

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Albireo Pharma, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation
or organization)

90-0136863

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

10 Post Office Square, Suite 502 South, Boston, Massachusetts
(Address of principal executive offices)

02109
(Zip code)

Albireo Pharma, Inc. 2018 Equity Incentive Plan, as amended
(Full title of the plan)

Ronald H.W. Cooper
President and Chief Executive Officer
Albireo Pharma, Inc.

10 Post Office Square, Suite 502 South
Boston, Massachusetts 02109
(857) 254-5555

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

Copy to:

Megan N. Gates, Esq.
John P. Condon, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
(617) 542-6000
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Jason G. Duncan, Esq.
General Counsel and Secretary
Albireo Pharma, Inc.
10 Post Office Square, Suite 502 South
Boston, Massachusetts 02109
(857) 254-5555

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 checked="" type="checkbox"/>
Non-accelerated filer	<input 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	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.01 par value per share	2,100,000 shares	\$ 25.90(2)	\$ 54,390,000(2)	\$ 6,592.07

(1) The number of shares of common stock, par value \$0.01 per share ("Common Stock"), of Albireo Pharma, Inc. (the "Registrant") stated above consists of an increase of 2,100,000 shares reserved for issuance under the Registrant's 2018 Equity Incentive Plan, as amended (the "Plan"), approved by the Registrant's stockholders at the 2019 Annual Meeting of Stockholders held on June 14, 2019. Pursuant to Rule 416 under the Securities Act of 1933, as

amended (the "Securities Act"), this Registration Statement covers, in addition to the number of shares stated above, an indeterminate number of shares which may be subject to grant or otherwise issuable after the operation of any antidilution and other provisions of the Plan.

- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) promulgated under the Securities Act. The offering price per share and the aggregate offering price for shares reserved for future issuance under the Plan are based on the average of the high and the low price of the Registrant's Common Stock as reported on The Nasdaq Capital Market as of a date (August 1, 2019) within five business days prior to filing this Registration Statement.
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EXPLANATORY NOTE

This Registration Statement registers 2,100,000 additional shares (the “Shares”) of common stock, par value \$0.01 per share, of the Registrant (the “Common Stock”) reserved for issuance under the Registrant’s 2018 Equity Incentive Plan, as amended (the “Plan”), approved by the Registrant’s stockholders at the 2019 Annual Meeting of Stockholders held on June 14, 2019. In accordance with the instructional Note to Part I of Form S-8 as promulgated by the Securities and Exchange Commission (the “Commission”), the information specified by Part I of Form S-8 has been omitted from this Registration Statement on Form S-8 with respect to the Shares.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission are incorporated herein by reference:

[\(a\) the Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2018 filed with the Commission on March 6, 2019;](#)

[\(b\) the portions of the Registrant’s definitive proxy statement on Schedule 14A filed on April 25, 2019 that are deemed “filed” with the Commission under the Securities Exchange Act of 1934, as amended;](#)

[\(c\) the Registrant’s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2019 filed with the Commission on May 9, 2019](#) and the Registrant’s Quarterly Report on [Form 10-Q for the fiscal quarter ended June 30, 2019 filed with the Commission on August 8, 2019;](#)

[\(d\) the Registrant’s Current Reports on Form 8-K filed with the Commission on March 6, 2019, April 3, 2019 and June 18, 2019;](#) and

[\(e\) the description of the Registrant’s Common Stock which is contained in the Registrant’s Registration Statement on Form 8-A filed with the Commission on May 8, 2007, including any amendment or report filed for the purpose of updating such description.](#)

All reports and other documents filed by the Registrant after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, 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 herein and to be part hereof from the date of 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 the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any 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.

None.

Item 6. Indemnification of Directors and Officers.

The Registrant’s restated certificate of incorporation and its restated bylaws provide that the Registrant shall indemnify its directors and officers to the fullest extent not prohibited by the Delaware General Corporation Law or any other applicable law, except that the Registrant is not required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Registrant’s board of directors, (iii) the Registrant provides such indemnification, in its sole discretion, pursuant to the powers vested in the Registrant under the Delaware General Corporation Law or any other applicable law, or (iv) such indemnification is required to be made under the enforcement provisions of the Registrant’s restated bylaws.

Section 145 of the Delaware General Corporation Law permits a corporation to indemnify any director or officer of the corporation against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer

of the corporation, if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe his or her conduct was unlawful. In a derivative action (i.e., one brought by or on behalf of the corporation), indemnification may be provided only for expenses actually and reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be provided if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the Delaware Chancery Court or the court in which the action or suit was brought shall determine that such person is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Pursuant to Section 102(b)(7) of the Delaware General Corporation Law, Article Sixth of the Registrant's restated certificate of incorporation eliminates the liability of a director to the Registrant or its stockholders for monetary damages for such a breach of fiduciary duty as a director to the fullest extent under applicable law, which does not include liabilities arising:

- from any breach of the director's duty of loyalty to the Registrant or its stockholders;
- from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law; and
- from any transaction from which the director derived an improper personal benefit.

The Registrant has entered into indemnification agreements with its directors and executive officers, in addition to the indemnification provided in its restated certificate of incorporation and its restated bylaws, and intends to enter into indemnification agreements with any new directors and executive officers in the future. The Registrant has purchased and intends to maintain insurance on behalf of any person who is or was a director or officer against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
4.1.1	Restated Certificate of Incorporation, as amended, of the Registrant.		S-3 (Exhibit 4.1.1)	10/13/2017	333-220958
4.2	Amended and Restated Bylaws of the Registrant.		S-8 (Exhibit 4.2)	7/6/2007	333-144407
4.3	Form of common stock certificate.		10-K (Exhibit 4.1)	12/22/2016	001-33451
5.1	Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. with respect to the legality of the securities being registered.	X			
23.1	Consent of Ernst & Young LLP.	X			
23.2	Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1).	X			
24.1	Powers of Attorney (included on the signature page to this registration statement).	X			
99.1	2018 Equity Incentive Plan, as amended.		8-K (Exhibit 10.1)	6/18/2019	001-33451

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 of 1933;
- (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 (1)(i) and (1)(ii) of this section 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 Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, 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 of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, 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 of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6, 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 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. 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 Boston, Commonwealth of Massachusetts, on August 8, 2019.

ALBIREO PHARMA, INC.

By: /s/ Ronald H.W. Cooper
Ronald H.W. Cooper
President and Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of Albireo Pharma, Inc., hereby severally constitute and appoint Ronald H.W. Cooper, Simon N.R. Harford and Jason G. Duncan, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him or her and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8 of Albireo Pharma, Inc., 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 or necessary to be done in and about the premises, as full 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 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 below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ronald H.W. Cooper</u> Ronald H.W. Cooper	President, Chief Executive Officer and Director (principal executive officer)	August 8, 2019
<u>/s/ Simon N.R. Harford</u> Simon N.R. Harford	Chief Financial Officer and Treasurer (principal financial officer and principal accounting officer)	August 8, 2019
<u>/s/ David Chiswell, Ph.D.</u> David Chiswell, Ph.D.	Chairman of the Board of Directors	August 8, 2019
<u>/s/ Anne Klibanski, M.D.</u> Anne Klibanski, M.D.	Director	August 8, 2019
<u>/s/ Michael Gutch, Ph.D.</u> Michael Gutch, Ph.D.	Director	August 8, 2019
<u>/s/ Roger A. Jeffs, Ph.D.</u> Roger A. Jeffs, Ph.D.	Director	August 8, 2019
<u>/s/ Stephanie S. Okey, M.S.</u> Stephanie S. Okey, M.S.	Director	August 8, 2019
<u>/s/ Davey S. Scoon</u> Davey S. Scoon	Director	August 8, 2019

One Financial Center
Boston, MA 02111
617 542 6000
mintz.com



August 8, 2019

Albireo Pharma, Inc.
10 Post Office Square, Suite 502 South
Boston, Massachusetts 02109

Ladies and Gentlemen:

We have acted as legal counsel to Albireo Pharma, Inc., a Delaware corporation (the “Company”), in connection with the preparation and filing with the Securities and Exchange Commission (the “Commission”) of a Registration Statement on Form S-8 (the “Registration Statement”), pursuant to which the Company is registering the issuance under the Securities Act of 1933, as amended (the “Securities Act”), of an aggregate of 2,100,000 shares (the “Shares”) of the Company’s common stock, \$0.01 par value per share (the “Common Stock”) that may be issued pursuant to the Company’s 2018 Equity Incentive Plan, as amended (the “Plan”). This opinion is being rendered in connection with the filing of the Registration Statement with the Commission. All capitalized terms used herein and not otherwise defined shall have the respective meanings given to them in the Registration Statement.

In connection with this opinion, we have examined the Company’s Restated Certificate of Incorporation, as amended, and Amended and Restated Bylaws, each as currently in effect; such other records of the corporate proceedings of the Company and certificates of the Company’s officers as we have deemed relevant; and the Registration Statement and the exhibits thereto.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, the authenticity of the originals of such copies, and the truth and correctness of any representations and warranties contained therein. In addition, we have assumed that the Company will receive any required consideration in accordance with the terms of the Plan.

Our opinion expressed herein is limited to the General Corporation Law of the State of Delaware and we express no opinion with respect to the laws of any other jurisdiction. No opinion is expressed herein with respect to the qualification of the Shares under the securities or blue sky laws of any state or any foreign jurisdiction.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

Based upon the foregoing, we are of the opinion that the Shares, when issued and delivered in accordance with the terms of the Plan, will be validly issued, fully paid and non-assessable.

We understand that you wish to file this opinion with the Commission as an exhibit to the Registration Statement in accordance with the requirements of Item 601(b)(5) of Regulation S-K

BOSTON LONDON LOS ANGELES NEW YORK SAN DIEGO SAN FRANCISCO WASHINGTON
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

promulgated under the Securities Act, and we hereby consent thereto. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2018 Equity Incentive Plan of our reports dated March 6, 2019, with respect to the consolidated financial statements of Albireo Pharma, Inc. and the effectiveness of internal control over financial reporting of Albireo Pharma, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2018, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP
Boston, Massachusetts
August 8, 2019
