

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 20549

**FORM S-8**

**REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933**

**WINDTREE THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**94-3171943**  
(IRS Employer  
Identification No.)

**2600 Kelly Road, Suite 100  
Warrington, Pennsylvania 18976  
(215) 488-9300**  
(Address, including zip code, of Principal Executive Offices)

**Windtree Therapeutics, Inc. 2020 Equity Incentive Plan**

(Full title of the plan)

**Craig E. Fraser**  
**President & Chief Executive Officer**  
**Windtree Therapeutics, Inc.**  
**2600 Kelly Road, Suite 100**  
**Warrington, Pennsylvania 18976**  
(Name and Address of agent for service)

**(215) 488-9300**  
(Telephone number, including area code, of agent for service)

With copies to:

**Diane Carman**  
**Senior Vice President, General Counsel**  
**Windtree Therapeutics, Inc.**  
**2600 Kelly Road, Suite 100**  
**Warrington, Pennsylvania 18976**  
**(215) 488-9300**

**Rachael M. Bushey**  
**Jennifer L. Porter**  
**Troutman Pepper Hamilton Sanders LLP**  
**3000 Two Logan Square**  
**Eighteenth and Arch Streets**  
**Philadelphia, Pennsylvania 19103**  
**(215) 981-4331**

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  
Non-accelerated filer

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.

## EXPLANATORY NOTE

This Registration Statement on Form S-8 (this “Registration Statement”) is being filed for the purpose of registering an additional 1,130,757 shares of common stock, par value \$0.001 per share (“Common Stock”), of Windtree Therapeutics, Inc. (the “Company”) that were added to the number of shares authorized for issuance under the Windtree Therapeutics, Inc. 2020 Equity Incentive Plan (the “2020 Plan”) for which a Registration Statement on Form S-8 relating to the same employee benefit plan is effective.

The Company previously filed a Registration Statement on Form S-8 (File No. 333-253065) (the “Prior Registration Statement”) with the Securities and Exchange Commission (the “Commission”) on February 12, 2021 to register 1,535,500 shares of Common Stock that were authorized for issuance under the 2020 Plan. Upon the effectiveness of this Registration Statement, an aggregate of 2,666,257 shares of Common Stock will be registered for issuance from time to time under the 2020 Plan. Pursuant to General Instruction E to Form S-8, the contents of the Prior Registration Statement are incorporated herein by reference except to the extent supplemented, amended or superseded by the information set forth herein. Only those items of Form S-8 containing new information not contained in the Prior Registration Statement are presented herein.

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**PART I**  
**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

The documents constituting Part I of this Registration Statement will be delivered to participants in the 2020 Plan as specified by Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not, filed with the Commission either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**Item 2. Registrant Information and Employee Plan Annual Information.**

Upon written or oral request, the Company will provide, without charge, the documents incorporated by reference in Item 3 of Part II of this Registration Statement. The documents are incorporated by reference in the Section 10(a) prospectus. The Company will also provide, without charge, upon written or oral request, other documents required to be delivered to employees pursuant to Rule 428(b). Requests for the information described above should be directed to Investor Relations at [ir@windtreex.com](mailto:ir@windtreex.com) or John P. Hamill, the Company's Chief Financial Officer and Corporate Secretary, at the address and telephone number on the cover of this Registration Statement.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents, which have been filed by the Company with the Commission are incorporated by reference in, and shall be deemed to be a part of, this Registration Statement:

- The Company's Annual Report on Form 10-K and 10-K/A for the year ended December 31, 2021 filed with the Commission on [March 31, 2022](#) and [April 29, 2022](#), respectively;
- The Company's Definitive Proxy Statement on Schedule 14A, filed with the Commission on [May 11, 2022](#);
- The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed with the Commission on [May 5, 2022](#);
- The Company's Current Reports on Form 8-K (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) filed with the Commission on [March 15, 2022](#); [March 31, 2022](#); [April 20, 2022](#); [May 5, 2022](#); and [May 11, 2022](#); and
- The description of the Common Stock included in the Company's Form 8-A filed with the Commission on [May 15, 2020](#), including any amendments or reports filed for the purpose of updating such description.

All reports and other documents the Company subsequently files (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items unless such Form 8-K expressly provides to the contrary) pursuant to Section 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") including all such documents the Company may file with the Commission after the date of this Registration Statement and prior to the effectiveness of this Registration Statement, but excluding any information furnished to, rather than filed with, the Commission, will also be incorporated by reference into this Registration Statement and deemed to be part of this Registration Statement from the date of the filing of such reports and documents.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained therein, or in any other subsequently filed document which also is or is deemed to be incorporated by reference, modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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You may request a copy, without charge, of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents) by writing or telephoning us at the address and telephone number on the cover of this Registration Statement.

**Item 8. Exhibits.**

The following documents are filed as exhibits to this Registration Statement:

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
4.1	<a href="#"><u>Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K, as filed with the Commission on April 17, 2018).</u></a>
4.2	<a href="#"><u>Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K, as filed with the Commission on April 29, 2020).</u></a>
4.3	<a href="#"><u>Amended and Restated By-Laws (incorporated by reference to Exhibit 3.2 to the Company's Form 8-K, as filed with the Commission on April 18, 2016).</u></a>
5.1*	<a href="#"><u>Opinion of Troutman Pepper Hamilton Sanders LLP.</u></a>
23.1*	<a href="#"><u>Consent of Troutman Pepper Hamilton Sanders LLP (included in Exhibit 5.1).</u></a>
23.2*	<a href="#"><u>Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm.</u></a>
24.1*	<a href="#"><u>Power of Attorney (included on the signature page of the Registration Statement).</u></a>
99.1	<a href="#"><u>Windtree Therapeutics, Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K, as filed with the Commission on December 31, 2020).</u></a>
99.2	<a href="#"><u>Form of Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 4.5 to the Company's Form S-8, as filed with the Commission on February 12, 2021).</u></a>
99.3	<a href="#"><u>Form of Stock Option Award Agreement (incorporated by reference to Exhibit 4.6 to the Company's Form S-8, as filed with the Commission on February 12, 2021).</u></a>
107*	<a href="#"><u>Filing Fee Table.</u></a>

\* Filed herewith

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Warrington, Commonwealth of Pennsylvania, on May 18, 2022.

### WINDTREE THERAPEUTICS, INC.

By: /s/ Craig E. Fraser  
Craig E. Fraser  
President and Chief Executive Officer  
(Principal Executive Officer)

## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below hereby constitutes and appoints Craig E. Fraser and John P. Hamill, and each of them, 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 (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, proxy, 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, proxy and agent, or his 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 dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Craig E. Fraser</u> Craig E. Fraser	Director, President, and Chief Executive Officer (Principal Executive Officer)	May 18, 2022
<u>/s/ John P. Hamill</u> John P. Hamill	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	May 18, 2022
<u>/s/ James Huang</u> James Huang	Director (Chairman of the Board)	May 18, 2022
<u>/s/ Daniel Geffken</u> Daniel Geffken	Director	May 18, 2022
<u>/s/ Evan Loh, M.D.</u> Evan Loh, M.D.	Director	May 18, 2022
<u>/s/ Robert Scott, M.D.</u> Robert Scott, M.D.	Director	May 18, 2022
<u>/s/ Leslie J. Williams</u> Leslie J. Williams	Director	May 18, 2022

Troutman Pepper Hamilton Sanders LLP  
3000 Two Logan Square, Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799  
troutman.com



May 18, 2022

Board of Directors  
Windtree Therapeutics, Inc.  
2600 Kelly Road, Suite 100  
Warrington, Pennsylvania 18976

Ladies and Gentlemen:

We are acting as counsel to Windtree Therapeutics, Inc., a Delaware corporation (the "**Company**"), in connection with its registration statement on Form S-8, as amended (the "**Registration Statement**"), filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "**Act**"), relating to the proposed offering of up to 1,130,757 shares of common stock, par value \$0.001 per share, of the Company (the "**Shares**"), all of which Shares are issuable pursuant to the Company's 2020 Equity Incentive Plan (the "**Plan**"). 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 telecopies). 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 General Corporation Law of the State of Delaware, 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) effectiveness of the Registration Statement, (ii) issuance of the Shares pursuant to the terms of the Plan, and (iii) receipt by the Company of the consideration for the Shares specified in the resolutions of the Board of Directors or a duly authorized committee thereof, the Plan and any underlying award agreements or letters, the Shares will be validly issued, fully paid, and nonassessable.

This opinion letter has been prepared for use in connection with the Registration Statement. We assume no obligation to advise you 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. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Act.

Very truly yours,  
/s/ TROUTMAN PEPPER HAMILTON SANDERS LLP  
TROUTMAN PEPPER HAMILTON SANDERS LLP

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Windtree Therapeutics, Inc. 2020 Equity Incentive Plan of our report dated March 31, 2022, with respect to the consolidated financial statements of Windtree Therapeutics, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2021, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania

May 18, 2022

## Calculation of Filing Fee Tables

Form S-8  
(Form Type)Windtree Therapeutics, 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)(2)	Proposed Maximum Offering Price Per Unit(3)	Maximum Aggregate Offering Price(3)	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.001	457(c) and 457(h)	1,130,757	\$0.51	\$576,686.07	0.0000927	\$53.46
Total Offering Amounts					\$576,686.07		53.46
Total Fee Offsets (4)							—
Net Fee Due							\$53.46

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement covers an indeterminate number of additional shares of common stock, par value \$0.001 (the “Common Stock”), of Windtree Therapeutics, Inc. (the “Registrant”) issuable under the Windtree Therapeutics, Inc. 2020 Equity Incentive Plan (the “Plan”) in the event the number of outstanding shares of the Registrant is increased by reason of any stock dividend, stock split, recapitalization, merger, consolidation or reorganization or similar transaction.
- (2) Represents 1,130,757 shares of Common Stock that were added to the shares authorized for issuance under the Plan on January 1, 2022 pursuant to an “evergreen” provision contained in the Plan. Pursuant to such provision in the Plan, on January 1 of each year, the Registrant’s board of directors may approve an increase to the number of shares authorized for issuance under the Plan of up to four percent (4%) of the issued and outstanding Common Stock of the Registrant.
- (3) Estimated in accordance with Rule 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee based upon the average of the high and low prices of the Registrant’s Common Stock on the Nasdaq Capital Market on May 12, 2022.
- (4) The Registrant does not have any fee offsets.