
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)

93-0948554

(I.R.S. Employer
Identification No.)

5777 Central Avenue, Suite 102
Boulder, CO

(Address of Principal Executive Offices)

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)

Copies to:

Christine G. Long
Faegre Drinker Biddle & Reath LLP
600 East 96th Street, Suite 600
Indianapolis, Indiana 46240
(317) 569-9600

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 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 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(2)	Proposed maximum aggregate offering price(2)	Amount of registration fee
Common stock, \$0.01 par value per share	4,500,000	\$0.78	\$3,510,000	\$455.60

- (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 September 4, 2020 of a share of common stock on The Nasdaq Capital Market.

EXPLANATORY NOTE

This registration statement on Form S-8 relates to the registration of an additional 4,500,000 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 statement on Form S-8 filed with the Securities and Exchange Commission (the "Commission") on April 27, 2020 (Registration No. 333-237859) is 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, 2019, filed with the Commission on March 18, 2020;
- (b) those portions of the Registrant's Definitive Proxy Statement on Schedule 14A for its 2020 Annual Meeting of Stockholders, filed with the Commission on March 30, 2020, as amended April 3, 2020, that were specifically incorporated by reference into its Annual Report on Form 10-K for the year ended December 31, 2019;
- (c) the Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2020 and June 30, 2020 filed with the Commission on May 14, 2020 and August 12, 2020, respectively;
- (d) the Registrant's Current Reports on Form 8-K, filed with the Commission on February 10, 2020, February 10, 2020, February 10, 2020, February 18, 2020, March 18, 2020 (with respect to Item 8.01 only), April 3, 2020, April 14, 2020, April 20, 2020, June 2, 2020, June 15, 2020, June 18, 2020, June 26, 2020, August 21, 2020 and September 1, 2020 (other than information contained in current reports 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 Exhibit 99.3 to 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
<u>4.1</u>	Amended and Restated Certificate of Incorporation, as amended through August 31, 2020 (incorporated by reference to Exhibit 3.2 filed with the Registrant's Current Report on Form 8-K filed with the Commission on September 1, 2020)
<u>4.2</u>	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)
<u>4.3</u>	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)
<u>4.4</u>	Brickell Biotech, Inc. 2020 Omnibus Long-Term Incentive Plan, as amended through August 31, 2020 (incorporated by reference to Exhibit 10.1 filed with the Registrant's Current Report on Form 8-K filed with the Commission on September 1, 2020)
<u>5.1</u>	Opinion of Faegre Drinker Biddle & Reath LLP
<u>23.1</u>	Consent of Ernst & Young LLP
<u>23.2</u>	Consent of Faegre Drinker Biddle & Reath LLP (included in Exhibit 5.1)
<u>24.1</u>	Power of attorney (contained on the signature page of this registration statement)

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Boulder, State of Colorado, on September 9, 2020.

BRICKELL BIOTECH, INC.

By: /s/ Robert B. Brown

Robert B. Brown
Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert B. Brown and R. Michael Carruthers, and each of them, as 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 to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the 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 substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons on September 9, 2020, in the capacities indicated.

<u>Signature</u>	<u>Title</u>
<u>/s/ Robert B. Brown</u> Robert B. Brown	Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ R. Michael Carruthers</u> R. Michael Carruthers	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
<u>/s/ Jose Breton</u> Jose Breton	Controller and Chief Accounting Officer
<u>/s/ Reginald L. Hardy</u> Reginald L. Hardy	Co-Founder and Chairman of the Board of Directors
<u>/s/ Gary A. Lyons</u> Gary A. Lyons	Director
<u>/s/ Vijay B. Samant</u> Vijay B. Samant	Director
<u>/s/ Dennison T. Veru</u> Dennison T. Veru	Director



faegredrinker.com

Faegre Drinker Biddle & Reath LLP
600 East 96th Street, Suite 600
Indianapolis, Indiana 46240
+1 317 569 9600 main
+1 317 569 4800 fax

September 9, 2020

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 4,500,000 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 (the "Plan").

For purposes of this opinion letter, we have examined the Plan, the Registration Statement, the Amended and Restated Certificate of Incorporation of the Company, as currently in effect, the Amended and Restated Bylaws of the Company, 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 records 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 reviewed such matters of law as we have deemed relevant hereto. 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; (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. We have also assumed that the Company's board of directors, or a duly authorized committee thereof, will have approved the issuance of each award under the Plan prior to the issuance thereof.

Based upon such examination and review, and subject to the foregoing and the other qualifications, assumptions and limitations set forth herein, it is our 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 the terms of the applicable awards granted under the Plan, and (b) where applicable, the consideration for the Shares specified in the Plan and the terms of any awards granted under the Plan have been received by the Company, the Shares will be legally and validly issued, fully paid and nonassessable.

The foregoing opinions are limited to 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

/s/ Christine G. Long

By: 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 18, 2020, with respect to the consolidated financial statements of Brickell Biotech, Inc., included in Brickell Biotech, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2019, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Denver, Colorado
September 9, 2020
