

Edgar Filing: EXELIXIS INC - Form S-8

EXELIXIS INC
Form S-8
March 10, 2004

As Filed with the Securities and Exchange Commission on March 10, 2004
Registration No. 333-

=====

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

EXELIXIS, INC.
(Exact name of registrant as specified in its charter)

Delaware 04-3257395
(State of Incorporation) (I.R.S. Employer Identification Number)

170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
(650) 837-7000
(Address of principal executive offices)

2000 EQUITY INCENTIVE PLAN
2000 EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plans)

Frank Karbe
Chief Financial Officer
Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
(650) 837-7000
(Name, address, including zip code, and telephone number, including area code,
of agent for service)

Copies to:

Robert L. Jones, Esq.
Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306

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) |
|--|-------------------------------|--|---|
| ----- | ----- | ----- | ----- |
| Stock Options and Common Stock (par value \$.001) | 1,599,429 shares | \$8.76 | \$14,010,998 |

=====

Edgar Filing: EXELIXIS INC - Form S-8

- (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 the registrant's common stock that become issuable under the 2000 Equity Incentive Plan and 2000 Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h)(1) under the Securities Act. The offering price per share and aggregate offering price for the unissued stock options and shares of common stock are based upon the average of the high and low prices of the Registrant's common stock as reported on the Nasdaq National Market System on March 9, 2004. The following chart illustrates the calculation of the registration fee:

| Title of Shares to be Registered | Amount to be Registered | Proposed Offering Price Per Share |
|--|-------------------------|-----------------------------------|
| Shares issuable pursuant to the 2000 Equity Incentive Plan | 1,000,000 | \$ |
| Shares issuable pursuant to the Employee Stock Purchase Plan | 599,429 | \$ |
| Proposed Maximum Aggregate Offering Price | | |

Approximate date of commencement of proposed sale to the public: as soon as practicable after this Registration Statement becomes effective.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional: (i) 1,000,000 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2000 Equity Incentive Plan and (ii) 599,429 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2000 Employee Stock Purchase Plan.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The contents of the Registration Statements on Form S-8 (relating to the 2000 Equity Incentive Plan and 2000 Employee Stock Purchase Plan) File Nos. 333-35862, 333-57026, 333-82722 and 333-102770 previously filed with the SEC on April 28, 2000, March 14, 2001, February 14, 2002 and January 28, 2003, respectively, are incorporated by reference herein.

Item 8. Exhibits

| Exhibit Number | Description |
|----------------|--|
| 4.1 | Specimen Common Stock Certificate. (1) |

Edgar Filing: EXELIXIS INC - Form S-8

- 4.2 Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999 among Exelixis, Inc. and Certain Stockholders of Exelixis, Inc. (1)
- 4.3 Warrant, dated August 17, 1998, to purchase 125,796 post-split shares of Exelixis, Inc. Series A preferred stock in favor of Comdisco, Inc. (1)
- 4.4 Warrant, dated August 17, 1998, to purchase 15,365 post-split shares of Exelixis, Inc. Series A preferred stock in favor of Greg Stento. (1)
- 4.5 Warrant, dated January 24, 1996, to purchase 267,857 post-split shares of Exelixis, Inc. Series B convertible stock in favor of MMC/GATX Partnership No. 1. (1)
- 4.6 Warrant, dated September 25, 1997, to purchase 63,750 post-split shares of Exelixis, Inc. common stock in favor of MMC/GATX Partnership No. 1. (1)
- 4.7 Warrant, dated November 15, 1999, to purchase 9,000 post-split shares of Exelixis, Inc. common stock in favor Bristow Investments, L.P. (1)
- 4.8 Warrant, dated November 15, 1999, to purchase 101,250 post-split shares of Exelixis, Inc. common stock in favor of Slough Estates USA, Inc. (1)
- 4.9 Warrant, dated November 15, 1999, to purchase 2,250 post-split shares of Exelixis, Inc. common stock in favor of Laurence and Magdalena Shushan Trust. (1)
- 4.10 Warrant, dated April 1, 2000, to purchase 70,875 shares of Exelixis, Inc. common stock in favor of Slough Estates USA, Inc. (2)
- 4.11 Warrant, dated April 1, 2000, to purchase 6,300 shares of Exelixis, Inc. common stock in favor of Bristow Investments, L.P. (2)
- 4.12 Warrant, dated April 1, 2000, to purchase 1,575 shares of Exelixis, Inc. common stock in favor of Laurance and Madgalena Shusan Family Trust. (2)
- 4.13 Form of Convertible Promissory Note, dated May 22, 2001 by and between Exelixis, Inc. and Protein Design Labs, Inc. (3)
- 4.14 Form of Note Purchase Agreement, dated May 22, 2001 by and between Exelixis, Inc. and Protein Design Labs, Inc. (3)
- 5.1 Opinion of Cooley Godward LLP.
- 23.1 Consent of Ernst & Young LLP, Independent Auditors.
- 23.2 Consent of Cooley Godward LLP (contained in Exhibit 5.1 to this Registration Statement).
- 24.1 Power of Attorney (contained on the signature pages to this Registration Statement).
- 99.1 2000 Equity Incentive Plan. (1)
- 99.2 2000 Employee Stock Purchase Plan. (1)

(1) Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-1,

Edgar Filing: EXELIXIS INC - Form S-8

as amended (File No. 333-30978), as filed with the Securities and Exchange Commission on February 7, 2000, as amended, and incorporated herein by reference.

(2) Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2000, filed with the Securities and Exchange Commission on May 15, 2000 and incorporated herein by reference.

(3) Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, as filed with the Securities and Exchange Commission on August 14, 2001 and incorporated herein by reference.

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 South San Francisco, State of California, on March 10, 2004.

EXELIXIS, INC.

By: /s/ George A. Scangos

George A. Scangos, Ph.D.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints George A. Scangos and Frank Karbe, and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his 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 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 of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--------------------------------|---|-------------------------|
| ----- /s/ George A. Scangos | ----- President, Chief Executive Officer and Director | ----- March 10, 2004 |

Edgar Filing: EXELIXIS INC - Form S-8

| | | |
|--|--|----------------|
| George A. Scangos, Ph.D. | (Principal Executive Officer) | |
| /s/ Frank Karbe Frank Karbe | Chief Financial Officer (Principal Financial and Accounting Officer) | March 10, 2004 |
| /s/ Stelios Papadopoulos Stelios Papadopoulos, Ph.D. | Chairman of the Board of Directors | March 10, 2004 |
| /s/ Charles Cohen Charles Cohen, Ph.D. | Director | March 10, 2004 |
| /s/ Jason Fisherman Jason S. Fisherman, M.D. | Director | March 10, 2004 |
| /s/ Jean-Francois Formela Jean-Francois Formela, M.D. | Director | March 10, 2004 |
| /s/ Vincent T. Marchesi Vincent T. Marchesi, Ph.D. | Director | March 10, 2004 |
| /s/ Frank McCormick Frank McCormick, Ph.D. | Director | March 10, 2004 |
| /s/ Lance Willsey Lance Willsey, M.D. | Director | March 10, 2004 |
| /s/ Jack L. Wyszomierski Jack L. Wyszomierski | Director | March 10, 2004 |

EXHIBIT INDEX

| Exhibit Number | Description |
|-------------------|--|
| 4.1 | Specimen Common Stock Certificate. (1) |
| 4.2 | Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999 among Exelixis, Inc. and Certain Stockholders of Exelixis, Inc. (1) |
| 4.3 | Warrant, dated August 17, 1998, to purchase 125,796 post-split shares of Exelixis, Inc. Series A preferred stock in favor of |

Edgar Filing: EXELIXIS INC - Form S-8

- Comdisco, Inc. (1)
- 4.4 Warrant, dated August 17, 1998, to purchase 15,365 post-split shares of Exelixis, Inc. Series A preferred stock in favor of Greg Stento. (1)
- 4.5 Warrant, dated January 24, 1996, to purchase 267,857 post-split shares of Exelixis, Inc. Series B convertible stock in favor of MMC/GATX Partnership No. 1. (1)
- 4.6 Warrant, dated September 25, 1997, to purchase 63,750 post-split shares of Exelixis, Inc. common stock in favor of MMC/GATX Partnership No. 1. (1)
- 4.7 Warrant, dated November 15, 1999, to purchase 9,000 post-split shares of Exelixis, Inc. common stock in favor Bristow Investments, L.P. (1)
- 4.8 Warrant, dated November 15, 1999, to purchase 101,250 post-split shares of Exelixis, Inc. common stock in favor of Slough Estates USA, Inc. (1)
- 4.9 Warrant, dated November 15, 1999, to purchase 2,250 post-split shares of Exelixis, Inc. common stock in favor of Laurence and Magdalena Shushan Trust. (1)
- 4.10 Warrant, dated April 1, 2000, to purchase 70,875 shares of Exelixis, Inc. common stock in favor of Slough Estates USA, Inc. (2)
- 4.11 Warrant, dated April 1, 2000, to purchase 6,300 shares of Exelixis, Inc. common stock in favor of Bristow Investments, L.P. (2)
- 4.12 Warrant, dated April 1, 2000, to purchase 1,575 shares of Exelixis, Inc. common stock in favor of Laurance and Madgalena Shusan Family Trust. (2)
- 4.13 Form of Convertible Promissory Note, dated May 22, 2001 by and between Exelixis, Inc. and Protein Design Labs, Inc. (3)
- 4.14 Form of Note Purchase Agreement, dated May 22, 2001 by and between Exelixis, Inc. and Protein Design Labs, Inc. (3)
- 5.1 Opinion of Cooley Godward LLP.
- 23.1 Consent of Ernst & Young LLP, Independent Auditors.
- 23.2 Consent of Cooley Godward LLP (contained in Exhibit 5.1 to this Registration Statement).
- 24.1 Power of Attorney (contained on the signature pages to this Registration Statement).
- 99.1 2000 Equity Incentive Plan. (1)
- 99.2 2000 Employee Stock Purchase Plan. (1)

(1) Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-1, as amended (File No. 333-30978), as filed with the Securities and Exchange Commission on February 7, 2000, as amended, and incorporated herein by reference.

(2) Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2000, filed with the Securities and Exchange

Edgar Filing: EXELIXIS INC - Form S-8

Commission on May 15, 2000 and incorporated herein by reference.

(3) Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, as filed with the Securities and Exchange Commission on August 14, 2001 and incorporated herein by reference.