

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

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

**VIRIOS THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

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

**85-4314201**  
(I.R.S. Employer Identification No.)

**44 Milton Avenue, Alpharetta, GA**  
(Address of Principal Executive Offices)

**30009**  
(Zip Code)

**Virios Therapeutics, Inc. Amended and Restated 2020 Equity Incentive Plan**  
(Full title of the plan)

**Greg Duncan**  
**Chief Executive Officer**  
**Virios Therapeutics, Inc.**  
**44 Milton Avenue**  
**Alpharetta, GA 30009**  
(Name and address of agent for service)

**(866) 620-8655**  
(Telephone number, including area code, of agent for service)

*Copies to:*

**Darrick M. Mix, Esq.**  
**Duane Morris LLP**  
**30 South 17th Street**  
**Philadelphia, PA 19103**  
**(215) 979-1206**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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.

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## INTRODUCTORY NOTE

Virios Therapeutics, Inc. (the “**Registrant**”) has filed this registration statement on form S-8 (this “**Registration Statement**”) to register under the Securities Act of 1933, as amended (the “**Securities Act**”), the offer and sale of 1,250,000 shares of the Registrant’s common stock, par value \$0.0001 per share (the “**Common Stock**”), not previously registered, pursuant to the Virios Therapeutics, Inc. Amended and Restated 2020 Equity Incentive Plan, as amended (the “**Amended and Restated Plan**”). Such shares are being registered in addition to the Common Stock previously registered for issuance on the Registrant’s Registration Statement on Form S-8 concerning the Virios Therapeutics, Inc. 2020 Equity Incentive Plan filed with the U.S. Securities and Exchange Commission (the “**Commission**”) on December 21, 2020 (Registration No. 333-251544) (the “**Prior Registration Statement**”).

Effective as of March 28, 2022, the Board of Directors of the Registrant authorized the registration of an additional 1,250,000 shares of Common Stock under the Amended and Restated Plan. In accordance with Instruction E to the General Instructions to Form S-8, the Registrant is registering the additional 1,250,000 shares of Common Stock which may, following approval of the Amended and Restated Plan by the Registrant’s stockholders, which occurred on June 16, 2022, be offered and sold under the Amended and Restated Plan pursuant to this Registration Statement, and the contents of the Prior Registration Statement are incorporated by reference herein except to the extent supplemented, amended or superseded by the information set forth herein.

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Item 1 and Item 2 of Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

The following documents filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), are incorporated into this Registration Statement by reference (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with the Commission’s rules):

- (a) [The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2021, filed with the Commission on March 18, 2022.](#)
- (b) [The Registrant’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2022, filed with the Commission on May 13, 2022.](#)
- (c) The Registrant’s Current Reports on Form 8-K, filed with the Commission on [June 3, 2022](#) and [June 17, 2022](#); and
- (d) [The description of the Registrant’s shares of Common Stock contained in its registration statement on Form 8-A filed by the Registrant with the Commission on December 16, 2020 pursuant to Section 12\(b\) of the Exchange Act, including all amendments and reports filed for the purpose of updating such description.](#)

All documents that the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the shares of Common Stock offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents; except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under current Items 2.02 or 7.01 of Form 8-K, and exhibits furnished on such form that relate to such items, 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

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that a statement contained herein or in any other subsequently filed document which 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.

**Item 8. Exhibits.**

The following Exhibits are filed as part of this Registration Statement:

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 4.1                | <a href="#"><u>Certificate of Incorporation of the Registrant. (Incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1 filed August 28, 2020.)</u></a>   |
| 4.2                | <a href="#"><u>Bylaws of the Registrant. (Incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 filed August 28, 2020.)</u></a>   |
| 4.3                | <a href="#"><u>Specimen Certificate evidencing shares of the Registrant's common stock. (incorporated by reference herein from Exhibit 4.1 to the Registrant's Registration Statement on Form S-1, filed with the SEC on October 16, 2020).</u></a> |
| 5.1*               | <a href="#"><u>Opinion of Duane Morris LLP.</u></a>   |
| 23.1*              | <a href="#"><u>Consent of FORVIS, LLP, Independent Registered Public Accounting Firm.</u></a>   |
| 23.2*              | <a href="#"><u>Consent of Duane Morris LLP (included in Exhibit 5.1).</u></a>   |
| 24.1*              | <a href="#"><u>Power of Attorney (included on signature pages of this Registration Statement).</u></a>  |
| 99.1               | <a href="#"><u>Virios Therapeutics, Inc. Amended and Restated 2020 Equity Incentive Plan (Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed June 17, 2022).</u></a>                                    |
| 107*               | <a href="#"><u>Filing Fee Table.</u></a>  |

\* Filed herewith.

**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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and
  - 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;
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*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 Commission by the Registrant pursuant to Section 13 or Section 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; and
  - (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 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.
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## EXHIBIT INDEX

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\* Filed herewith.

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ALLIANCES IN MEXICO  
AND SRI LANKA

June 22, 2022

Virios Therapeutics, Inc.  
44 Milton Avenue  
Alpharetta, GA 30009

**Re: Exhibit 5.1 to Registration Statement on Form S-8**

Ladies and Gentlemen:

We are acting as counsel to Virios Therapeutics, Inc., a Delaware corporation (the “Company”), in connection with its registration statement on Form S-8 (the “Registration Statement”), filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the “Securities Act”), relating to the offering by the Company of up to 1,250,000 shares of the Company’s common stock, \$0.0001 par value per share (the “Shares”). The Shares subject to the Registration Statement are reserved for issuance pursuant to future awards under the Virios Therapeutics, Inc. Amended and Restated 2020 Equity Incentive Plan (the “Amended and Restated Plan”).

We have examined the originals, or photostatic or certified copies, of such records of the Company and certificates of officers of the Company and of public officials and such other documents as we have deemed relevant and necessary as the basis for the opinions set forth below. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. We have also assumed that there are no agreements or understandings between or among the Company and any participants in the Amended and Restated Plan that would expand, modify or otherwise affect the terms of the Amended and Restated Plan or the respective rights or obligations of the

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June 22, 2022

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participants thereunder. Finally, we have assumed the accuracy of all other information provided to us by the Company during the course of our investigations, on which we have relied in issuing the opinion expressed below.

This opinion letter is based as to matters of law solely on the Delaware General Corporation Law, as amended. We express no opinion herein as to any other laws, statutes, ordinances, rules, or regulations. As used herein, the term "Delaware General Corporation Law, as amended" includes the statutory provisions contained therein, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting these laws.

Based upon, subject to and limited by the foregoing, we are of the opinion that the Shares when issued and sold in accordance with the terms set forth in the Amended and Restated Plan and against payment therefor, and when the Registration Statement has become effective under the Securities Act, will be validly issued, fully paid and non-assessable

The opinion expressed herein is rendered as of the date hereof and is based on existing law, which is subject to change. Where our opinion expressed herein refers to events to occur at a future date, we have assumed that there will have been no changes in the relevant law or facts between the date hereof and such future date. We do not undertake to advise you of any changes in the opinion expressed herein from matters that may hereafter arise or be brought to our attention or to revise or supplement such opinion should the present laws of any jurisdiction be changed by legislative action, judicial decision or otherwise.

Our opinion expressed herein is limited to the matters expressly stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated.

We consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Duane Morris LLP

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## Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Virios Therapeutics, Inc. (the "Company") for the registration of securities available for issuance pursuant to the Company's Amended and Restated 2020 Equity Incentive Plan, of our report dated March 18, 2022, with respect to the financial statements of the Company included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ FORVIS, LLP (Successor to Dixon Hughes Goodman LLP)

**Atlanta, Georgia**  
**June 22, 2022**

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## Calculation of Filing Fee Tables

**FORM S-8**

(Form Type)

**Virios Therapeutics, Inc.**

(Exact Name of Registrant as Specified in its Charter)

**Table 1: Newly Registered and Carry Forward Securities**

| Security Type            | Security Class Title                       | Fee Calculation or Carry Forward Rule | Amount Registered        | 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 | Rule 457(c) and Rule 457(h)           | 1,250,000 <sup>(1)</sup> | \$3.875 <sup>(2)</sup>                   | \$4,843,750                      | \$0.0000927 | \$449.02                   |
| <b>Total Fee Offsets</b> |  |                                       |                          |  |                                  |             | \$0                        |
| <b>Net Fee Due</b>       |  |                                       |                          |  |                                  |             | \$449.02                   |

(1) Represents shares of common stock, \$0.0001 par value per share ("Common Stock"), of Virios Therapeutics, Inc. (the "Registrant") that are issuable pursuant to the Virios Therapeutics, Inc. Amended and Restated 2020 Equity Incentive Plan. Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers such additional securities that become issuable by reason of any stock dividend, stock split, recapitalization or any other similar transactions.

(2) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act, based on the average of the high and low prices of the Common Stock as reported on the Nasdaq Capital Market on June 16, 2022.