

STEALTH BIOTHERAPEUTICS CORP

FORM F-1/A

(Securities Registration (foreign private issuer))

Filed 02/08/19

Telephone	617-600-6888
CIK	0001696396
Symbol	MITO
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

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

AMENDMENT NO. 3

**to
FORM F-1**
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

STEALTH BIOTHERAPEUTICS CORP

(Exact name of registrant as specified in its charter)

N/A

(Translation of Registrant's Name into English)

Cayman Islands
(State or other jurisdiction of
incorporation or organization)

2834
(Primary Standard Industrial
Classification Code Number)

Not Applicable
(I.R.S. Employer
Identification No.)

Stealth BioTherapeutics Corp
c/o Intertrust Corporate Services (Cayman) Limited
190 Elgin Avenue, George Town
Grand Cayman
KY1-9005 Cayman Islands
(Address, including zip code, and telephone number, including
area code, of registrant's principal executive offices)

Stealth BioTherapeutics Inc.
275 Grove Street, Suite 3-107
Newton, MA 02466
(617) 600-6888
(Name, address, including zip code, and telephone number,
including area code, of agent for service)

Copies to:

Steven D. Singer, Esq.
Rosemary G. Reilly, Esq.
Christopher D. Barnstable-Brown, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
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Brent B. Siler, Esq.
Divakar Gupta, Esq.
Richard C. Segal, Esq.
Cooley LLP
1114 Avenue of the Americas
New York, NY 10036
Telephone: (212) 479-6000

Approximate date of commencement of proposed sale to the public:
As soon as practicable after this Registration Statement is declared effective.

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 an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging Growth Company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 3 ("Amendment No. 3") to Registration Statement on Form F-1 (File No. 333-229097) of Stealth BioTherapeutics Corp (the "Registration Statement") is being filed solely for the purpose of filing Exhibit 8.1 and Exhibit 23.3 and updating Item 8 of the Registration Statement accordingly. This Amendment No. 3 does not modify any provision of the prospectus that forms a part of the Registration Statement. Accordingly, such prospectus has been omitted.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 6. Indemnification of Directors and Officers.

Every director and officer is indemnified and secured harmless out of the assets and funds of the Company against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such director or officer in or about the conduct of the Company's affairs or in the execution of such director or officer's duties, powers, authorities or discretions, including any costs, expenses, losses or liabilities incurred by such director or officer in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether Cayman Islands or elsewhere.

Item 7. Recent Sales of Unregistered Securities.

Set forth below is information regarding ordinary shares, preferred shares, share options, and warrants to purchase shares issued by us within the past three years that were not registered under the Securities Act. Also included is the consideration received by us for such securities and information relating to the section of the Securities Act, or rule of the Securities and Exchange Commission, under which exemption from registration was claimed. All of the securities described below are deemed restricted securities for purposes of the Securities Act. All certificates representing the issued shares of share capital described in this Item 7 included appropriate legends setting forth that the securities have not been registered and the applicable restrictions on transfer.

Except as otherwise indicated herein or as the context otherwise requires, references below to "Stealth," "the Company," "we," "us" and "our" refer to Stealth BioTherapeutics Corp and its consolidated subsidiaries, or any one or more of them as the context may require.

Since January 1, 2016, we have issued the following unregistered securities:

(a) Share option grants and option exercises

We granted options to purchase an aggregate of 8,764,139 ordinary shares, with exercise prices ranging from \$1.14 to \$2.22 per share, pursuant to our 2006 share incentive plan, as amended. We issued an aggregate of 16,139 ordinary shares upon the exercise of options for aggregate consideration of \$10,476.

In October 2018, we reduced the exercise price per share of an aggregate of 385,833 options granted in June 2018 from \$2.22 per share to \$1.53 per share.

No underwriters were involved in the foregoing issuances of securities. The issuances of share options and the ordinary shares issued upon the exercise of the options described in this paragraph (a) of Item 7 were issued pursuant to written compensatory plans or arrangements with our employees, directors and consultants, in reliance on the exemption provided by Rule 701 promulgated under the Securities Act, or pursuant to Section 4(a)(2) under the Securities Act, relative to transactions by an issuer not involving any public offering, to the extent an exemption from such registration was required. All recipients either received adequate information about us or had access, through employment or other relationships, to such information.

(b) Convertible Promissory Note Issuances

Between February 2017 and January 2019, we issued convertible notes in an aggregate principal amount of \$132.4 million. The notes are convertible into shares of our preferred shares or ordinary shares upon the occurrence of certain qualified financings.

No underwriters were involved in the issuance of these securities. The convertible securities described in this paragraph (b) of Item 7 were issued to investors in reliance upon the exemption from the registration requirements of the Securities Act provided under Regulation D promulgated under the Securities Act, or pursuant to Section 4(a)(2) under the Securities Act, relating to transactions by an issuer not involving any public offering. Each recipient of the security in the transaction described above represented that it was an accredited investor and was acquiring the security for its own account for investment purposes only and not with a view to the public resale or distribution thereof and that it could bear the risks of the investment and could hold the security for an indefinite period of time, and appropriate legends were affixed to the instrument representing the security issued in such transaction.

(c) Warrant Issuances

In January 2017, we issued a warrant to purchase up to 231,989 ordinary shares to a consultant at an exercise price of \$1.38 per share.

In June 2017, in connection with our entry into a loan agreement, we issued to a lender a warrant, which was amended and restated in June 2018. The warrant is exercisable for that number of our shares equal to the quotient determined by dividing (a) \$500,000 plus an amount equal to 2.5% of any amount drawn under specified tranches of the loan agreement by (b) an exercise price equal to (i) \$2.30769 in the event the shares issuable are Series A preferred shares or (ii) if the shares issuable are next round securities, the price per share of such next round securities. The warrant holder may elect whether to exercise the warrant for shares of Series A convertible preferred shares or next round securities.

No underwriters were involved in the issuance of these warrants. The issuance of the warrants described in this paragraph (c) of Item 7 were issued to investors in reliance upon the exemption from the registration requirements of the Securities Act provided under Regulation D promulgated under the Securities Act, or pursuant to Section 4(a)(2) under the Securities Act, relating to transactions by an issuer not involving any public offering. Each recipient of the security in the transaction described above represented that it was an accredited investor and was acquiring the security for its own account for investment purposes only and not with a view to the public resale or distribution thereof and that it could bear the risks of the investment and could hold the security for an indefinite period of time, and appropriate legends were affixed to the instrument representing the security issued in such transaction.

(d) Warrant Exercise

In December 2009, in connection with our preferred share financing, we issued a warrant to purchase an aggregate of 333,333 ordinary shares. In November 2016, the holder exercised this warrant, pursuant to which 333,333 ordinary shares were issued for an aggregate exercise price of \$10,000.

No underwriters were involved in the foregoing issuance of securities. The issuance of the warrant described in this paragraph (d) of Item 7 was issued to an investor in reliance upon the exemption from the registration requirements of the Securities Act provided under Regulation D promulgated under the Securities Act, or pursuant to Section 4(a)(2) under the Securities Act, relating to transactions by an issuer not involving any public offering. The recipient of securities in the transaction described above represented that it was an accredited investor and was acquiring the securities for its own account for investment purposes only and not with a view to the public resale or distribution thereof and that it could bear the risks of the investment and could hold the securities for an indefinite period of time, and appropriate legends were affixed to the instrument representing such securities issued in such transaction.

Item 8. Exhibits and Financial Statement Schedules.

(a) Exhibits.

The exhibits to the registration statement are listed in the Exhibit Index attached hereto and 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 notes.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes to provide to the underwriter, at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(b) 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.

(c) The undersigned hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a 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 of 1933, 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.

EXHIBIT INDEX

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION OF EXHIBIT</u>
1.1**	Form of Underwriting Agreement
3.1**	Memorandum and Articles of Association of the Registrant, as amended
3.2**	Form of Articles of Association of the Registrant (to be effective prior to the closing of this offering)
4.1**	Form of Deposit Agreement among Registrant, Citibank, N.A., as depository, and all Owners and Holders of ADSs issued thereunder
4.2**	Form of American Depositary Receipt (included in Exhibit 4.1)
4.3**	Warrant Agreement, dated June 30, 2017, by and between the Company and Hercules Capital Inc., as amended and restated on June 7, 2018
5.1**	Opinion of Walkers
8.1	Tax Opinion of Wilmer Cutler Pickering Hale and Dorr LLP
10.1**	2006 Share Incentive Plan, as amended
10.2**	Form of Incentive Option Agreement under 2006 Share Incentive Plan, as amended
10.3**	Form of Nonstatutory Option Agreement under 2006 Share Incentive Plan, as amended
10.4**	2019 Share Incentive Plan
10.5**	Form of Share Option Agreement under 2019 Share Incentive Plan
10.6**	Form of Restricted Share Agreement under 2019 Share Incentive Plan
10.7**	Form of Director and Officer Indemnification Agreement by and between the Registrant and each of its officers and directors
10.8†**	Exclusive License Agreement, dated April 20, 2006, among the Company, Cornell Research Foundation, Inc. and Institut de recherches cliniques de Montréal, as amended by First Amendment to Exclusive License Agreement dated October 7, 2010
10.9†**	Exclusive License Agreement, dated November 22, 2010, between the Company and Cornell University
10.10†**	Exclusive License Agreement, dated November 3, 2011, by and between the Company and Cornell University
10.11†**	Exclusive License Agreement, dated December 27, 2012, by and between the Company and Cornell University
10.12†**	Exclusive License Agreement, dated August 12, 2013, by and between the Company and Cornell University
10.13**	Office Lease Agreement, dated October 31, 2014, by and between the Company and Hines Global REIT Riverside Center, LLC
10.14**	Amendment Agreement by and between the Company and Danforth Advisors, LLC, dated as of June 13, 2018
10.15**	Loan and Security Agreement, dated June 30, 2017, by and between the Company and Hercules Capital Inc., as amended on March 12, 2018, July 26, 2018 and October 10, 2018
10.16**	2019 Employee Share Purchase Plan
21.1**	Subsidiaries of the Registrant
23.1**	Consent of Deloitte & Touche, LLP, independent registered public accounting firm

**EXHIBIT
NUMBER**

DESCRIPTION OF EXHIBIT

23.2**	Consent of Walkers (included in Exhibit 5.1)
23.3	Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 8.1)
24.1**	Power of Attorney (included on signature page)

** Previously filed.

† Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

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 F-1 and has duly caused this Amendment No. 3 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Newton, Massachusetts on this 8th day of February, 2019.

STEALTH BIOTHERAPEUTICS CORP

By: /s/ Henry H. Hess

Henry H. Hess
Authorized Signatory

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 3 to 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>
* Irene P. McCarthy	Chief Executive Officer and Director (principal executive officer, principal financial officer and principal accounting officer)	February 8, 2019
* Francis W. Chen, Ph.D.	Director	February 8, 2019
* Gerald L. Chan, Sc.D.	Director	February 8, 2019
* Kevin F. McLaughlin	Director	February 8, 2019
* Vincent Sai Sing Cheung	Director	February 8, 2019
* Lu Huang	Director	February 8, 2019
* Cheuk Kin Stephen Law	Director	February 8, 2019
* Edward P. Owens	Director	February 8, 2019

Stealth BioTherapeutics, Inc.
Authorized Representative in the United States

* By: /s/ Henry H. Hess
Name: Henry H. Hess
Title: Corporate Counsel

WILMERHALE

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wilmerhale.com

February 8, 2019

Stealth BioTherapeutics Corp
c/o Intertrust Corporate Services (Cayman) Limited
190 Elgin Avenue, George Town
Grand Cayman
KY1-9005 Cayman Islands

Re: Stealth BioTherapeutics Corp

Ladies and Gentlemen:

In connection with the public offering of ordinary shares, par value \$0.0003 per share (the “Shares”), represented by American Depositary Shares (the “ADSs”) of Stealth BioTherapeutics Corp (the “Company”), pursuant to the registration statement on Form F-1 under the Securities Act of 1933, as amended (the “Securities Act”), originally filed by the Company with the Securities and Exchange Commission (the “Commission”) on December 28, 2018 (File No. 333-229097) (as so filed and as amended, the “Registration Statement”), you have requested our opinion concerning the statements in the Registration Statement under the heading “Taxation—Material U.S. Federal Income Tax Considerations for U.S. Holders.”

In connection with rendering the opinion set forth below, we have examined and relied on the Registration Statement and such other documents as we have deemed necessary or relevant as a basis for the opinion set forth below, including representations from officers and employees of the Company. We have not independently verified any factual matters.

For purposes of rendering our opinion, we have assumed the authenticity of original documents, the accuracy of copies, the genuineness of all signatures and the legal capacity of all persons executing all instruments or documents examined or relied on by us.

Our opinion is based upon the relevant provisions of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations promulgated thereunder, and interpretations of the foregoing as expressed in court decisions and administrative determinations, all as in effect on the date of this opinion and all of which are subject to change at any time (possibly with retroactive effect). A change in the authorities upon which our opinion is based could affect the conclusions expressed herein. We undertake no obligation to update or supplement this opinion to reflect any changes of law or fact.

Our opinion is not binding upon the Internal Revenue Service (the “IRS”) or any court. Thus, no assurance can be given that a position taken in reliance on our opinion will not be challenged by the IRS or rejected by a court.

Wilmer Cutler Pickering Hale and Dorr LLP, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007
Beijing Berlin Boston Brussels Denver Frankfurt London Los Angeles New York Oxford Palo Alto Washington

Stealth BioTherapeutics Corp
February 8, 2019
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On the basis of and subject to the foregoing and in reliance on the assumptions described above, subject to the limitations set forth in the Registration Statement, the statements of law or legal conclusions in the Registration Statement under the heading “Taxation—Material U.S. Federal Income Tax Considerations for U.S. Holders” constitute our opinion regarding the material U.S. federal income tax consequences to U.S. holders (as defined therein) of the acquisition, ownership and disposition of the ADSs and of the Shares.

This opinion is limited to the matters of federal income tax law of the United States set forth under the heading “Taxation—Material U.S. Federal Income Tax Considerations for U.S. Holders” in the Registration Statement, and we express no opinion with respect to any other federal, state, local or foreign tax issues (including without limitation matters of Cayman Islands law), consequences or matters related to the acquisition, ownership and disposition of the ADSs or of the Shares.

This opinion is furnished to you solely in connection with the Registration Statement and may not be relied upon by anyone else or used for any other purpose without our prior written consent, provided, however, that it may be relied upon by persons entitled to rely on it pursuant to applicable provisions of federal securities laws.

We hereby consent to the filing of this opinion as Exhibit 8.1 to the Registration Statement and to the use of our name under the caption “Legal Matters” in the Registration Statement. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules or regulations of the Commission promulgated thereunder, nor do we thereby admit that we are experts with respect to any part of such Registration Statement within the meaning of the term “experts” as used in the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Sincerely,

WILMER CUTLER PICKERING
HALE AND DORR LLP

By: /s/ Richard E. Andersen
Richard E. Andersen, Partner