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

**Amendment No. 1
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

NextCure, Inc.

(Exact name of registrant as specified in its charter)

| | | |
|---|--|---|
| Delaware (State or other jurisdiction of incorporation or organization) | 2834 (Primary Standard Industrial Classification Code Number) | 47-5231247 (I.R.S. Employer Identification Number) |
|---|--|---|

**9000 Virginia Manor Road, Suite 200
Beltsville, Maryland 20705
(240) 399-4900**

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

**Michael Richman
Chief Executive Officer
NextCure, Inc.
9000 Virginia Manor Road, Suite 200
Beltsville, Maryland 20705
(240) 399-4900**

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

Copies to:

**Asher M. Rubin
William I. Intner
Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, Maryland 21202
(410) 659-2700**

**Divakar Gupta
Brent B. Siler
Joshua A. Kaufman
Madison A. Jones
Cooley LLP
55 Hudson Yards
New York, New York 10001
(212) 479-6000**

**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, 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(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.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

Explanatory Note

NextCure, Inc. has prepared this Amendment No. 1 to its registration statement on Form S-1 filed with the Securities and Exchange Commission on November 12, 2019, or the Registration Statement, for the purpose of refiling Exhibit 5.1 and making corresponding updates to Item 16 and the Exhibit Index of the Registration Statement. This Amendment No. 1 does not modify any provision of the prospectus that forms Part I of the Registration Statement and, accordingly, such prospectus has not been included herein.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by us in connection with the sale of common stock being registered. All amounts are estimates except for the SEC registration fee and the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee.

| | Amount to be Paid |
|--|----------------------|
| SEC registration fee | \$ 18,638.45 |
| FINRA filing fee | 22,039.04 |
| Printing and engraving expenses | 120,000.00 |
| Legal fees and expenses | 475,000.00 |
| Accounting fees and expenses | 225,000.00 |
| Transfer agent and registrar fees and expenses | 5,000.00 |
| Miscellaneous expenses | 34,322.51 |
| Total | <u>\$ 900,000.00</u> |

Item 14. Indemnification of Directors and Officers.

We are incorporated under the laws of the State of Delaware. As permitted by Section 102 of the Delaware General Corporation Law, we have adopted provisions in our amended and restated certificate of incorporation and bylaws that limit or eliminate the personal liability of our directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the duty of loyalty to us or our stockholders;
- any act or omission not in good faith that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. Our amended and restated certificate of incorporation also authorizes us to indemnify our officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws provide that:

- we will indemnify our directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions;
- we will advance expenses to our directors in connection with legal proceedings to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and
- the rights provided in our amended and restated bylaws are not exclusive.

Our amended and restated certificate of incorporation, attached as Exhibit 3.1 hereto, and our amended and restated bylaws, attached as Exhibit 3.2 hereto, provide for the indemnification provisions described above and elsewhere herein.

We have entered and expect to continue to enter into agreements to indemnify our directors, executive officers and other employees as determined by our board of directors. These indemnification agreements generally require us, among other things, to indemnify our directors, executive officers and these employees against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require us to advance any expenses incurred by the directors, executive officers and employees as a result of any proceeding against them as to which they could be indemnified. We also maintain directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment in some circumstances.

The form of Underwriting Agreement, attached as Exhibit 1.1 hereto, provides for indemnification by the underwriters named in this registration statement of our executive officers, directors and us, and by us of the underwriters named in this registration statement, for specified liabilities, including liabilities arising under the Securities Act. Our amended and restated investors' rights agreement with certain stockholders, attached as Exhibit 4.2 hereto, also provides for cross-indemnification in connection with the registration of our common stock on behalf of such investors.

See the undertakings set forth in response to Item 17 herein.

Item 15. Recent Sales of Unregistered Securities.

The following list sets forth information regarding all securities sold or granted by us within the last three years that were not registered under the Securities Act and the consideration, if any, received by us for such securities.

Issuances of Capital Stock

- (1) In January 2017, we issued an aggregate of 25,000,000 shares of our Series A-2 Preferred Stock to seven accredited investors at a price per share of \$1.00 for aggregate proceeds of \$25 million. Upon the closing of our IPO, each share of Series A-2 Preferred Stock converted into 0.1245 shares of our common stock.
- (2) In April 2018, we issued an aggregate of 28,181,819 shares of our Series A-3 Preferred Stock to seven accredited investors at a price per share of \$1.10 for aggregate proceeds of \$31 million. Upon the closing of our IPO, each share of Series A-3 Preferred Stock converted into 0.1245 shares of our common stock.
- (3) In November 2018, we issued an aggregate of 15,052,117 shares of our Series B-1 Preferred Stock to seven accredited investors at a price per share of \$1.59 for aggregate proceeds of approximately \$23.9 million. Upon the closing of our IPO, each share of Series B-1 Preferred Stock converted into 0.1245 shares of our common stock.
- (4) In November 2018, we issued an aggregate of 34,276,734 shares of our Series B-2 Preferred Stock to 14 accredited investors at a price per share of \$1.59 for aggregate proceeds of approximately \$54.5 million. Upon the closing of our IPO, each share of Series B-2 Preferred Stock converted into 0.1245 shares of our common stock.
- (5) In November 2018, we issued an aggregate of 7,500,000 shares of our Series B-3 Preferred Stock to Eli Lilly and Company at a price per share of \$2.00 for aggregate proceeds of \$15 million. Upon the closing of our IPO, each share of Series B-3 Preferred Stock converted into 0.1245 shares of our common stock.

Grants of Stock Options and Restricted Stock

- (6) Since November 14, 2016, we have granted to our directors, officers, employees, consultants and other service providers stock options to purchase an aggregate of 2,139,164 shares of our common stock under the 2015 Plan or the 2019 Plan at exercise prices ranging from \$0.48 to \$15.57 per share. Of these, stock options covering an aggregate of 15,476 shares were cancelled without being exercised.
- (7) From November 14, 2016 through the filing of our registration statement on Form S-8 on May 13, 2019, we issued an aggregate of 34,984 shares of our common stock to our directors, officers and employees pursuant to the exercise of stock options under the 2015 Plan at exercise prices ranging from \$0.48 to \$1.76 per share for aggregate proceeds of approximately \$48,431.

We deemed the offers, sales and issuances of the securities described in paragraphs (1) through (5) above to be exempt from registration under the Securities Act, in reliance on Section 4(a)(2) of the Securities Act, including Regulation D and Rules 504 and 506 promulgated thereunder, relative to transactions by an issuer not involving a public offering. All purchasers of securities in transactions exempt from registration pursuant to Regulation D represented to us that they were accredited investors and were acquiring the shares for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof and that they could bear the risks of the investment and could hold the securities for an indefinite period of time. The purchasers received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration statement or an available exemption from such registration.

We deemed the issuance of restricted common stock and grants and exercises of stock options described in paragraphs (6) and (7) above to be exempt from registration under the Securities Act in reliance on Rule 701 of the Securities Act as offers and sales of securities under compensatory benefit plans and contracts relating to compensation in compliance with Rule 701. Each of the recipients of securities in any transaction exempt from registration either received or had adequate access, through employment, business or other relationships, to information about us.

All of the foregoing securities are deemed restricted securities for purposes of the Securities Act. All certificates representing securities issued in the transactions described in this Item 15 included appropriate legends setting forth that the securities had not been offered or sold pursuant to a registration statement and describing the applicable restrictions on transfer of the securities. There were no underwriters employed in connection with any of the transactions set forth in this Item 15.

Item 16. Exhibits and Financial Statement Schedules.

- (a) Exhibits

See the Index to Exhibits attached to this registration statement, which is incorporated by reference herein.

- (b) Financial Statement Schedules

No financial statement schedules are provided, because the information called for is not required or is shown either in the financial statements or the notes thereto.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the

registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

INDEX TO EXHIBITS

| <u>Exhibit Number</u> | <u>Exhibit Description</u> |
|---------------------------|--|
| 1.1* | <u>Form of Underwriting Agreement.</u> |
| 3.1* | <u>Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 filed with Registrant's Current Report on 8-K filed with the Commission on May 13, 2019 (File No. 001-38905)).</u> |
| 3.2* | <u>Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 filed with Registrant's Current Report on 8-K filed with the Commission on May 13, 2019 (File No. 001-38905)).</u> |
| 4.1* | <u>Amended and Restated Investors' Rights Agreement, dated as of November 5, 2018, by and among the Company and the investors party thereto (incorporated by reference to Exhibit 4.1 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 5.1 | <u>Opinion of Hogan Lovells US LLP.</u> |
| 10.1 ^{†*} | <u>License Agreement, dated as of December 29, 2015, by and between the Company and Yale University (incorporated by reference to Exhibit 10.1 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.2 ^{†*} | <u>Corporate Sponsored Research Agreement, dated as of December 29, 2015, by and between the Company and Yale University (incorporated by reference to Exhibit 10.2 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.3 ^{†*} | <u>Research and Development Collaboration Agreement, dated as of November 2, 2018, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.3 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.4 ^{†*} | <u>Amended and Restated Sublease Agreement, dated as of March 15, 2019, by and between the Company and Lupin, Inc. (incorporated by reference to Exhibit 10.4 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.5 ^{†*} | <u>Form of Indemnification Agreement by and between the Company and each of its directors and executive officers (incorporated by reference to Exhibit 10.5 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.6 ^{†*} | <u>NextCure, Inc. 2015 Omnibus Incentive Plan, as amended (incorporated by reference to Exhibit 10.6 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.7 ^{†*} | <u>Form of Stock Option Agreement under the NextCure, Inc. 2015 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.7 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |

| Exhibit Number | Exhibit Description |
|----------------------|---|
| 10.8 ⁺ * | <u>NextCure, Inc. 2019 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.8 filed with Registration Statement on Form S-1/A filed with the Commission on April 29, 2019 (File No. 333-230837)).</u> |
| 10.9 ⁺ * | <u>Forms of Stock Option Agreement under the NextCure, Inc. 2019 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.9 filed with Registrant's Registration Statement on Form S-1/A filed with the Commission on April 29, 2019 (File No. 333-230837)).</u> |
| 10.10 ⁺ * | <u>Form of Restricted Stock Agreement under the NextCure, Inc. 2019 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.10 filed with Registrant's Registration Statement on Form S-1/A filed with the Commission on April 29, 2019 (File No. 333-230837)).</u> |
| 10.11 ⁺ * | <u>Form of Restricted Stock Unit Agreement under the NextCure, Inc. 2019 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.11 filed with Registrant's Registration Statement on Form S-1/A filed with the Commission on April 29, 2019 (File No. 333-230837)).</u> |
| 10.12 ⁺ * | <u>NextCure, Inc. 2019 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.12 filed with Registrant's Registration Statement on Form S-1/A filed with the Commission on April 29, 2019 (File No. 333-230837)).</u> |
| 10.13 ⁺ * | <u>Non-Employee Director Compensation Program (incorporated by reference to Exhibit 10.13 filed with Registrant's Registration Statement on Form S-1/A filed with the Commission on April 29, 2019 (File No. 333-230837)).</u> |
| 10.14 [†] * | <u>Lease Agreement, dated as of January 30, 2019, by and between the Company and ARE-8000/9000/10000 Virginia Manor, LLC (incorporated by reference to Exhibit 10.14 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.15 [†] * | <u>First Amendment to Lease Agreement, dated August 2, 2019, by and between the Company and ARE-8000/9000/10000 Virginia Manor, LLC (incorporated by reference to Exhibit 10.1 filed with Registrant's Quarterly Report on Form 10-Q filed on November 12, 2019 (File No. 001-38905)).</u> |
| 10.16 ⁺ * | <u>Employment Letter, dated as of September 12, 2016, by and between the Company and Michael Richman (incorporated by reference to Exhibit 10.15 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.17 ⁺ * | <u>Employment Letter, dated as of December 18, 2017, by and between the Company and Steven P. Cobourn (incorporated by reference to Exhibit 10.16 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 10.18 ⁺ * | <u>Employment Letter, dated as of September 12, 2016, by and between the Company and Sol Langermann, Ph.D. (incorporated by reference to Exhibit 10.17 filed with Registrant's Registration Statement on Form S-1 filed with the Commission on April 12, 2019 (File No. 333-230837)).</u> |
| 23.1 [*] | <u>Consent of Ernst & Young LLP, independent registered public accounting firm.</u> |
| 23.2 | <u>Consent of Hogan Lovells US LLP (included in Exhibit 5.1).</u> |

| Exhibit Number | Exhibit Description |
|---------------------------|--|
| 24.1* | Power of Attorney. |
| EX-101.INS* | XBRL Instance Document |
| EX-101.SCH* | XBRL Taxonomy Extension Schema Document |
| EX-101.CAL* | XBRL Taxonomy Extension Calculation Linkbase Document |
| EX-101.DEF* | XBRL Taxonomy Extension Definition Linkbase Document |
| EX-101.LAB* | XBRL Taxonomy Extension Label Linkbase Document |
| EX-101.PRE* | XBRL Taxonomy Extension Presentation Linkbase Document |

* Previously filed.

+ Indicates a management contract or compensatory plan.

† Portions of this exhibit have been omitted in compliance with Item 601 of Regulation S-K.

Signature

Title

Date

*

Stephen Webster

Director

November 14, 2019

*

Stella Xu

Director

November 14, 2019

*By: /s/ STEVEN P. COBOURN

Steven P. Cobourn
Attorney-in-Fact

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November 14, 2019

Board of Directors
NextCure, Inc.
9000 Virginia Manor Road
Suite 200
Beltsville, Maryland 20705

Ladies and Gentlemen:

We are acting as counsel to NextCure, Inc., a Delaware corporation (the “**Company**”), in connection with its registration statement on Form S-1, as amended, and any Rule 462(b) registration statement (collectively, the “**Registration Statement**”), filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “**Act**”) relating to the proposed public offering of up to \$143,593,600 of shares of the common stock, par value \$0.001 per share (the “**Common Stock**”) of the Company (such shares together with any additional shares of Common Stock that may be sold pursuant to Rule 462(b) under the Act, the “**Shares**”), all of which shares are to be sold by the Company. This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including pdfs). As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

This opinion letter is based as to matters of law solely on the Delaware General Corporation Law, as amended. We express no opinion herein as to any other statutes, rules or regulations.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) execution and delivery by the Company of the Underwriting Agreement, (ii) effectiveness of the Registration Statement, (iii) issuance of the Shares pursuant to the terms of the Underwriting Agreement, and (iv) receipt by the Company of the consideration for the Shares specified in the resolutions of the Board of Directors and the Pricing Committee of the Board of Directors, the Shares will be validly issued, fully paid, and nonassessable.

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. “Hogan Lovells” is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington, D.C. Associated Offices: Budapest Jakarta Riyadh Shanghai FTZ Ulaanbaatar Zagreb. Business Service Centers: Johannesburg Louisville. Legal Services Center: Berlin. For more information see www.hoganlovells.com

This opinion letter has been prepared for use in connection with the Registration Statement. We assume no obligation to advise of any changes in the foregoing subsequent to the effective date of the Registration Statement.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus constituting a part of the Registration Statement. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Act.

Very truly yours,

/s/ HOGAN LOVELLS US LLP

HOGAN LOVELLS US LLP