

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Acurx Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

82-3733567
(I.R.S. Employer
Identification Number)

**259 Liberty Avenue
Staten Island, NY 10305**
(Address, including zip code, of registrant's principal executive offices)

2021 Equity Incentive Plan
(Full Title of the Plan)

David P. Luci
President and Chief Executive Officer
Acurx Pharmaceuticals, Inc.
259 Liberty Avenue
Staten Island, NY 10305
Telephone: (917) 533-1469
(Name, address, and telephone number, including area code, of agent for service)

Copies to:
Ivan K. Blumenthal, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
666 Third Avenue New York, NY 10017 (212) 935-3000

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 checked="" 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.

EXPLANATORY NOTE

This registration statement registers an aggregate of 408,631 additional shares of common stock, par value \$0.001 per share ("common stock"), of Acurx Pharmaceuticals, Inc. (the "Registrant") reserved under the 2021 Equity Incentive Plan (the "Plan"), representing an increase of 408,631 shares reserved under the Plan effective January 2, 2022 by operation of the 2021 Plan's "evergreen" provision. This registration statement registers additional securities of the same class as other securities for which a registration statement filed on Form S-8 (File No. 333-258026) relating to an employee benefit plan is effective. The information contained in the Registrant's registration statement on Form S-8 filed with the Securities and Exchange Commission on [July 19, 2021](#) (File No. 333-258026) is hereby incorporated by reference pursuant to General Instruction E of Form S-8.

Item 8. Exhibits.

| Exhibit Number | Exhibit Description | Filed Herewith | Incorporated by Reference herein from Form or Schedule | Filing Date | SEC File/Reg. Number |
|-----------------------|--|----------------|--|-------------------------------|----------------------------|
| 3.1 | Certificate of Incorporation of Acurx Pharmaceuticals, Inc. | | Form S-1 (Exhibit 3.2) | May 27, 2021 | 333-256516 |
| 3.2 | Bylaws of Acurx Pharmaceuticals, Inc. | | Form S-1 (Exhibit 3.3) | May 27, 2021 | 333-256516 |
| 4.1 | Form of Common Stock Certificate. | | Form S-1 (Exhibit 4.1) | May 27, 2021 | 333-256516 |
| 5.1 | Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. | X | | | |
| 23.1 | Consent of CohnReznick LLP, independent registered public accounting firm. | X | | | |
| 23.2 | Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1) | X | | | |
| 24.1 | Power of Attorney (included on the signature page hereof) | X | | | |
| 99.1+ | Acurx Pharmaceuticals, Inc. 2021 Equity Incentive Plan. | | Form S-1 (Exhibit 10.9) | May 27, 2021 | 333-256516 |
| 99.2+ | Form of Stock Option Agreement under the 2021 Equity Incentive Plan. | | Form S-8 (Exhibit 99.2) | July 19, 2021 | 333-258026 |
| 99.3+ | Form of Restricted Stock Agreement under the 2021 Equity Incentive Plan. | | Form S-8 (Exhibit 99.3) | July 19, 2021 | 333-258026 |
| 107 | Filing Fee Table | X | | | |

+ Denotes management contract or compensatory plan or arrangement.

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 New York, New York, on March 16, 2022.

ACURX PHARMACEUTICALS, INC.

By: /s/ David P. Luci
 David P. Luci
 Chief Executive Officer and President

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints each of David P. Luci and Robert G. Shawah, acting alone or together with another attorney-in-fact, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his name, place and stead, in any and all capacities, to sign any or all further 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 and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, 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, as amended, this registration statement has been signed by the following persons in the capacities and on the date indicated.

| Signature | Title | Date |
|---|--|----------------|
| <u>/s/ David P. Luci</u> David P. Luci | President, Chief Executive Officer and Director (Principal Executive Officer) | March 16, 2022 |
| <u>/s/ Robert G. Shawah</u> Robert G. Shawah | Chief Financial Officer (Principal Financial and Accounting Officer) | March 16, 2022 |
| <u>/s/ Robert J. DeLuccia</u> Robert J. DeLuccia | Executive Chairman | March 16, 2022 |
| <u>/s/ Carl V. Sailer</u> Carl V. Sailer | Director | March 16, 2022 |

| | | |
|---|----------|----------------|
| <hr/> <i>/s/ Jack H. Dean</i> Jack H. Dean | Director | March 16, 2022 |
| <hr/> <i>/s/ Joseph C. Scodari</i> Joseph C. Scodari | Director | March 16, 2022 |
| <hr/> <i>/s/ Thomas Harrison</i> Thomas Harrison | Director | March 16, 2022 |
| <hr/> <i>/s/ James Donohue</i> James Donohue | Director | March 16, 2022 |



Chrysler Center
666 Third Avenue
New York, NY 10017
212 935 3000
mintz.com

March 16, 2022

Acurx Pharmaceuticals, Inc.
259 Liberty Avenue
Staten Island, New York 10305

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as legal counsel to Acurx Pharmaceuticals, 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 408,631 shares (the "Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), that may be issued pursuant to the Company's 2021 Equity Incentive Plan (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 Certificate of Incorporation and 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.

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

MINTZ

March 16, 2022
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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 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 this Registration Statement of Acurx Pharmaceuticals, Inc. on Form S-8 of our report dated March 16, 2022, on our audits of the financial statements of Acurx Pharmaceuticals, Inc. (formerly Acurx Pharmaceuticals, LLC) as of December 31, 2021 and 2020 and for the years then ended, which report is included in Acurx Pharmaceuticals, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ CohnReznick LLP

Parsippany, New Jersey
March 16, 2022

Calculation of Filing Fee Table

Form S-8
(Form Type)

Acurx Pharmaceuticals, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered

| Security Type | Security Class Title | Fee Calculation Rule | Amount Registered | Proposed Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|-----------------------------------|---|----------------------|-------------------|--|----------------------------------|--------------|----------------------------|
| Equity | Common stock, par value \$0.001 per share | 457(c) and 457(h) | 408,631(1) | \$ 3.96(2) | \$ 1,618,178.76 | \$ 0.0000927 | \$ 150.01 |
| Total Offering Amount | | | | | \$ 1,618,178.76 | | \$ 150.01 |
| Total Fees Previously Paid | | | | | | | — |
| Total Fee Offsets | | | | | | | — |
| Net Fee Due | | | | | | | \$ 150.01 |

- (1) The number of shares of common stock, par value \$0.001 per share (“common stock”), of Acurx Pharmaceuticals, Inc. (the “Registrant”) stated above consists of additional shares of common stock available for issuance under the 2021 Equity Incentive Plan (the “Plan”), by operation of the Plan’s “evergreen” provision. The maximum number of shares which may be sold upon the exercise of options or issuance of stock-based awards granted under the Plan is subject to adjustment in accordance with certain anti-dilution and other provisions of the Plan. Accordingly, 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 such anti-dilution and other provisions.
- (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 grant or issuance under the Plan are based on the average of the high and the low price of Registrant’s common stock as reported on The Nasdaq Capital Market as of a date (March 11, 2022) within five business days prior to filing this Registration Statement.