

Precipio, Inc.
Form S-8
November 29, 2017

As filed with the Securities and Exchange Commission on November 29, 2017

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Precipio, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

4 Science Park,

New Haven, CT

91-1789357
(I.R.S. Employer
Identification No.)

06511

(Address of principal executive offices)

(Zip Code)

2017 Stock Option and Incentive Plan

(Full title of each plan)

Ilan Danieli

Chief Executive Officer

4 Science Park,

New Haven, CT 06511

(203) 787-7888

(Name and address of agent for service)

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

The Commission is requested to mail signed copies of all orders, notices and communications to:

Stephen M. Davis, Esq.

Daniel A. Lang, Esq.

Goodwin Procter LLP

620 Eighth Avenue

New York, NY

(212) 813-8800

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.

(Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

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.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.01 per share	666,666	\$1.24(2)	\$826,665.84	\$102.92
Total	666,666		\$826,665.84	\$102.92

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement also includes an indeterminate number of additional shares that may be offered and issued to prevent dilution resulting from stock splits, stock dividends, reverse stock splits, recapitalizations, reclassifications, mergers, split-ups, reorganizations, consolidations or similar transactions.
- (2) Pursuant to Rule 457(h)(1) under the Securities Act, the offering price is estimated solely for the purpose of calculating the registration fee on the basis of the average of the high and low prices of the registrant's Common Stock as reported on the NASDAQ Capital Market on November 22, 2017.

Explanatory Note

Precipio, Inc. (f/k/a Transgenomic, Inc.) (the Company) has prepared this registration statement in accordance with the requirements of Form S-8 under the Securities Act of 1933, as amended (the Securities Act), to register 666,666 shares of the Company's common stock, par value \$0.01 per share (Common Stock), issuable pursuant to the 2017 Stock Option and Incentive Plan (the 2017 Plan). The 2017 Plan, including the shares available for issuance under the 2017 Plan, was approved by the Company's stockholders on June 5, 2017. The 2017 Plan as approved by the stockholders provided for the issuance of up to 20,000,000 shares, but did not account for the Company's one-for-thirty reverse stock split which became effective on June 5, 2017.

Part I Information Required in the Section 10(a) Prospectus

Item 1. Plan Information.

Item 2. Registrant Information and Employee Plan Annual Information.

The documents constituting Part I of this registration statement have been or will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act. These documents and the documents incorporated by reference into this registration statement pursuant to Item 3 of Part II of this form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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 Company also will provide without charge, upon written or oral request, other documents required to be delivered to employees pursuant to Rule 428(b) under the Securities Act. Requests for the above mentioned information should be directed to: Precipio, Inc., 4 Science Park, New Haven, CT 06511, Attention: President, telephone number (203) 787-7888.

Part II Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission (the SEC) are hereby incorporated by reference into this registration statement as of their respective dates of filing:

- (a) The Company's Annual Report on Form 10-K for the year ended December 31, 2016, filed on April 13, 2017;
- (b) The Company's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2017, filed on May 18, 2017, June 30, 2017, filed on August 22, 2017, and September 30, 2017, filed on November 20, 2017;
- (c) The Company's Current Reports on Form 8-K filed on January 6, 2017, January 17, 2017, January 19, 2017, January 20, 2017, February 3, 2017, February 21, 2017, February 24, 2017, April 17, 2017, May 25, 2017, June 6, 2017, June 20, 2017, June 27, 2017, June 28, 2017, June 30, 2017, July 31, 2017, August 1, 2017, August 23, 2017, August 1, 2017, August 31, 2017, September 8, 2017, October 2, 2017, November 3, 2017, November 6, 2017, November 13, 2017 and November 14, 2017; and

(d) The description of the Company's Common Stock set forth in the prospectus included in the Registrant's Registration Statement on Form S-1 (File No. 333-187285), initially filed with the Commission on March 15, 2013, as amended from time to time.

All documents filed subsequent to the date of this registration statement by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all shares of Common Stock offered hereby have been sold or which deregisters any shares of such Common Stock then remaining unsold, also shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from their respective dates of filing. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein, or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein, modifies or supersedes such statement. Any statement contained in this registration statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document which is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement. Under no circumstances will any information filed under items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145(a) of the Delaware General Corporation Law (the "DGCL") provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director, officer, employee or agent of the

corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made with respect to any claim, issue or matter as to which he or she shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, he or she is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or other adjudicating court shall deem proper.

Section 145(g) of the DGCL provides, in general, that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person against such liability under Section 145 of the DGCL.

Section 9.1 of Article IX of the Company's Third Amended and Restated Certificate of Incorporation, as amended to date (the "Certificate of Incorporation"), and Section 1 of Article V of the Company's Amended and Restated Bylaws, as amended to date (the "Bylaws") provide that each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Company or is or was serving at the request of the Company as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Company to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may thereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and that such indemnification shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as otherwise provided in the Certificate of Incorporation or Bylaws, as applicable, the Company will indemnify any such indemnitee in connection with a proceeding initiated by such indemnitee only if such proceeding was authorized by the Board of Directors of the Company. The right to indemnification conferred by the Certificate of Incorporation and Bylaws is a contract right and includes the right to be paid by the Company the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); and provided, further, that, if the General Corporation Law of the State of Delaware requires it, an advancement of expenses incurred by an indemnitee shall be made only upon delivery to the Company of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under the Certificate of Incorporation or Bylaws, as applicable, or otherwise (hereinafter an "undertaking").

Section 9.2 of Article IX of the Certificate of Incorporation and Section 2 of Article V of the Bylaws provide that if a claim under Section 9.1 of Article IX of the Certificate of Incorporation or under Section 1 of Article V of the Bylaws, as applicable, is not paid in full by the Company within sixty (60) days after a written claim has been received by the Company, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim. If successful in whole or part in any such suit, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses), it shall be a defense that the indemnitee has not met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware. Likewise, in any suit by the Company to recover an advancement of expenses pursuant to the terms of an undertaking, the Company shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met such standards. Neither the failure of the Company (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the Company (including its Board of Directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right under such indemnification provisions of the Certificate of Incorporation or Bylaws, as applicable, or by the Company to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified or to such advancement of expenses shall be on the Company.

The Company also maintains a directors and officers liability insurance policy that insures the Company's directors and officers against such liabilities as are customarily covered by such policies.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

Number	Description of Exhibit
3.1	Third Amended and Restated Certificate of Incorporation, as amended, of Precipio, Inc. (incorporated herein by reference to Exhibit 3.1 to the Company's Form 8-K filed on June 30, 2017)
3.2	Amended and Restated Bylaws, as amended, of Precipio, Inc. (incorporated herein by reference to Exhibit 3.2 to the Company's Form 8-K filed on June 30, 2017)
5.1	Opinion of Goodwin Procter LLP
23.1	Consent of Ernst & Young LLP
23.2	Consent of Marcum LLP
23.2	Consent of Goodwin Procter LLP (included in opinion filed as Exhibit 5.1)
24	Power of Attorney (included on signature page)
99.1	2017 Stock Option and Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on June 28, 2017)

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment 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.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement 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.

(c) 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 SEC 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.

Exhibit Index

Exhibit			
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3.1	<u>Third Amended and Restated Certificate of Incorporation, as amended, of Precipio, Inc. (incorporated herein by reference to Exhibit 3.1 to the Company's Form 8-K filed on June 30, 2017)</u>		X
3.2	<u>Amended and Restated Bylaws, as amended, of Precipio, Inc. (incorporated herein by reference to Exhibit 3.2 to the Company's Form 8-K filed on June 30, 2017)</u>		X
5.1	<u>Opinion of Goodwin Procter LLP</u>	X	
23.1	<u>Consent of Ernst & Young LLP</u>	X	
23.2	<u>Consent of Marcum LLP</u>	X	
23.2	<u>Consent of Goodwin Procter LLP (included in opinion filed as Exhibit 5.1)</u>	X	
24	<u>Power of Attorney (included on signature page)</u>	X	
99.1	<u>2017 Stock Option and Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on June 28, 2017)</u>		X

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 New Haven, state of Connecticut, on November 29, 2017.

PRECIPIO, INC.

By: /s/ Ilan Danieli
Name: Ilan Danieli
Title: Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Ilan Danieli and Carl Iberger as the true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for and in the name, place and stead of the undersigned, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants 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, as fully for all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on November 29, 2017.

Signature	Title
/s/ Ilan Danieli	Director and Chief Executive Officer
Ilan Danieli	(Principal Executive Officer)
/s/ Carl Iberger	Chief Financial Officer
Carl Iberger	(Principal Financial Officer and Principal Accounting Officer)
/s/ Michael A. Luther	Director
Michael A. Luther	
/s/ David S. Cohen	Director
David S. Cohen	
/s/ Samuel Riccitelli	Director

Samuel Riccitelli

/s/ Mark Rimer

Director

Mark Rimer

/s/ Douglas Fisher

Director

Douglas Fisher, M.D.

/s/ Jeffrey Cossman

Director

Jeffrey Cossman, M.D.