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

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

BRICKELL BIOTECH, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

**5777 Central Avenue, Suite 102
Boulder, CO**
(Address of Principal Executive Offices)

93-0948554
(I.R.S. Employer
Identification No.)

80301
(Zip Code)

**Brickell Biotech, Inc.
2020 Omnibus Long-Term Incentive Plan**
(Full title of the plan)

**Robert B. Brown
Chief Executive Officer
Brickell Biotech, Inc.
5777 Central Avenue, Suite 102
Boulder, CO 80301
(720) 505-4755**

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

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
Non-accelerated filer
Emerging growth company

Accelerated filer
Smaller reporting 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 relates to the registration of an additional 5,372,000 shares of common stock, \$0.01 par value per share, of Brickell Biotech, Inc. (the "Registrant"), issuable under the Brickell Biotech, Inc. 2020 Omnibus Long-Term Incentive Plan. Pursuant to General Instruction E of Form S-8, the contents of the Registrant's registration statements on Form S-8 filed with the Securities and Exchange Commission (the "Commission") on April 27, 2020 ([Registration No. 333-237859](#)), on September 9, 2020 ([Registration No. 333-248688](#)) and on May 14, 2021 ([Registration No. 333-256113](#)) are incorporated herein by reference and made a part of this registration statement, except as amended hereby.

PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

The Registrant incorporates by reference in this registration statement the following documents that the Registrant has filed with the Commission:

- (a) the Registrant's Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2021, filed with the Commission on March 15, 2022;
- (b) those portions of the Registrant's Definitive Proxy Statement on Schedule 14A for its 2022 Annual Meeting of Stockholders, filed with the Commission on [March 22, 2022](#), that were specifically incorporated by reference into its Annual Report on Form 10-K for the year ended December 31, 2021;
- (c) the Registrant's Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2022, filed with the Commission on May 12, 2022;
- (d) the Registrant's Current Reports on Form 8-K, filed with the Commission on [February 2, 2022](#), [May 3, 2022](#), [May 3, 2022](#), and [May 17, 2022](#) (other than information contained in a Current Report on Form 8-K that is "furnished" but not "filed" for purposes of the Securities Exchange Act of 1934, as amended (the "Exchange Act")); and
- (e) the description of the Registrant's common stock, par value \$0.01 per share, contained in the registration statement on [Form S-8](#) that the Registrant filed with the Commission on September 10, 2019, together with any amendment or report that the Registrant may file for the purpose of updating this description.

All documents that the Registrant files with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the filing of this registration statement but prior to the filing of a post-effective amendment which (i) indicates that all of the shares of the Registrant's common stock covered by this registration statement have been sold, or which (ii) deregisters all of the shares then remaining unsold, shall be deemed to be incorporated by reference in and to be part of this registration statement from the respective dates of filing.

Any statement in a document incorporated or deemed to be incorporated by reference in this registration statement shall be deemed to be modified or superseded to the extent that a statement in this registration statement, or in any document filed after the filing of this registration statement which is deemed to be incorporated by reference in this registration statement, modifies or supersedes the earlier statement. The earlier statement shall be deemed to be incorporated in this registration statement only as so modified or superseded.

Item 6. Indemnification of Directors and Officers.

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify any persons who were or are,

or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where a present or former director or officer is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses (including attorney's fees) which such director or officer has actually and reasonably incurred. Article XI(B) of the Registrant's amended and restated certificate of incorporation authorizes the Registrant to provide indemnification of its directors, officers, agents and any other persons to which applicable law permits the Registrant to provide indemnification, and Article V of the Registrant's amended and restated bylaws provides for indemnification of its directors, officers, employees and other agents to the maximum extent permitted by the DGCL. In addition, the Registrant maintains a policy providing directors' and officers' liability insurance.

Section 102 of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability:

- for any breach of the director's duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- for acts related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or
- for any transaction from which the director derived an improper personal benefit.

Article XI(A) of the Registrant's amended and restated certificate of incorporation includes such a provision. Moreover, Article V, Section 5 of the Registrant's amended and restated bylaws provides that expenses incurred by any director, officer, employee or other agent in defending any such action, suit or proceeding in advance of its final disposition shall be paid by the Registrant upon delivery of an undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Registrant.

Item 8. Exhibits.

Exhibit Number	Description of Exhibit
4.1	Amended and Restated Certificate of Incorporation, as amended through April 19, 2021 (incorporated by reference to Exhibit 3.2 filed with the Registrant's Current Report on Form 8-K filed with the Commission on April 19, 2021)
4.2	Amended and Restated Bylaws, as currently in effect (incorporated by reference to Exhibit 3.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 14, 2020)
4.3	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-8 filed with the Commission on September 10, 2019)
4.4	Brickell Biotech, Inc. 2020 Omnibus Long-Term Incentive Plan, as amended through May 17, 2022 (incorporated by reference to Exhibit 10.1 filed with the Registrant's Current Report on Form 8-K filed with the Commission on May 17, 2022)
5.1	Opinion of Faegre Drinker Biddle & Reath LLP
23.1	Consent of Ernst & Young LLP
23.2	Consent of Faegre Drinker Biddle & Reath LLP (included in Exhibit 5.1)
24.1	Power of attorney (contained on the signature page of this registration statement)
107	Filing Fee Table

Calculation of Filing Fee Table

FORM S-8
(Form Type)

BRICKELL BIOTECH, 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 Unit ⁽²⁾	Maximum Aggregate Offering Price ⁽²⁾	Fee Rate	Amount of Registration Fee
Equity	Common Stock \$0.01 par value per share	457(c) and (h)	5,372,000	\$0.16	\$859,520	0.0000927	\$79.68
Total Offering Amounts					\$859,520		\$79.68
Total Fee Offsets							—
Net Fee Due							\$79.68

- (1) The aggregate number of shares to be registered is subject to adjustment by reason of stock splits, stock dividends and other events pursuant to the anti-dilution provisions of the Brickell Biotech, Inc. 2020 Omnibus Long-Term Incentive Plan. Accordingly, pursuant to Rule 416, this registration statement covers, in addition to the number of shares of common stock shown in the table above, an indeterminate number of shares of common stock that may become issuable by reason of such provisions.
- (2) Computed pursuant to Rule 457(c), in accordance with Rule 457(h)(1), on the basis of the average of the high and low reported sales price on May 23, 2022 of a share of common stock on The Nasdaq Capital Market.



faegredrinker.com

Faegre Drinker Biddle & Reath LLP
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May 24, 2022

Brickell Biotech, Inc.
 5777 Central Avenue
 Boulder, Colorado 80301

Ladies and Gentlemen:

We have acted as counsel to Brickell Biotech, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of the Company's Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act"), registering the offer and sale of up to 5,372,000 additional shares of the Company's common stock, par value \$0.01 per share (the "Shares"), pursuant to the Brickell Biotech, Inc. 2020 Omnibus Long-Term Incentive Plan, as amended (the "Plan").

For purposes of this opinion letter, we have examined the Plan, the Registration Statement, the Company's Amended and Restated Certificate of Incorporation, as currently in effect, the Company's Amended and Restated Bylaws, as currently in effect, and the resolutions of the Company's board of directors authorizing the issuance of the Shares. We have also examined a certificate of the Secretary of the Company dated the date hereof (the "Certificate") and originals, or copies certified or otherwise authenticated to our satisfaction, of such corporate and other records, agreements, instruments, certificates of public officials and documents as we have deemed necessary as a basis for the opinions hereinafter expressed and have made such examination of law as we have deemed relevant and necessary in connection with the opinions hereinafter expressed. As to facts material to this opinion letter, we have relied upon certificates, statements or representations of public officials, of officers and representatives of the Company (including the Certificate) and of others, without any independent verification thereof.

In our examination, we have assumed: (i) the legal capacity of all natural persons; (ii) the genuineness of all signatures, including electronic signatures; (iii) the authenticity of all documents submitted to us as originals; (iv) the conformity to original documents of all documents submitted to us as certified, conformed, photostatic or facsimile copies; (v) the authenticity of the originals of such latter documents; (vi) the truth, accuracy and completeness of the information, representations and warranties contained in the agreements, documents, instruments, certificates and records we have reviewed; and (vii) the absence of any undisclosed modifications to the agreements and instruments reviewed by us.

Based upon such examination and review, and subject to the foregoing and the other qualifications, assumptions and limitations set forth herein, we are of the opinion that all necessary corporate action on the part of the Company has been taken to authorize the issuance and sale of the Shares to be issued in accordance with the Plan and that, when (a) the Shares have been issued and sold as contemplated in the Registration Statement and related prospectus and in accordance with the Plan and any applicable award agreement, and (b) where applicable, the consideration for the Shares specified in the Plan and any applicable award agreement has been received by the Company, the Shares will be validly issued, fully paid and nonassessable.

We do not express any opinion herein with respect to the laws of any jurisdiction other than, subject to the limitations and assumptions contained herein, the General Corporation Law of the State of Delaware.

This opinion speaks only as of the date the Registration Statement becomes effective under the Act, and we assume no obligation to revise or supplement this opinion thereafter. This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein.

We hereby 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 within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

FAEGRE DRINKER BIDDLE & REATH LLP

By: /s/ Christine G. Long
 Christine G. Long, *Partner*

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Brickell Biotech, Inc. 2020 Omnibus Long-Term Incentive Plan of our report dated March 15, 2022, with respect to the consolidated financial statements of Brickell Biotech, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2021, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Denver, Colorado
May 24, 2022