

EXELIXIS INC
Form S-8
March 14, 2001

**As filed with the Securities and Exchange Commission on March 14, 2001
Registration No. 333-_____**

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

FORM S-8

**REGISTRATION STATEMENT
Under
The Securities Act of 1933**

EXELIXIS, INC. (Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

04-3257395

(I.R.S. Employer Identification Number)

**170 Harbor Way
P.O. Box 511
South San Francisco, California 94083
(650) 837-7000**

(Address of principal executive offices, including zip code)

**2000 EQUITY INCENTIVE PLAN
2000 EMPLOYEE STOCK PURCHASE PLAN
2000 NON-EMPLOYEE DIRECTORS' STOCK OPTION PLAN**

(Full title of the plans)

Glen Y. Sato
Chief Financial Officer
Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
(650) 837-7000

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

Copies to:

Robert L. Jones, Esq.
Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Stock Options and Common Stock (par value \$.001)	3,365,987	\$9.35155	\$ 31,477,195.73	\$7,869.30

1. Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h)(1) under the Securities Act of 1933, as amended (the "Act"). The offering price per share and aggregate offering price for the unissued stock options and common stock are based upon the average of the high and low prices of the Registrant's common stock as reported on the Nasdaq National Market System on March 12, 2001. The following chart illustrates the calculation of the registration fee:

Title of Shares	Number of Shares

Offering Price per Share

Aggregate Offering Price

Shares issuable pursuant to unissued stock options to the 2000 Equity Incentive Plan

Shares issuable pursuant to unissued stock options pursuant to the 2000 Non-Employee Directors' Stock Option Plan

Shares issuable pursuant to the 2000 Employee Stock Purchase Plan

Proposed Maximum Aggregate Offering Price

2,589,221

388,383

388,383

\$9.35155

\$9.35155

\$9.35155

\$ 24,213,229.64

\$ 3,631,983.04

\$ 3,631,983.04

\$ 31,477,195.73

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

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by Exelixis, Inc. (the "Company") with the Securities and Exchange Commission (the "SEC") are incorporated by reference into this Registration Statement:

- a. The Company's prospectus filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the "Securities Act"), on April 25, 2000 (No. 333-96335);
- b. The Company's quarterly reports on Form 10-Q for the quarters ended March 31, June 30 and September 30, 2000;
- c. The Company's current reports on Form 8-K filed on April 24, September 8, November 9, and December 22, 2000; and
- d. The description of the Company's common stock which is contained in the Registration Statement on Form 8-A filed on April 6, 2000, under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and documents.

INTERESTS OF NAMED EXPERTS AND COUNSEL

The legality of the common stock offered hereby will be passed upon for the Company by Cooley Godward LLP, Palo Alto, California.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Under Section 145 of the Delaware General Corporation Law, the Company has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. The Restated Bylaws of the Company require the Company to indemnify its directors and executive officers, and permit the Company to indemnify its other officers, employees and other agents, to the extent permitted by Delaware law. Under the Bylaws, indemnified parties are entitled to indemnification for negligence, gross negligence and otherwise to the fullest extent permitted by the Bylaws. The Bylaws also require the Company to advance litigation expenses in the case of stockholder derivative actions, or other actions, against an undertaking by the indemnified party to repay such advances if it is ultimately determined that the indemnified party is not entitled to indemnification.

The Company has entered into indemnity agreements with each of its directors and executive officers. Such indemnity agreements contain provisions which are in some respects broader than the specific indemnification provisions contained in Delaware law. The Company also maintains an insurance policy for its directors and executive officers insuring against certain liabilities arising in their capacities as such.

EXHIBITS

Exhibit
Number

- 4.1* Amended and Restated Certificate of Incorporation of the Company.
- 4.2* Restated bylaws of the Company.
- 5.1 Opinion of Cooley Godward LLP.
- 23.1 Consent of Independent Accountants.
- 23.2 Consent of Cooley Godward LLP is contained in Exhibit 5.1 to this Registration Statement.
- 24.1 Power of Attorney is contained on the signature pages to this Registration Statement.

*Incorporated by reference to the Company's Registration Statement on Form S-1, as amended (File No. 333-96335), originally filed with the SEC on February 7, 2000.

UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

(a) 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 this 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 this 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 Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 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 this Registration Statement or any material change to such information in this Registration Statement;

provided, however,

that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference herein.

(b) 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.

(c) 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.

2. 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 herein 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. 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.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of South San Francisco, State of California, on March 13, 2001.

EXELIXIS, INC.

By: /s/ George A.
Scangos

George A.
Scangos, Ph.D.

President and
Chief Executive
Officer

Know All Persons by these Presents

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, that each person whose signature appears below constitutes and appoints George A. Scangos and Glen Y. Sato, and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, 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, granting unto said attorneys-in-fact and agents, and each of them, 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 to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or 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.

Signature	Title	Date
<u>/s/ George A. Scangos, Ph.D.</u> George A. Scangos, Ph.D.	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 13, 2001
<u>/s/ Glen Y. Sato</u> Glen Y. Sato	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	March 13, 2001
<u>/s/ Steilos Papadopoulos, Ph.D.</u> Stelios Papadopoulos, Ph.D.	Chairman of the Board of Directors	March 13, 2001
<u>/s/ Charles Cohen, Ph.D.</u> Charles Cohen, Ph.D.	Director	March 13, 2001
<u>/s/ Jurgen Drews, M.D.</u> Jurgen Drews, M.D.	Director	March 13, 2001
<u>/s/ Geoffrey Duyk, M.D. Ph.D.</u> Geoffrey Duyk, M.D., Ph.D.	Director	March 13, 2001

/s/ Jason S. Fisherman, M.D. Director March 13, 2001

Jason S. Fisherman, M.D.

/s/ Jean-Francois Formela, M.D. Director March 13, 2001

Jean-Francois Formela, M.D.

/s/ Edmund Olivier de Vezin Director March 13, 2001

Edmund Olivier de Vezin

_____ Director March __, 2001

Lance Willsey, M.D.

/s/ Peter Stadler Director March 13, 2001

Peter Stadler, Ph.D.

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