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

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

ORCHESTRA BIOMED HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

92-2038755
(I.R.S. Employer
Identification No.)

150 Union Square Drive
New Hope, Pennsylvania 18928
(Address of Principal Executive Offices) (Zip Code)

Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan
(Full titles of the plans)

David P. Hochman
Chief Executive Officer
150 Union Square Drive
New Hope, PA 18928
(215) 862-5797
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Yariv Katz, Esq.
Keith Pisani, Esq.
Paul Hastings LLP
200 Park Avenue
New York, NY 10016
(212) 318-6000

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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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; INCORPORATION BY REFERENCE OF CONTENTS OF
REGISTRATION STATEMENTS ON FORM S-8**

Pursuant to General Instruction E of Form S-8, Orchestra BioMed Holdings, Inc. (the “Registrant” or the “Company”) is filing this Registration Statement with the Securities and Exchange Commission (the “SEC”) to register 1,717,315 additional shares of common stock, par value \$0.0001 per share (“Common Stock”), of the Registrant reserved for issuance under the Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan (the “2023 Plan”) resulting from an automatic annual increase as of January 1, 2024. This Registration Statement hereby incorporates by reference the contents of the Registrant’s Registration Statement on Form S-8 filed with the SEC on April 3, 2023 (File No. 333-271092).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the SEC.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by the Registrant with the SEC are hereby incorporated by reference into this Registration Statement:

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the year ended December 31, 2023, filed with the SEC on March 27, 2024; and
- (b) The description of the Registrant’s Common Stock contained in [Exhibit 4.16](#) to the Annual Report on Form 10-K for the year ended December 31, 2023, filed with the SEC on March 27, 2024, including any amendment or reports filed for the purpose of updating such description.

All other reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part of this Registration Statement from the date of the filing of such reports and documents, except as to any portion of any future current report furnished under Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions.

For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded 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 such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

You should rely only on the information provided or incorporated by reference in this Registration Statement or any related prospectus. The Registrant has not authorized anyone to provide you with different information. You should not assume that the information in this Registration Statement or any related prospectus is accurate as of any date other than the date on the front of the document.

You may contact the Registrant in writing or orally to request copies of the above-referenced filings, without charge (excluding exhibits to such documents unless such exhibits are specifically incorporated by reference into the information incorporated into this Registration Statement). Requests for such information should be directed to:

Orchestra BioMed Holdings, Inc.
150 Union Square Drive
New Hope, PA 18938
Attn: Chief Executive Officer

ITEM 8. EXHIBITS.

Exhibit Number	Description
<u>4.1</u>	<u>Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed by the Registrant on January 31, 2023).</u>
<u>4.2</u>	<u>Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K filed by the Registrant on January 31, 2023).</u>
<u>5.1*</u>	<u>Opinion of Paul Hastings LLP.</u>
<u>23.1*</u>	<u>Consent of Ernst & Young LLP, independent registered public accounting firm of Orchestra BioMed, Inc.</u>
<u>23.2*</u>	<u>Consent of Paul Hastings LLP (included in Exhibit 5.1).</u>
<u>24.1*</u>	<u>Power of Attorney is contained on the signature page.</u>
<u>99.1</u>	<u>Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan (incorporated by reference to Exhibit 10.7 to the Current Report on Form 8-K filed by the Registrant on January 31, 2023).</u>
<u>99.2</u>	<u>Form of Stock Option Grant Notice and Stock Option Agreement under the Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan (incorporated by reference to Exhibit 10.8 to the Current Report on Form 8-K filed by the Registrant on January 31, 2023).</u>
<u>99.3</u>	<u>Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan (incorporated by reference to Exhibit 10.9 to the Current Report on Form 8-K filed by the Registrant on January 31, 2023).</u>
<u>107*</u>	<u>Filing Fee Table</u>

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 city of New York, State of New York, on March 27, 2024.

ORCHESTRA BIOMED HOLDINGS, INC.

By: /s/ David P. Hochman
Name: David P. Hochman
Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David P. Hochman and Andrew L. Taylor, and each or any one of them, as his or her true and lawful attorneys-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her 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 of 1933, 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/ David P. Hochman</u> David P. Hochman	Chief Executive Officer, Chairperson and Director <i>(Principal Executive Officer)</i>	March 27, 2024
<u>/s/ Andrew L. Taylor</u> Andrew L. Taylor	Chief Financial Officer <i>(Principal Financial Officer)</i>	March 27, 2024
<u>/s/ Joshua Aiello</u> Joshua Aiello	Corporate Controller <i>(Principal Accounting Officer)</i>	March 27, 2024
<u>/s/ Jason Aryeh</u> Jason Aryeh	Director	March 27, 2024
<u>/s/ Pamela A. Connealy</u> Pamela A. Connealy	Director	March 27, 2024
<u>/s/ Eric S. Fain, M.D.</u> Eric S. Fain, M.D.	Director	March 27, 2024
<u>/s/ David Pacitti</u> David Pacitti	Director	March 27, 2024
<u>/s/ Eric A. Rose, M.D.</u> Eric A. Rose, M.D.	Director	March 27, 2024
<u>/s/ Darren R. Sherman</u> Darren R. Sherman	Chief Operating Officer and Director	March 27, 2024

PAUL HASTINGS

March 27, 2024

Orchestra BioMed Holdings, Inc.
150 Union Square Drive
New Hope, PA 18938

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Orchestra BioMed Holdings, Inc., a Delaware corporation (the “**Company**”), in connection with the preparation of the registration statement on Form S-8 to be filed by the Company with the U.S. Securities and Exchange Commission (the “**Commission**”) on the date hereof (the “**Registration Statement**”) to effect registration under the Securities Act of 1933, as amended (the “**Securities Act**”), of 1,717,315 shares (the “**Shares**”) of the Company’s common stock, \$0.0001 par value per share (“**Common Stock**”), reserved for awards available for future issuance under the Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan (the “**2023 Plan**”).

As such counsel and for purposes of our opinion set forth below, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of such documents, resolutions, certificates and instruments of the Company and corporate records furnished to us by the Company, and have reviewed certificates of public officials, statutes, records and such other instruments and documents as we have deemed necessary or appropriate as a basis for the opinion set forth below, including, without limitation:

- (i) the Registration Statement;
- (ii) the Certificate of Incorporation of the Company (the “**Certificate of Incorporation**”), as certified as of March 26, 2024 by the Office of the Secretary of State of the State of Delaware;
- (iii) the Bylaws of the Company as presently in effect, as certified by an officer of the Company on March 27, 2024;
- (iv) the 2023 Plan and the forms of award agreements related thereto;
- (v) a certificate, dated as of March 21, 2024, from the Office of the Secretary of State of the State of Delaware, certifying as to the existence and good standing of the Company in the State of Delaware (the “**Good Standing Certificate**”);
- (vi) the resolutions adopted by the board of directors of the Health Sciences Acquisitions Corporation 2 (“**HSAC2**”), the resolutions adopted by the board of directors of the Company and the resolutions adopted by the Compensation Committee of the Company regarding the 2023 Plan, and other matters related thereto, as certified by an officer of the Company on March 27, 2024;

Orchestra BioMed Holdings, Inc.
March 27, 2024
Page 2

- (vii) the resolutions adopted by the shareholders of HSAC2 regarding the 2023 Plan, and other matters related thereto, as certified by an officer of the Company on March 27, 2024;
- (viii) the agreement and plan of merger, dated as of July 4, 2022, by and among HSAC2, HSAC Olympus Merger Sub, Inc., and Orchestra BioMed, Inc., as amended.

In addition to the foregoing, we have made such investigations of law as we have deemed necessary or appropriate as a basis for the opinion set forth in this opinion letter.

In such examination and in rendering the opinion expressed below, we have assumed, without independent investigation or verification: (i) the genuineness of all signatures on all agreements, instruments, corporate records, certificates and other documents submitted to us; (ii) the authenticity and completeness of all agreements, instruments, corporate records, certificates and other documents submitted to us as originals; (iii) that all agreements, instruments, corporate records, certificates and other documents submitted to us as certified, electronic, facsimile, conformed, photostatic or other copies conform to originals thereof, and that such originals are authentic and complete; (iv) the legal capacity, competency and authority of all individuals executing all agreements, instruments, corporate records, certificates and other documents; (v) the due authorization, execution and delivery of all agreements, instruments, corporate records, certificates and other documents by all parties thereto (other than the Company); (vi) that no documents submitted to us have been amended or terminated orally or in writing except as has been disclosed to us in writing; (vii) that the statements contained in the certificates and comparable documents of public officials, officers and representatives of the Company and other persons on which we have relied for the purposes of this opinion letter are true and correct on and as of the date hereof; (viii) that there has not been any change in the good standing status of the Company from that reported in the Good Standing Certificate; and (ix) that each of the officers and directors of the Company has properly exercised his or her fiduciary duties. As to all questions of fact material to this opinion letter, and as to the materiality of any fact or other matter referred to herein, we have relied (without independent investigation or verification) upon representations and certificates or comparable documents of officers and representatives of the Company. We have also assumed that the individual issuances, grants, awards or grants of purchase rights under the 2023 Plan will be duly authorized by all necessary corporate action of the Company and duly issued, granted or awarded and exercised in accordance with the requirements of law, the 2023 Plan and the agreements, forms of instrument, awards and grants duly adopted thereunder. We have also assumed that upon the issuance of any Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Certificate of Incorporation.

Based upon the foregoing, and in reliance thereon, and subject to the assumptions, limitations, qualifications and exceptions set forth herein, we are of the opinion that the Shares are duly authorized and, when issued and sold as described in the Registration Statement and in accordance with the 2023 Plan and the applicable award agreements or forms of instrument evidencing purchase rights thereunder (including the receipt by the Company of the full consideration therefor), will be validly issued, fully paid and nonassessable.

Without limiting any of the other assumptions, limitations, qualifications and exceptions stated elsewhere herein, we express no opinion with regard to the applicability or effect of the laws of any jurisdiction other than the General Corporation Law of the State of Delaware, as in effect on the date of this opinion letter.



Orchestra BioMed Holdings, Inc.
March 27, 2024
Page 3

This opinion letter deals only with the specified legal issues expressly addressed herein, and you should not infer any opinion that is not explicitly stated herein from any matter addressed in this opinion letter.

This opinion letter is rendered solely in connection with the preparation and filing of the Registration Statement. This opinion letter is rendered as of the date hereof, and we assume no obligation to advise you or any other person with regard to any change after the date hereof in the circumstances or the law that may bear on the matters set forth herein even if the change may affect the legal analysis or a legal conclusion or other matters in this opinion letter.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not hereby 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 thereunder.

Very truly yours,

/s/ Paul Hastings 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 2023 Equity Incentive Plan of Orchestra BioMed Holdings, Inc. of our report dated March 27, 2024, with respect to the consolidated financial statements of Orchestra BioMed Holdings, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2023, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania
March 27, 2024

Calculation of Filing Fee Tables

Form S-8
(Form Type)

Orchestra BioMed Holdings, 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⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.0001 par value per share, “ Common Stock ” reserved for issuance under the Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan (the “ 2023 Plan ”)	457(c) and (h)	1,717,315 ⁽²⁾	\$5.50 ⁽³⁾	\$9,445,232.50 ⁽³⁾	0.00014760	\$1,394.12
Total Offering Amounts					\$9,445,232.50		\$1,394.12
Total Fee Offsets							–
Net Fee Due							\$1,394.12

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “*Securities Act*”), this Registration Statement shall also cover any additional shares of Common Stock that become issuable under the 2023 Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of Common Stock.
- (2) Represents the additional shares of Common Stock reserved for issuance under the 2023 Plan resulting from an automatic annual increase as of January 1, 2024.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) of the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are calculated based on \$5.50 per share, the average of the high and low price of the Common Stock on the Nasdaq Global Market on March 21, 2024 (such date being within five business days prior to the date that this registration statement was filed with the U.S. Securities and Exchange Commission).