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

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

Benitec Biopharma Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

3940 Trust Way
Hayward, California 94545
(510) 780-0819
(Address of Principal Executive Offices)

84-462-0206
(I.R.S. Employer
Identification Number)

Benitec Biopharma Inc. 2020 Equity and Incentive Compensation Plan
(Full title of the plans)

Dr. Jerel Banks
Chief Executive Officer
Benitec Biopharma Inc.
3940 Trust Way
Hayward, California 94545
(510) 780-0819
(Name and address of agent for service)

Copies to:

Matthew S. O'Loughlin, Esq.
Louis Rambo, Esq.
Proskauer Rose LLP
2029 Century Park East, Suite 2400
Los Angeles, CA 90067-3010
(310) 557-2900
(310) 557-2193 - Facsimile

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 Accelerated Filer
Non-Accelerated Filer 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.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 7,000,000 shares of common stock, par value \$0.0001 (“Common Stock”) of Benitec Biopharma Inc. (the “Company”). The increase in the number of shares of Common Stock authorized for issuance under the Company’s 2020 Equity and Incentive Compensation Plan (the “Plan”) was approved by the Company’s stockholders at the Company’s Special Meeting of Stockholders held on August 29, 2024. These additional shares of Common Stock are additional securities of the same class as the securities previously registered for issuance on the registrant’s Registration Statements on Form S-8 with respect to the Plan filed with the Securities Exchange Commission (the “SEC”) on February 18, 2021 (the “Original Form S-8”) (File No. 333-253258), December 23, 2021 (the “First Amended Form S-8”) (File No. 333-261874), and December 26, 2023 (the “Second Amended Form S-8”) (File No. 333-276267). The total shares that may be issued under the Plan will now be 8,204,537 shares, after giving effect to the increase of 7,000,000 additional shares approved by the Company’s stockholders, and the impact of the reverse stock split effected in 2023. Pursuant to General Instruction E of Form S-8, the Original Form S-8, the First Amended Form S-8, and the Second Amended Form S-8 are incorporated by reference into and made part of this Registration Statement, except to the extent supplemented, superseded or modified by the specific information set forth below and the specific exhibits attached hereto.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company with the SEC are incorporated by reference into this Registration Statement:

- (a) the Company’s Annual Report on Form 10-K for the fiscal year ended June 30, 2024, filed with the SEC on [September 26, 2024](#);
- (c) the Company’s Current Reports on Form 8-K filed with the SEC on [July 1, 2024](#) and [September 5, 2024](#); and
- (d) the description of the Company’s Common Stock contained in the Company’s Form 8-K12B, filed with the SEC on [April 15, 2020](#), together with any amendment or report filed for the purpose of updating such description.

All other reports and documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which 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 subsequently filed document that also 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 8. Exhibits

Exhibit No.	Description
4.1	Amended and Restated Certificate of Incorporation of Benitec Biopharma Inc. (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on April 15, 2020).
4.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Benitec Biopharma Inc., effective December 17, 2021 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on December 21, 2021).
4.3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Benitec Biopharma Inc., effective December 9, 2022 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on December 12, 2022).
4.4	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Benitec Biopharma Inc., effective July 26, 2023 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on July 25, 2023).
4.5	Amended and Restated Bylaws of Benitec Biopharma Inc. (incorporated by reference to Exhibit 3.2 to the Company's Form 8-K filed on April 15, 2020).
5.1*	Opinion of Proskauer Rose LLP
23.1*	Consent of Proskauer Rose LLP (contained in Exhibit 5.1)
23.2*	Consent of Baker Tilly US, LLP
24.1*	Power of Attorney (contained on signature page)
99.1	Benitec Biopharma Inc. 2020 Equity and Incentive Compensation Plan (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on December 14, 2020).
99.2	First Amendment to the Benitec Biopharma Inc. 2020 Equity and Incentive Compensation Plan, dated as of December 8, 2021 (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on December 13, 2021).
99.3	Second Amendment to the Benitec Biopharma Inc. 2020 Equity and Incentive Compensation Plan, dated as of December 6, 2023 (incorporated by reference to Annex A to the Company's Definitive Proxy Statement on Schedule 14A filed on October 20, 2023).
99.4	Third Amendment to the Benitec Biopharma Inc. 2020 Equity and Incentive Compensation Plan, dated as of August 29, 2024 (incorporated by reference to Annex A to the Company's Definitive Proxy Statement on Schedule 14A filed on July 29, 2024).
107*	Filing Fee Table

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Hayward, State of California, on this 1st day of October, 2024.

BENITEC BIOPHARMA INC.

By: /s/ Dr. Jerel Banks

Name: Dr. Jerel Banks

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Dr. Jerel Banks and Megan Boston, as his or her true and lawful attorney-in-fact and agent, each 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 sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, 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 substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Dr. Jerel Banks</u> Dr. Jerel Banks	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	October 1, 2024
<u>/s/ Megan Boston</u> Megan Boston	Executive Director, Director <i>(Principal Accounting and Financial Officer)</i>	October 1, 2024
<u>/s/ J. Kevin Buchi</u> J. Kevin Buchi	Director	October 1, 2024
<u>/s/ Peter Francis</u> Peter Francis	Director	October 1, 2024
<u>/s/ Kishan ("Kishen") Mehta</u> Kishan ("Kishen") Mehta	Director	October 1, 2024
<u>/s/ Edward Smith</u> Edward Smith	Director	October 1, 2024



Proskauer Rose LLP 2029 Century Park East, Suite 2400 Los Angeles, CA 90067-3010

October 1, 2024

Benitec Biopharma Inc.
3940 Trust Way
Hayward, California 94545

Ladies and Gentlemen:

We are acting as counsel to Benitec Biopharma Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), of a registration statement on Form S-8 (the "Registration Statement") and the rules and regulations thereunder, relating to the registration of an additional 7,000,000 shares (the "Shares") of the Company's common stock, \$0.0001 par value per share (the "Common Stock"), that may be issued by the Company pursuant to the Benitec Biopharma Inc. 2020 Equity and Incentive Compensation Plan, as amended (the "Plan"). The Shares are to be issued by the Company upon grant, vesting or exercise of certain stock-based awards (the "Awards") to be granted pursuant to the Plan.

As such counsel, we have participated in the preparation of the Registration Statement and have examined originals or copies of such documents, corporate records and other instruments as we have deemed relevant, including, without limitation: (i) the amended and restated certificate of incorporation of the Company, as amended; (ii) the amended and restated bylaws of the Company; (iii) certain resolutions of the Board of Directors of the Company relating to the authorization and issuance of the Awards and the Shares; (iv) certain resolutions of the Company's stockholders relating to the adoption of the Plan and the amendments thereto; (v) the Plan; and (vii) the Registration Statement, together with the other exhibits filed as a part thereof.

We have made such examination of law as we have deemed necessary to express the opinion contained herein. As to matters of fact relevant to this opinion, we have relied upon, and assumed without independent verification, the accuracy of certificates of public officials and officers of the Company. We have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as certified, facsimile or photostatic copies, and the authenticity of the originals of such copies. We have also assumed that certificates representing the Shares will have been properly signed by authorized officers of the Company or their agents.

Based upon the foregoing, and subject to the limitations, qualifications, exceptions and assumptions expressed herein, we are of the opinion, assuming no change in the applicable law or pertinent facts, that the Shares when and to the extent issued in accordance with the terms of the Awards and the Plans, including payment of the applicable exercise price therefor, will be validly issued, fully paid and non-assessable.

This opinion is limited in all respects to the General Corporation Law of the State of Delaware, and we express no opinion as to the laws, statutes, rules or regulations of any other jurisdiction. The reference and limitation to the "General Corporation Law of the State of Delaware" includes all applicable Delaware statutory provisions of law and reported judicial decisions interpreting these laws.

Beijing | Boca Raton | Boston | Chicago | Hong Kong | London | Los Angeles | New Orleans | New York | Paris | São Paulo | Washington, DC



October 1, 2024

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving the foregoing consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Proskauer Rose LLP

Beijing | Boca Raton | Boston | Chicago | Hong Kong | London | Los Angeles | New Orleans | New York | Paris | São Paulo | Washington, DC

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Benitec Biopharma Inc. (the “Company”) of our report dated September 26, 2024 relating to the consolidated financial statements of the Company, which appears in the Company’s Annual Report on Form 10-K for the year ended June 30, 2024.

/s/ Baker Tilly US, LLP

San Diego, California

October 1, 2024

Calculation of Filing Fee Tables

Form S-8
(Form Type)

Benitec Biopharma 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(2)	Maximum Aggregate Offering Price(2)	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.0001 per share	457(a) and 457(h)(2)	7,000,000	\$8.98	\$62,860,000	0.0001531	\$9,623.87
Total Offering Amounts							\$62,860,000
Total Fee Offsets							—
Net Fee Due							\$9,623.87

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended, (the "Securities Act") this Registration Statement shall also cover any additional shares of the Company's common stock that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected that results in an increase to the number of outstanding shares of the Company's common stock, as applicable.
- (2) Estimated in accordance with Rules 457(c) and (h) solely for the purpose of calculating the registration fee on the basis of \$8.98 per share, the average of the high and low prices of the Company's common stock as reported on The Nasdaq Capital Market on September 27, 2024, a date that is within five business days prior to the date on which this Registration Statement is being filed.