instructional note to Part I of Form S-8 as promulgated by the Commission, the information specified by Part I of the Form S-8 has been omitted from this Registration Statement.

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 Commission:

- (a) the contents of the Registrant’s Registration Statements on Form S-8, previously filed with the Commission on [September 10, 2021](#), as amended on [August 18, 2023](#) (File No. 333-259458), [May 12, 2022](#) (333-264893), as amended on [August 18, 2023](#), and [August 18, 2023](#) (File No. 333-274092);
- (b) the Registrant’s Annual Report on [Form 10-K](#) (File No. 001-39692) for the fiscal year ended December 31, 2022, filed with the Commission on March 30, 2023;
- (c) the Registrant’s Current Reports on Form 8-K (File No. 001-39692), filed on [January 5, 2023](#), [February 23, 2023](#), [April 17, 2023](#), [April 24, 2023](#), [May 1, 2023](#), [May 17, 2023](#), [June 5, 2023](#), [June 16, 2023](#), [October 12, 2023](#), [November 20, 2023](#), [December 7, 2023](#), [December 11, 2023](#) and [December 11, 2023](#) to the extent the information in and exhibits to such reports are filed and not furnished;
- (d) the Registrant’s Quarterly Reports on Form 10-Q (File No. 001-39692), filed on [May 12, 2023](#), [August 10, 2023](#) and [November 9, 2023](#); and
- (e) the description of the Common Stock contained in the Registrant’s Registration Statement on [Form 8-A](#) (File No. 001-39692), filed with the Commission on November 10, 2020, under Section 12(b) of the Securities 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 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 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. 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 herein or in any subsequently filed document which 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 constitute a part of this Registration Statement, except as so modified or superseded.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

As of the date hereof, partners of Cooley LLP and GC&H Investments, LLC, an entity that is comprised of partners and associates of Cooley LLP, beneficially own an aggregate of 173,937 shares of the Registrant's common stock.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. The Registrant's amended and restated certificate of incorporation provides for indemnification of the Registrant's directors to the maximum extent permitted by the Delaware General Corporation Law, and the Registrant's amended and restated bylaws provide for indemnification of the Registrant's directors, officers, employees and other agents to the maximum extent permitted by law.

The Registrant has entered into indemnification agreements with the Registrant's directors and officers, whereby the Registrant has agreed to indemnify the Registrant's directors and officers to the fullest extent permitted by law, including advancement of expenses incurred in legal proceedings to which the director or officer was, or is threatened to be made, a party by reason of the fact that such director or officer is or was a director, officer, employee or agent of the Registrant, provided that such director or officer acted in good faith and in a manner that the director or officer reasonably believed to be in, or not opposed to, the best interest of the Registrant. At present, there is no pending litigation or proceeding involving a director or officer of the Registrant regarding which indemnification is sought, nor is the Registrant aware of any threatened litigation that may result in claims for indemnification.

The Registrant maintains insurance policies that indemnify the Registrant's directors and officers against various liabilities arising under the Securities Act and the Exchange Act that might be incurred by any director or officer in his capacity as such.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits to this Registration Statement are listed below:

Exhibit Number	Exhibit Description
4.1	Amended and Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-39692), filed with the Commission on August 3, 2021).
4.2	Second Amended and Restated Bylaws of the Registrant (incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-39692), filed with the Commission on December 7, 2023).
5.1*	Opinion of Cooley LLP.
23.1*	Consent of Independent Registered Public Accounting Firm.
23.2*	Consent of Cooley LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on the signature page to this Registration Statement).
99.1	2020 Employee Stock Purchase Plan (incorporated herein by reference to Exhibit 4.9 to the Registrant's Registration Statement on Form S-8 (File No. 333-259458), filed with the Commission on September 10, 2021).
99.2	Amended and Restated 2023 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-39692), filed with the Commission on August 10, 2023).
99.3	Forms of Option Grant Notice and Option Agreement under the Amended and Restated 2023 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-39692), filed with the Commission on August 10, 2023).
107*	Filing Fee Table.

* Filed herewith.

Item 9. Undertakings.

A. The undersigned Registrant hereby undertakes:

1. 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; and

(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)(1)(i) and (A)(1)(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.

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 herein, and the offering of such 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.

B. 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.

C. 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 New York, State of New York on January 19, 2024.

IN8bio, Inc.

By: /s/ William Ho

William Ho

President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints William Ho and Patrick McCall, 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 or his or her 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.

Signature	Title	Date
<u>/s/ William Ho</u> William Ho	President, Chief Executive Officer and Director (Principal Executive Officer)	January 19, 2024
<u>/s/ Patrick McCall</u> Patrick McCall	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	January 19, 2024
<u>/s/ Alan S. Roemer</u> Alan S. Roemer	Chairman of the Board of Directors	January 19, 2024
<u>/s/ Peter Brandt</u> Peter Brandt	Director	January 19, 2024
<u>/s/ Corinne Epperly</u> Corinne Epperly	Director	January 19, 2024
<u>/s/ Emily T. Fairbairn</u> Emily T. Fairbairn	Director	January 19, 2024
<u>/s/ Jeremy R. Graff</u> Jeremy R. Graff	Director	January 19, 2024
<u>/s/ Luba Greenwood</u> Luba Greenwood	Director	January 19, 2024
<u>/s/ Travis Whitfill</u> Travis Whitfill	Director	January 19, 2024



Joshua A. Kaufman
T: +1 212 479 6495
josh.kaufman@cooley.com

January 19, 2024

IN8bio, Inc.
350 5th Avenue
Suite 5330
New York, New York 10118

Ladies and Gentlemen:

We have acted as counsel to IN8bio, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**"), covering the offering of up to 2,564,366 shares (the "**Shares**") of the Company's common stock, par value \$0.0001 per share (the "**Common Stock**"), consisting of (i) 2,164,366 shares of Common Stock issuable under the Company's Amended and Restated 2023 Equity Incentive Plan (the "**2023 Plan**") and (ii) 400,000 shares of Common Stock issuable pursuant to the Company's 2020 Employee Stock Purchase Plan (together with the 2023 Plan, the "**Plans**").

In connection with this opinion, we have examined and relied upon (i) the Registration Statement and related prospectuses, (ii) the Company's certificate of incorporation, and bylaws, each as currently in effect, (iii) the Plans and (iv) such other records, documents, opinions, certificates, memoranda and instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified 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 Plans, the Registration Statement and the related prospectuses, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we have no obligation or responsibility to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.



January 19, 2024

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We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.

Sincerely,

Cooley LLP

By: /s/ Joshua A. Kaufman
Joshua A. Kaufman

Cooley LLP 55 Hudson Yards New York, NY 10001
t: (212) 479-6000 f: (212) 479-6275 cooley.com

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 30, 2023, with respect to the financial statements of IN8bio, Inc. as of December 31, 2022 and 2021 and for the years then ended, which report is included in the Annual Report on Form 10-K of IN8bio, Inc. for the year ended December 31, 2022, filed with the Securities and Exchange Commission. Our audit report includes an explanatory paragraph relating to IN8bio, Inc.'s ability to continue as a going concern.

/s/ CohnReznick LLP

Tysons, Virginia
January 19, 2024

CALCULATION OF FILING FEE TABLES

Form S-8
(Form Type)IN8bio, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Share	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	2020 Employee Stock Purchase Plan (Common stock, \$0.0001 par value per share)	Other	400,000 (2)	\$1.2835 (3)	\$513,400.00	.00014760	\$75.78
Equity	Amended and Restated 2023 Equity Incentive Plan (Common stock, \$0.0001 par value per share)	Other	2,164,366 (4)	\$1.51 (5)	\$3,268,192.66	.00014760	\$482.39
Total Offering Amounts					\$3,781,592.66		\$558.17
Total Fee Offsets							—
Net Fee Due							\$558.17

- (1) Pursuant to Rule 416(a) 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 which results in an increase in the number of IN8bio, Inc.’s (the “Registrant”) outstanding shares of common stock, par value \$0.0001 per share (the “Common Stock”).
- (2) Represents additional shares of the Registrant’s Common Stock reserved for issuance under the IN8bio, Inc. 2020 Employee Stock Purchase Plan (the “ESPP”) as a result of the automatic increase in shares reserved thereunder on January 1, 2022 pursuant to the terms of the ESPP. The ESPP provides that an additional number of shares will automatically be added annually to the shares authorized for issuance under the ESPP on January 1, 2022 through January 1, 2031. The number of shares added each year will be equal to the lesser of: (a) 1% of the total number of shares of Common Stock outstanding on the last day of the calendar month before the date of the automatic increase; (b) 400,000 shares of Common Stock; and (c) a number of shares of Common Stock designated by action of the Registrant’s board of directors prior to the date of the increase.
- (3) Estimated pursuant to Rules 457(c) and 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 Common Stock as reported on The Nasdaq Global Market on January 16, 2024 multiplied by 85%, which is the percentage of the price per share applicable to purchases under the ESPP.
- (4) Represents additional shares of the Registrant’s Common Stock reserved for future grant under IN8bio, Inc. 2023 Amended and Restated Equity Incentive Plan (the “2023 Plan”) as a result of the automatic increase in shares reserved thereunder on January 1, 2024 pursuant to the terms of the 2023 Plan. The 2023 Plan provides that an additional number of shares will automatically be added annually to the shares authorized for issuance under the 2023 Plan on January 1st of each year, for a period of not more than 10 years, commencing on January 1, 2024 and ending on (and including) January 1, 2033, in an amount equal to the lesser of (a) 5% of the total number of shares of Common Stock outstanding on December 31st of the preceding calendar year and (b) a number of shares of Common Stock designated by action of the Registrant’s board of directors prior to the first day of any calendar year.
- (5) Estimated pursuant to Rules 457(c) and 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 Common Stock as reported on The Nasdaq Global Market on January 16, 2024.