

CALLON PETROLEUM CO
Form S-8
May 10, 2018

As filed with the Securities and Exchange Commission on May 10, 2018
Registration No. 333-

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

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

Callon Petroleum
Company
(Exact Name of
Registrant as Specified in
Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization) 64-0844345
(I.R.S. Employer Identification No.)

200 North Canal Street
Natchez, Mississippi
(Address of Principal Executive Offices) 39120
(Zip Code)

Callon
Petroleum
Company
2018
Omnibus
Incentive
Plan
(Full title of
the plan)

Michol L.
Ecklund
Vice
President
and General
Counsel
200 North
Canal
Street

Natchez,
Mississippi
39120
(Name and
address of
agent for
service)

(601)
442-1601
(Telephone
number,
including
area code,
of agent for
service)

Copy to:

Jason A.
Rocha
Baker Botts
L.L.P.
910
Louisiana
Street
Houston,
Texas
77002
(713)
229-1234

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	Accelerated filer	Non-accelerated filer	(Do not check if 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 13(a) of the Exchange Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share ⁽²⁾	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock (par value \$0.01 per share)	9,400,000	\$13.55	\$127,370,000	\$15,857.56

Covers, in addition to the number of shares of Callon Petroleum Company common stock, par value \$0.01 per share (the "Common Stock"), stated above, options and other rights to purchase or acquire the shares of Common Stock covered by this registration statement or otherwise issuable pursuant to the Callon Petroleum Company 2018 (1) Omnibus Incentive Plan (the "2018 Incentive Plan") and, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), an additional indeterminate number of shares, options and rights that may be offered or issued pursuant to the 2018 Incentive Plan, as a result of one or more adjustments under the 2018 Incentive Plan to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions.

Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under (2) the Securities Act, based upon the average of the high and low sales prices of the Common Stock on May 4, 2018, as quoted on the New York Stock Exchange.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information required by Part I of this registration statement on Form S-8 will be sent or given to employees as specified in Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with Rule 428 and the requirements of Part I of Form S-8, such documents need not be filed with the Securities and Exchange Commission (the "Commission") either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. The registrant shall maintain a file of such documents in accordance with the provisions of Rule 428. Upon request, the registrant shall furnish to the Commission or its staff a copy or copies of all of the documents included in such file. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this registration statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, filed with the Commission (File No. 001-14039) by Callon Petroleum Company, a Delaware corporation (the "Company"), are incorporated by reference into this registration statement, in each case excluding any information "furnished" but not "filed," unless the Company specifically provides that such "furnished" information is to be incorporated by reference:

- (a) the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017, including information incorporated by reference in the Form 10-K from the Company's definitive proxy statement on Schedule 14A filed with the Commission on March 23, 2018;
- (b) the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018;
- (c) the Company's Current Reports on Form 8-K filed with the Commission on March 9, 2018 and April 6, 2018; and
- (d) the description of Common Stock contained in the Company's Registration Statement on Form 8-B filed with the Commission on October 3, 1994, and any amendment or report filed for the purpose of updating such description.

Each document filed with the Commission by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (excluding information furnished pursuant to Items 2.02 and 7.01 of Form 8-K), subsequent to the date of this registration statement and prior to the filing of a post-effective amendment to this registration statement 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 in this registration statement and to be a part hereof from the date of filing such documents.

Any statement contained in this registration statement, in an amendment hereto or in a document 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 subsequently filed supplement to this registration statement or in any document that also is 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.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Delaware General Corporation Law

Section 145(a) of the General Corporation Law of the State of Delaware (the "DGCL") provides that a corporation shall have 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 that such 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), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if such person acted in good faith and in a manner the person 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 the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person 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 reasonable cause to believe that such person's conduct was unlawful.

Section 145(b) of the DGCL states 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 by reason of the fact that 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 the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or such other court shall deem proper.

Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145 of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145(d) of the DGCL states that any indemnification under subsections (a) and (b) of Section 145 of the DGCL (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145 of the DGCL. Such determination shall be made, with respect to a person who is a director or officer of the corporation at the time of such determination, (1) by a majority vote of the directors who were not parties to such action, suit or proceeding, even though less than a quorum or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (4) by the stockholders.

Section 145(e) of the DGCL provides that expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in Section 145 of the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by

persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Section 145(f) of the DGCL states that the indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of Section 145 of the DGCL shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 145(g) of the DGCL provides 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 such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of Section 145 of the DGCL.

Section 145(j) of the DGCL states that the indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 of the DGCL shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Certificate of Incorporation

The Certificate of Incorporation of the Company, as amended (the “Certificate of Incorporation”), provides that a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. The Company shall have the power to indemnify its present or former directors, officers, employees and agents or any person who served or is serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise to the fullest extent permitted by the DGCL. Such indemnification shall not be deemed exclusive of any other rights to which such person may be entitled, under any bylaws, agreements, vote of stockholders or disinterested directors, or otherwise.

Bylaws

The Bylaws of the Company (the “Bylaws”) provide that the Company shall indemnify, and advance certain expenses to, the Indemnitee (as defined in the Bylaws) to the fullest extent permitted by applicable law in effect on the date of effectiveness of the Bylaws, and to such greater extent as applicable law may thereafter permit. The rights of the Indemnitee provided under the preceding sentence shall include, but not be limited to, the right to be indemnified to the fullest extent permitted by §145(b) of the DGCL in Proceedings (as defined in the Bylaws) by or in the right of the Company and to the fullest extent permitted by §145(a) of the DGCL in all other Proceedings.

The Bylaws include related provisions meant to facilitate the Indemnitee’s receipt of such benefits. These provisions cover, among other things: (i) specification of the method of determining entitlement to indemnification and the selection of independent counsel that will in some cases make such determination; (ii) specification of certain time periods by which certain payments or determinations must be made and actions must be taken; and (iii) the establishment of certain presumptions in favor of an Indemnitee. The benefits of certain of these provisions are available to an Indemnitee only if there has been a change in control (as defined in the Bylaws).

Incentive Plan

In addition, Section 5 of the Callon Petroleum Company 2018 Omnibus Incentive Plan (the “2018 Incentive Plan”) provides that certain directors and officers administering the 2018 Incentive Plan shall not be liable for anything done or omitted to be done by him or her in connection with the performance of duties under the 2018 Incentive Plan, except for his or her own willful misconduct or as expressly provided by statute.

The above discussion of the Company’s Certificate of Incorporation, Bylaws, 2018 Incentive Plan and the DGCL is intended to be only a summary and is qualified in its entirety by the full text of each of the foregoing.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See Exhibit Index.

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

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 20 percent change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement and

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 the undertakings set forth in paragraphs (i) and (ii) above 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.

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.

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.

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 this 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.

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 described under Item 6 above, 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.

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 Natchez, State of Mississippi, on May 10, 2018.

Callon Petroleum Company (Registrant)

By: /s/ Joseph C. Gatto, Jr.
Joseph C. Gatto, Jr.
Director, President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below appoints Joseph C. Gatto, Jr., James P. Ulm II and Michol L. Ecklund, and each of them severally, each of whom may act without the joinder of the other, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and re-substitution, 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 any additional registration statement pursuant to Rule 462(b) under the Securities Act, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully and for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them or their substitutes, 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 below by the following persons in the capacities indicated on May 10, 2018.

Signature	Title
/s/ Joseph C. Gatto, Jr. Joseph C. Gatto, Jr.	Director, President and Chief Executive Officer (Principal Executive Officer)
/s/ James P. Ulm II James P. Ulm II	Senior Vice President and Chief Financial Officer (Principal Financial Officer)
/s/ Mitzi P. Conn Mitzi P. Conn	Vice President and Chief Accounting Officer (Principal Accounting Officer)
/s/ L. Richard Flury L. Richard Flury	Chairman of the Board

/s/ Larry D. McVay Director
Larry D. McVay

/s/ Anthony J. Nocchiero Director
Anthony J. Nocchiero

/s/ Matthew R. Bob Director
Matthew R. Bob

/s/ James M. Trimble Director
James M. Trimble

/s/ Barbara J. Faulkenberry Director
Barbara J. Faulkenberry

/s/ Michael L. Finch Director
Michael L. Finch

EXHIBIT INDEX

Exhibit Number	Description
4.1	<u>Certificate of Incorporation of the Company, as amended through May 12, 2016 (incorporated by reference to Exhibit 3.1 of the Company's Quarterly Report on Form 10-Q, filed on November 3, 2016).</u>
4.2	<u>Certificate of Designation of Rights and Preferences of 10.00% Series A Cumulative Preferred Stock (incorporated by reference to Exhibit 3.5 of the Company's Form 8-A, filed on May 23, 2013).</u>
4.3	<u>Bylaws of the Company (incorporated by reference to Exhibit 3.3 of the Company's Annual Report on Form 10-K, filed on February 28, 2018).</u>
4.4	<u>Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company's Annual Report on Form 10-K, filed on February 28, 2018).</u>
4.5	<u>Certificate for the Company's 10.00% Series A Cumulative Preferred Stock (incorporated by reference to Exhibit 4.1 of the Company's Form 8-A, filed on May 23, 2013).</u>
4.6	<u>Registration Rights Agreement, dated May 26, 2016, among the Company and each of the Persons set forth on Schedule A therein (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on May 31, 2016).</u>
4.7	<u>Callon Petroleum Company 2018 Omnibus Incentive Plan (incorporated by reference to Appendix A to the Company's definitive proxy statement on Schedule 14A, filed on March 23, 2018).</u>
5.1	* <u>Opinion of Baker Botts L.L.P.</u>
23.1	* <u>Consent of Grant Thornton LLP.</u>
23.2	* <u>Consent of Ernst & Young LLP.</u>
23.3	* <u>Consent of DeGolyer and MacNaughton, Inc.</u>
23.4	* <u>Consent of Baker Botts L.L.P. (included in Exhibit 5.1).</u>
24.1	* Power of Attorney (included on the signature page hereof).

*Filed herewith.