

RXi Pharmaceuticals Corp
Form POS EX
October 02, 2018

As filed with the Securities and Exchange Commission on October 2, 2018

Registration No. 333-227173

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT No. 1 to

FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

RXi PHARMACEUTICALS CORPORATION

(Exact name of Registrant as specified in its charter)

Delaware

2834

45-3215903

*(State or other jurisdiction of (Primary Standard Industrial (I.R.S. Employer
incorporation or organization) Classification Code Number) Identification Number)*

257 Simarano Drive, Suite 101

Marlborough, Massachusetts 01752

(508) 767-3861

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Geert Cauwenbergh, Dr. Med. Sc.

President

RXi Pharmaceuticals Corporation

257 Simarano Drive, Suite 101

Marlborough, Massachusetts 01752

(508) 767-3861

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

Copies to:

Ryan A. Murr

Gibson, Dunn & Crutcher LLP

555 Mission Street, Suite 3000

San Francisco, CA 94105

Telephone: (415) 393-8373

Facsimile: (415) 374-8430

Oded Har-Even

Robert V. Condon III

Zysman, Aharoni, Gayer and Sullivan & Worcester LLP

1633 Broadway, 32nd Floor

New York, NY 10019

Telephone: (212) 660-5003

Facsimile: (212) 660-3001

Approximate date of commencement of proposed sale to the public:

As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. 333-227173

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	Accelerated filer
Non-accelerated filer	Smaller reporting company
	Emerging growth 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.

This Registration Statement shall become effective upon filing with the Securities and Exchange Commission in accordance with Rule 462(d) under the Securities Act of 1933, as amended.

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to Form S-1 Registration Statement (333-227173) is filed pursuant to Rule 462(d) of the Securities Act of 1933, as amended (the "Securities Act"), solely to add exhibits to the previously effective Registration Statement by removing the previously filed Exhibit 5.1 and replacing it with Exhibit 5.1 filed herewith in order to reflect an increase in the number of securities covered by the legal opinion of Gibson, Dunn & Crutcher LLP. Accordingly, this Post-Effective Amendment No. 1 consists only of a facing page, this explanatory note and Part II Item 16(a) of the Registration Statement on Form S-1 setting forth the exhibits to the Registration Statement. This Post-Effective Amendment No. 1 does not modify any other part of the Registration Statement. Pursuant to Rule 462(d) under the Securities Act, this Post-Effective Amendment No. 1 shall become effective immediately upon filing with the Securities and Exchange Commission. The contents of the Registration Statement are hereby incorporated by reference.

PART II**Information Not Required in Prospectus****Item 16. Exhibits and Financial Statement Schedules****Financial Statement Schedules**

Certain schedules are omitted because they are not applicable, or are not required by smaller reporting companies.

Exhibits

		Incorporated by Reference Herein	
Exhibit		Form	Date
Number	Description		
1.1	<u>Form of Underwriting Agreement.</u>	Registration Statement on Form S-1 (File No. 333-227173)	September 28, 2018
2.1	<u>Asset Purchase Agreement, dated March 1, 2013, between RXi Pharmaceuticals Corporation and OPKO Health, Inc. +</u>	Quarterly Report on Form 10-Q (File No. 000-54910)	May 15, 2013
2.2	<u>Stock Purchase Agreement, dated January 6, 2017, by and among RXi Pharmaceuticals Corporation, RXi Merger Sub, LLC, MirImmune Inc., certain shareholders named therein and Alexey Wolfson, Ph.D., in his capacity as Sellers' Representative.</u>	Current Report on Form 8-K (File No. 001-36304)	January 10, 2017
3.1	<u>Amended and Restated Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u>	Amendment No. 4 to the Registration Statement on Form S-1 (File No. 333-177498)	February 7, 2012
3.2	<u>Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of RXi Pharmaceuticals Corporation.</u>	Amendment No. 4 to the Registration Statement Form S-1 (File No. 333-177498)	February 7, 2012

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3.3	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u>	Current Report on Form 8-K (File No. 000-54910)	July 22, 2013
3.4	<u>Certificate of Designations, Preferences and Rights of Series A-1 Convertible Preferred Stock of RXi Pharmaceuticals Corporation.</u>	Quarterly Report on Form 10-Q (File No. 000-54910)	August 14, 2013
3.5	<u>Certificate of Increase, filed with the Secretary of State of the State of Delaware on January 24, 2014.</u>	Current Report on Form 8-K (File No. 000-54910)	January 24, 2014
3.6	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u>	Registration Statement on Form S-1 (File No. 333-203389)	April 13, 2015
3.7	<u>Certificate Eliminating the Series A Convertible Preferred Stock from the Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u>	Quarterly Report on Form 10-Q (File No. 001-36304)	November 12, 2015

<p>3.8 <u>Certificate Eliminating the Series A-1 Convertible Preferred Stock from the Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u></p>	<p>Quarterly Report on Form 10-Q (File No. 001-36304) November 12, 2015</p>
<p>3.9 <u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u></p>	<p>Current Report on Form 8-K (File No. 001-36304) April 15, 2016</p>
<p>3.10 <u>Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock of RXi Pharmaceuticals Corporation.</u></p>	<p>Current Report on Form 8-K (File No. 001-36304) December 21, 2016</p>
<p>3.11 <u>Certificate of Designation of Preferences, Rights and Limitations of Series C Convertible Preferred Stock of RXi Pharmaceuticals Corporation.</u></p>	<p>Current Report on Form 8-K (File No. 001-36304) January 10, 2017</p>
<p>3.12 <u>Certificate Eliminating the Series B Convertible Preferred Stock from the Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u></p>	<p>Quarterly Report on Form 10-Q (File No. 001-36304) November 8, 2017</p>
<p>3.13 <u>Certificate Eliminating the Series C Convertible Preferred Stock from the Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u></p>	<p>Quarterly Report on Form 10-Q (File No. 001-36304) November 8, 2017</p>
<p>3.14 <u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation of RXi Pharmaceuticals Corporation.</u></p>	<p>Current Report on Form 8-K (File No. 001-36304) January 5, 2018</p>
<p>3.15 <u>Amended and Restated Bylaws of RXi Pharmaceuticals Corporation.</u></p>	<p>Current Report on Form 8-K (File No. 001-36304) June 9, 2017</p>
<p>4.1 <u>Form of Warrant.</u></p>	<p>Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-203389) May 21, 2015</p>
<p>4.2 <u>Form of Warrant.</u></p>	<p>Amendment No. 3 to the Registration Statement on Form S-1 (File No. 333-214199) December 14, 2016</p>
<p>4.3 <u>Form of Warrant.</u></p>	<p>Current Report on Form 8-K (File No. 333-214199) April 11, 2018</p>
<p>4.4 <u>Form of Placement Agent Warrant.</u></p>	<p>Current Report on Form 8-K (File No. 333-214199) April 11, 2018</p>
<p>4.5 <u>Form of Warrant.</u></p>	

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Registration Statement on Form S-1 September
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4.6 Form of Pre-Funded Warrant.

Registration Statement on Form S-1 September
(File No. 333-227173) 28, 2018

5.1 Opinion of Gibson, Dunn & Crutcher LLP regarding the
securities being registered.*

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10.1	<u>Patent and Technology Assignment Agreement between RXi Pharmaceuticals Corporation (formerly RNCS, Inc.) and Advirna, LLC, effective as of September 24, 2011.</u>	Registration Statement on Form S-1 (File No. 333-177498)	October 25, 2011
10.2	<u>RXi Pharmaceuticals Corporation 2012 Long Term Incentive Plan.**</u>	Registration Statement on Form S-8 (File No. 333-227013)	August 24, 2018
10.3	<u>Form of Restricted Stock Unit Award under the Company's 2012 Long Term Incentive Plan.**</u>	Amendment No. 2 to the Registration Statement on Form S-1 (File No. 333-177498)	December 29, 2011
10.4	<u>Form of Incentive Stock Option Award under the Company's 2012 Long Term Incentive Plan, as amended.**</u>	Registration Statement on Form S-1 (File No. 333-191236)	September 18, 2013
10.5	<u>Form of Non-Qualified Stock Option Award under the Company's 2012 Long Term Incentive Plan, as amended.**</u>	Registration Statement on Form S-1 (File No. 333-191236)	September 18, 2013
10.6	<u>RXi Pharmaceuticals Corporation Employee Stock Purchase Plan.**</u>	Registration Statement on Form S-8 (File No. 333-227013)	August 24, 2018
10.7	<u>Form of Indemnification Agreement.**</u>	Amendment No. 3 to the Registration Statement on Form S-1 (File No. 333-177498)	January 23, 2012
10.8	<u>Employment Agreement, dated April 27, 2012, between RXi Pharmaceuticals Corporation and Geert Cauwenbergh, Dr. Med. Sc.**</u>	Current Report on Form 8-K (File No. 333-177498)	May 3, 2012
10.9	<u>Employment Agreement, dated January 6, 2017, between RXi Pharmaceuticals Corporation and Alexey Eliseev, Ph.D.**</u>	Annual Report on Form 10-K (File No. 001-36304)	March 30, 2017
10.10	<u>Non-Competition Agreement, dated January 6, 2017, between RXi Pharmaceuticals Corporation and Alexey Eliseev, Ph.D.**</u>	Annual Report on Form 10-K (File No. 001-36304)	March 30, 2017
10.11	<u>Employment Agreement, dated April 24, 2017, between RXi Pharmaceuticals Corporation and Gerrit Dispersyn, Dr. Med. Sc.**</u>	Post-effective Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-214199)	May 4, 2017
10.12	<u>Lease Agreement dated December 17, 2013 between RXi Pharmaceuticals Corporation and 257 Simarano Drive, LLC, Brighton Properties, LLC, Robert Stubblebine 1, LLC and Robert Stubblebine 2, LLC.</u>	Current Report on Form 8-K (File No. 000-54910)	December 20, 2013

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10.13	<u>Registration Rights Agreement, dated August 8, 2017, between RXi Pharmaceuticals Corporation and Lincoln Park Capital Fund, LLC.</u>	Current Report on Form 8-K (File No. 001-36304)	August 9, 2017
10.14	<u>Purchase Agreement, dated August 8, 2017, between RXi Pharmaceuticals Corporation and Lincoln Park Capital Fund, LLC.</u>	Registration Statement on Form S-1 (File No. 333-220062)	August 18, 2017
10.15	<u>Securities Purchase Agreement, dated April 9, 2018, by and between the Company and the Purchasers therein.</u>	Current Report on Form 8-K (File No. 333-214199)	April 11, 2018
23.1	Consent of BDO USA, LLP, an Independent Registered Public Accounting Firm.	Registration Statement on Form S-1 (File No. 333-227173)	September 14, 2018
23.2	Consent of Gibson, Dunn & Crutcher LLP.*	Included in Exhibit 5.1	
24.1	<u>Powers of Attorney.</u>	Registration Statement on Form S-1 (File No. 333-227173)	August 31, 2018

* Filed herewith.

**Indicates a management contract or compensatory plan or arrangement.

+ Confidential treatment has been requested or granted for certain portions which have been blanked out in the copy of the exhibit filed with the Securities and Exchange Commission. The omitted information has been filed separately with the Securities and Exchange Commission.

Signatures

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Marlborough, Massachusetts, on October 2, 2018.

RXi PHARMACEUTICALS CORPORATION

By: /s/ Geert Cauwenbergh
Geert Cauwenbergh, Dr. Med. Sc.
President, Chief Executive Officer and acting Chief Financial Officer

Power of Attorney

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

Signature	Title	Date
/s/ Geert Cauwenbergh	President, Chief Executive Officer, Acting Chief Financial Officer	October 2, 2018
Geert Cauwenbergh, Dr. Med. Sc.	and Director (Principal Executive Officer and Principal Financial Officer)	
/s/ Caitlin Kontulis	Senior Director of Finance and Secretary (Principal Accounting Officer)	October 2, 2018
Caitlin Kontulis		
*	Director	October 2, 2018
Robert J. Bitterman		
*	Director	October 2, 2018

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Keith L. Brownlie

*

Director

October 2, 2018

H. Paul Dorman

*

Director

October 2, 2018

Jonathan E. Freeman, Ph.D.

*

Director

October 2, 2018

Curtis A. Lockshin, Ph.D.

*By: /s/ Geert Cauwenbergh

Geert Cauwenbergh, Dr. Med. Sc

Attorney-in-fact