

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 12, 2024

Tracon Pharmaceuticals, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-36818
(Commission File Number)

34-2037594
(IRS Employer
Identification No.)

4350 La Jolla Village Drive, Suite 800
San Diego, California
(Address of Principal Executive Offices)

92122
(Zip Code)

Registrant's Telephone Number, Including Area Code: (858) 550-0780

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	TCON	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

Item 2.02 Results of Operations and Financial Condition.

As of March 31, 2024, TRACON Pharmaceuticals, Inc. (the “Company”) had an estimated approximately \$8.0 million in cash and cash equivalents, of which \$0.1 million was pledged as collateral for the Company’s obligations under its corporate headquarters facility lease. Based upon the Company’s current operating plan, the Company believes that its cash and cash equivalents as of March 31, 2024 will be sufficient to fund its current requirements of working capital and other financial commitments, including its operating lease obligations, into late third quarter 2024. This estimate of the Company’s cash and cash equivalents is preliminary and subject to completion, including the completion of interim review procedures as of and for the three months ended March 31, 2024. As a result, the unaudited preliminary cash and cash equivalents set forth above reflects the Company’s preliminary estimate with respect to such information, based on information currently available to management, and may vary from the Company’s actual financial position as of March 31, 2024. Further, this preliminary estimate is not a comprehensive statement or estimate of the Company’s financial results or financial condition as of and for the three months ended March 31, 2024. The unaudited preliminary cash and cash equivalents estimate included herein has been prepared by, and is the responsibility of, management. The Company’s independent registered public accounting firm has not audited, reviewed, compiled or performed any procedures with respect to the unaudited preliminary cash and cash equivalents and, accordingly, the Company’s independent registered public accounting firm does not express an opinion or any other form of assurance with respect thereto. It is possible that the Company or the Company’s independent registered public accounting firm may identify items that require us to make adjustments to the financial information set forth above. This estimate should not be viewed as a substitute for financial statements prepared in accordance with accounting principles generally accepted in the United States and it is not necessarily indicative of the results to be achieved in any future period. Accordingly, you should not draw any conclusions based on the foregoing estimate and should not place undue reliance on this preliminary estimate. We assume no duty to update this preliminary estimate except as required by law.

The information disclosed under Item 2.02 is being furnished and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, and shall not be deemed to be incorporated by reference in any filing under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, except as expressly set forth by specific reference in such filing.

Item 8.01 Other Events.

As previously disclosed, the Company previously entered into a Capital on Demand™ Sales Agreement, dated December 9, 2020, as amended on March 15, 2022 (the “Sales Agreement”), by and between the Company and JonesTrading Institutional Services LLC (“JonesTrading”) pursuant to which the Company may sell from time to time, at its option, up to an aggregate of \$50.0 million of the Company’s common stock, par value \$0.001 per share (“Common Stock”) through JonesTrading, as sales agent or principal. On March 16, 2022, the Company filed a registration statement on Form S-3 (Registration No. 333-263590) (the “Registration Statement”), which became effective on March 28, 2022, including a prospectus offering up to \$18,814,246 of shares of its Common Stock in accordance with the Sales Agreement (the “Prior Prospectus”), which was subsequently suspended on June 21, 2022, and the Company filed a new prospectus supplement on July 15, 2022 offering up to \$8,207,228 of shares of its Common Stock (the “Existing Prospectus”). The amounts registered under the Prior Prospectus and the Existing Prospectus were, as of their respective filing dates, subject to limitations imposed by General Instruction I.B.6 of Form S-3.

Pursuant to General Instruction I.B.6 of Form S-3, the Company may sell additional shares pursuant to the Registration Statement at this time, and on April 12, 2024, the Company filed a new prospectus supplement to the Registration Statement with the Securities and Exchange Commission (the “SEC”) registering an additional \$6,151,388 of shares of Common Stock (the “Additional Shares”) that may be sold pursuant to the Sales Agreement.

Cooley LLP, counsel to the Company, delivered an opinion as to the validity of the Additional Shares to be issued pursuant to the Sales Agreement, a copy of which is attached hereto as Exhibit 5.1 and is incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any securities of the Company, which is being made only by means of a written prospectus meeting the requirements of Section 10 of the Securities Act, nor shall there be any sale of the Company’s securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

Forward-Looking Statements

Statements contained in this current report regarding matters that are not historical facts are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Because such statements are subject to risks and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements. Such statements include, but are not limited to, statements regarding the Company’s preliminary financial results contained herein and future sales of Common Stock under the Sales Agreement. Risks that could cause actual results to differ from those expressed in these forward-looking statements include: changes that may arise in connection with the completion of interim review procedures as of and for the three months ended March 31, 2024, the Company’s ability to remain listed on a national securities exchange, risks associated with clinical development and regulatory approval of pharmaceutical product candidates; risks relating to the Company’s ability to continue as a going concern; risks relating to cost variability of clinical trials; whether other therapies are developed and compete with the Company’s product candidates; whether the Company or others will be able to complete or initiate clinical trials on the Company’s expected timelines, if at all, including due to risks associated with macroeconomic and geopolitical events; the fact that future clinical results may not be consistent with preliminary results or results from prior studies; potential changes in regulatory requirements in the United States and foreign countries; the Company’s reliance on third parties for the development of its product candidates, including the conduct of its clinical trials and manufacture of its product candidates; whether the Company will be able to obtain additional financing on favorable terms or at all; and other risks described in the Company’s filings with the SEC under the heading “Risk Factors”. All forward-looking statements contained in this press release speak only as of the date on which they were made and are based on management’s assumptions and estimates as of such date. the Company undertakes no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they were made except as required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Cooley LLP.
23.1	Consent of Cooley LLP (included in Exhibit 5.1).
104	Cover page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TRACON Pharmaceuticals, Inc.

Date: April 12, 2024

By: /s/ Charles P. Theuer, M.D., Ph.D.

Charles P. Theuer, M.D., Ph.D.
President and Chief Executive Officer



Matthew Browne
+1 858 550 6045
mbrowne@cooley.com

April 12, 2024

TRACON Pharmaceuticals, Inc.
4350 La Jolla Village Drive, Suite 800
San Diego, California 92122

Ladies and Gentlemen:

We have acted as counsel for TRACON Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), in connection with the offering by the Company of shares of its common stock, par value \$0.001 per share (the "**Common Stock**"), having an aggregate offering price of up to \$6,151,388 (the "**Shares**") pursuant to a Registration Statement on Form S-3 (File No. 333-263590) (the "**Registration Statement**") filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**Securities Act**"), the prospectus included in the Registration Statement (the "**Base Prospectus**") and the prospectus supplement relating to the Shares dated April 12, 2024, filed with the Commission pursuant to Rule 424(b) under the Act (together with the Base Prospectus, the "**Prospectus**"). The Shares are to be sold by the Company in accordance with that certain Capital on DemandTM Sales Agreement, dated December 9, 2020, as amended March 15, 2022, by and between the Company and JonesTrading Institutional Services LLC (the "**Agreement**"), as described in the Prospectus.

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the Prospectus, (b) the Agreement, (c) the Company's certificate of incorporation and bylaws, each as currently in effect, and (d) such other records, documents, opinions, certificates, memoranda and instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.



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We have assumed (i) that each sale of Shares will be duly authorized by the Board of Directors of the Company, a duly authorized committee thereof or a person or body pursuant to an authorization granted in accordance with Section 152 of the General Corporation Law of the State of Delaware (the "**DGCL**"), (ii) that no more than 30,000,000 Shares will be sold under the Agreement pursuant to the Prospectus and (iii) that the price at which the Shares are sold will equal or exceed the par value of the Shares. We express no opinion to the extent that future issuances of securities of the Company, anti-dilution adjustments to outstanding securities of the Company or other matters cause the number of shares of Common Stock issuable under the Agreement to exceed the number of shares of Common Stock available for issuance by the Company.

Our opinion is expressed solely with respect to the DGCL. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, in reliance thereon and subject to the qualifications set forth herein, we are of the opinion that the Shares, when sold and issued against payment therefor in accordance with the Agreement, the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we undertake no obligation or responsibility to update or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the reference to our firm under the heading "Legal Matters" in the Prospectus and to the filing of this opinion as an exhibit to the Company's Current Report on Form 8-K to be filed with the Commission for incorporation by reference into the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act, or the rules and regulations of the Commission thereunder.

Sincerely,

Cooley LLP

By: /s/ Matthew Browne
Matthew Browne

