

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**Form S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Kiromic BioPharma, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or
organization)

46-4762913

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

7707 Fannin, Suite 140, Houston, TX

(Address of Principal Executive Offices)

77054

(Zip Code)

Kiromic BioPharma, Inc. 2021 Omnibus Equity Incentive Plan

(Full title of the plan)

Pietro Bersani, CPA

Chief Executive Officer

7707 Fannin, Suite 200

Houston, TX, 77054

(Name and address of agent for service)

(832) 968-4888

(Telephone number, including area code, of agent for service)

Copy to:

Jeffrey J. Fessler, Esq.

Sheppard, Mullin, Richter & Hampton LLP

30 Rockefeller Plaza

New York, NY 10112-0015

Tel: (212) 653-8700

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 Securities Exchange Act of 1934, as amended (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 of 1933, as amended (the "Securities Act").

EXPLANATORY NOTE

Kiromic BioPharma, Inc. 2021 Omnibus Equity Incentive Plan

This Registration Statement on Form S-8 (“Registration Statement”) is being filed for the purpose of registering additional shares of common stock of Kiromic BioPharma, Inc. (the “Registrant”), par value \$0.001 per share (“Common Stock”), in connection with the Registrant’s 2021 Omnibus Equity Incentive Plan (the “2021 Plan”), for which a Registration Statement on Form S-8 is effective. This Registration Statement on Form S-8 registers an additional 1,000,000 shares of Common Stock issuable pursuant to the 2021 Plan. The contents of the previous Registration Statement on [Form S-8 filed by the Registrant with the Securities and Exchange Commission \(the “Commission”\) for the 2021 Plan on July 25, 2022 \(File No. 333-266317\)](#), to the extent not otherwise amended or superseded by the contents hereof, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents of the Registrant filed with the Commission are incorporated by reference in this Registration Statement as of their respective dates:

- (a) the Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, filed with the Commission on [April 17, 2023](#), as amended on [Form 10-K/A](#) and filed with the Commission on [April 28, 2023](#);
- (b) the Registrant’s Quarterly Report on [Form 10-Q](#) for the quarterly period ended March 31, 2023, filed with the Commission on [May 15, 2023](#);
- (c) the Registrant’s Quarterly Report on [Form 10-Q](#) for the quarterly period ended June 30, 2023, filed with the Commission on [August 14, 2023](#);
- (d) the Registrant’s Current Reports on Form 8-K filed with the Commission on [January 26, 2023](#), [February 27, 2023](#), [March 7, 2023](#), [March 10, 2023](#), [March 17, 2023](#), [March 31, 2023](#), [April 28, 2023](#), [May 12, 2023](#), [May 30, 2023](#), [June 12, 2023](#), [June 27, 2023](#), [July 18, 2023](#), [July 19, 2023](#), [July 24, 2023](#), [July 25, 2023](#), [July 27, 2023](#); and
- (e) the description of the Registrant’s Common Stock contained in the registration statement on [Form 8-A filed with the SEC on October 14, 2020](#), including any amendments or reports 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 Exchange Act but 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, except for the documents, or portions thereof, that are “furnished” rather than filed with the Commission.

For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded 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 such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 8. Exhibits.

Exhibit Number	Description
<u>4.1</u>	<u>Fourth Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed on October 21, 2020)</u>
<u>4.2</u>	<u>Second Amended and Restated Bylaws (incorporated by reference to Exhibit 3.5 of the Registrant's Amendment No. 1 to Form S-1 filed on June 26, 2020)</u>
<u>5.1*</u>	<u>Opinion of Sheppard Mullin Richter & Hampton LLP</u>
<u>23.1*</u>	<u>Consent of Whitley Penn LLP, independent registered public accounting firm</u>
<u>23.2*</u>	<u>Consent of Deloitte & Touche LLP</u>
<u>23.2*</u>	<u>Consent of Sheppard Mullin Richter & Hampton LLP (included in Exhibit 5.1)</u>
<u>24.1*</u>	<u>Power of Attorney (included on signature page)</u>
<u>99.1</u>	<u>2021 Omnibus Equity Incentive Plan (incorporated by reference to Appendix A to Schedule 14A filed on June 16, 2023)</u>
<u>107*</u>	<u>Filing Fee Table</u>

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Houston, State of Texas, on August 15, 2023.

KIROMIC BIOPHARMA, INC.

By: /s/ Pietro Bersani

Name: Pietro Bersani

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Pietro Bersani, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent 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 for 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 or her substitute, may lawfully do or cause to be done by virtue hereof.

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

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Pietro Bersani</u> Pietro Bersani	Chief Executive Officer (principal executive officer) and Director	August 15, 2023
<u>/s/ Brian Hungerford</u> Brian Hungerford	Interim Chief Financial Officer (Principal Financial and Accounting Officer)	August 15, 2023
<u>/s/ Americo Cicchetti</u> Americo Cicchetti	Director	August 15, 2023
<u>/s/ Michael Nagel</u> Michael Nagel	Director	August 15, 2023
<u>/s/ Pamela Misajon</u> Pamela Misajon	Director	August 15, 2023
<u>/s/ Michael Catlin</u> Michael Catlin	Director	August 15, 2023



Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza
New York, New York 10112-0015
212.653.8700 main
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www.sheppardmullin.com

August 15, 2023

VIA ELECTRONIC MAIL

Kiromic BioPharma, Inc.
7707 Fannin, Suite 140
Houston, TX, 77054

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by Kiromic BioPharma, Inc., a Delaware corporation (the "Company"), of a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), with the U.S. Securities and Exchange Commission (the "Commission"), covering 1,000,000 shares (the "Shares") of the Company's common stock, par value \$0.0001 per share ("Common Stock"), which may be issued pursuant to the Company's 2021 Omnibus Equity Incentive Plan (the "Plan").

This opinion (this "Opinion") is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5)(i) of Regulation S-K.

In connection with this Opinion, we have reviewed and relied upon the Registration Statement, the Company's Certificate of Incorporation as in effect on the date hereof, the Company's Bylaws, as in effect on the date hereof, the proceedings taken by the Company with respect to the authorization and adoption of the Plan, resolutions adopted by the board of directors of the Company, and such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this Opinion.

With respect to the foregoing documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to original of all documents submitted to us as certified or reproduced copies. We have also assumed that the Shares will be uncertificated in accordance with Section 158 of the Delaware General Corporation Law, and the transfer agent therefor will register the purchaser thereof as the registered owner of any uncertificated Shares on its stock transfer books and records. We have further assumed that (a) shares of Common Stock currently reserved for issuance under the Plan will remain available for the issuance of the Shares, and (b) neither the Company's charter documents nor any of the proceedings relating to either the Plan or any of the award agreements relating to the Shares will be rescinded, amended or otherwise modified prior to the issuance of the Shares. We have also obtained from public officials and officers of the Company certificates or comparable documents as to certain factual matters and, insofar as this Opinion is based on matters of fact, we have relied on such certificates and comparable documents without independent investigation. We have made such other investigations as we have deemed relevant and necessary in connection with the opinions hereinafter set forth.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when issued and sold in the manner referred to in the Plan against proper payment and consideration thereof and pursuant to the agreements that accompany the Plan, will be legally and validly issued, fully paid, and nonassessable.

We consent to the filing of this Opinion as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not thereby admit that we are included in 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.

We express no opinion as to matters governed by any laws other than the Delaware General Corporation Law and reported decisions of the Delaware courts interpreting such law.

This Opinion is rendered as of the date first written above, and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the Shares, the Plan, the award agreements related to the Shares, or the Registration Statement.

Respectfully Submitted,

/s/ Sheppard, Mullin, Richter & Hampton LLP

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated April 17, 2023, relating to the financial statements of Kiromic BioPharma, Inc. and subsidiaries as of and for the year ended December 31, 2022, appearing in the Annual Report on Form 10-K of Kiromic BioPharma, Inc. filed on April 17, 2023, as amended on Form 10-K/A and filed on April 28, 2023.

/s/ Whitley Penn LLP

Houston, Texas
August 15, 2023

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated April 8, 2022 relating to the financial statements of Kiromic BioPharma, Inc. appearing in the Annual Report on Form 10-K of Kiromic BioPharma, Inc. for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

Houston, Texas

August 15, 2023

Calculation of Filing Fee Table
Form S-8
(Form Type)

KIROMIC BIOPHARMA, INC.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Share	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to Be Paid	Equity	Common stock, par value \$0.001 per share	457(c) and (h)	1,000,000(2)	\$2.31 (3)	\$2,310,000 (3)	0.00011020	\$255
Total Fees Previously Paid								—
Total Fee Offsets								—
Net Fee Due								\$255

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement on Form S-8 shall also be deemed to cover such additional securities which become issuable by reason of any stock dividend, stock split, recapitalization or any other similar transactions.
- (2) Consists of 1,000,000 shares of common stock of Kiromic BioPharma, Inc., par value \$0.001 per share (“Common Stock”), available for issuance under the Kiromic BioPharma, Inc. 2021 Omnibus Equity Incentive Plan.
- (3) Estimated solely for the purpose of calculating the registration fee under Rule 457(c) and (h) of the Securities Act on the basis of the average of the high and low sales price per share of Common Stock on August 14, 2023, as reported on the Nasdaq Capital Market.