

ARENA PHARMACEUTICALS INC

Form S-8

June 14, 2016

As filed with the Securities and Exchange Commission on June 14, 2016

Registration No. 333-

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

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

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

Delaware 23-2908305
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)
6154 Nancy Ridge Drive
San Diego, California 92121
(Address of Principal Executive Offices) (Zip Code)

Arena Pharmaceuticals, Inc. 2013 Long-Term Incentive Plan
(Full title of the plan)
Steven W. Spector, Esq.
Executive Vice President, General Counsel and Secretary
6154 Nancy Ridge Drive
San Diego, California 92121
(Name and address of agent for service)

858.453.7200
(Telephone number, including area code, of agent for service)

Copy to:
Steven M. Przesmicki, Esq.
Cooley LLP
4401 Eastgate Mall
San Diego, California 92121
858.550.6000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered (1) | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee |
|--|-----------------------------|---|---|----------------------------|
| Common Stock, par value \$0.0001 per share | 3,800,000 shares (2) | \$ 1.55 (3) | \$ 5,890,000(3) | \$593.12 |
| Common Stock, par value \$0.0001 per share | 800,000 shares (4) | \$ 1.99 (5) | \$ 1,592,000(5) | \$160.32 |
| Total: | 4,600,000 shares | - | \$7,482,000 | \$753.44 |

(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 of Arena Pharmaceuticals, Inc. (the “Registrant” or “Arena”) that, with respect to the shares registered hereunder, become issuable under the 2013 Long-Term Incentive Plan (the “2013 LTIP”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant’s Common Stock.

(2) Represents the shares of the Registrant’s Common Stock added to the shares previously authorized for issuance under the 2013 LTIP pursuant to an amendment to the 2013 LTIP approved by the Registrant’s Board of Directors on May 6, 2016, which shares are reserved for issuance upon the exercise of an outstanding stock option granted under the 2013 LTIP.

(3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The proposed maximum aggregate offering price per share and proposed maximum aggregate offering price for the 3,800,000 shares of the Registrant’s Common Stock reserved for issuance upon the exercise of an outstanding stock option granted under the 2013 LTIP are calculated using the exercise price of such stock option of \$1.55 per share.

(4) Represents the shares of the Registrant’s Common Stock added to the shares previously authorized for issuance under the 2013 LTIP pursuant to an amendment to the 2013 LTIP approved by the Registrant’s Board of Directors on June 13, 2016, which shares are reserved for issuance exclusively for the grant of stock awards to employees of the Registrant who have not previously been one of the Registrant’s employees or directors, except following a bona fide period of non-employment, as an inducement material to the individual’s entering into employment with the Registrant within the meaning of Rule 5635(c)(4) of the NASDAQ Listing Rules.

(5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h)(1) of the Securities Act. The proposed maximum aggregate offering price per share and proposed maximum aggregate offering price are based on the average of the high and low prices of the Registrant’s Common Stock on June 10, 2016, as reported on the NASDAQ Global Select Market.

INCORPORATION BY REFERENCE

This registration statement is being filed for the purpose of increasing the number of securities of the same class as other securities for which a registration statement of the Registrant on Form S-8 relating to the same benefit plan is effective. The Registrant previously registered shares of its Common Stock for issuance under the 2013 LTIP under a registration statement on Form S-8 filed with the Securities and Exchange Commission on June 10, 2013 (File No. 333-189213). Pursuant to General Instruction E to Form S-8, this registration statement hereby incorporates by reference the contents of the registration statement referenced above.

Item 8. Exhibits

See the Exhibit Index on the page immediately following the signature page to this registration statement for a list of exhibits filed as part of this registration statement, which Exhibit Index is incorporated herein by reference.

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 San Diego, State of California, on June 14, 2016.

ARENA PHARMACEUTICALS, INC.

By: /s/ Amit D. Munshi
Amit D. Munshi
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Amit D. Munshi and Steven W. Spector, and each of them, as his or her true and lawful agent, proxy and attorney-in-fact, each acting alone, 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 or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either 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.

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| Signature | Title | Date |
|--|--|---------------|
| /s/ Amit D. Munshi Amit D. Munshi | President, Chief Executive Officer and Director (principal executive and financial officer) | June 14, 2016 |
| /s/ Jennifer K. Bielasz Jennifer K. Bielasz | Vice President, Finance and Accounting (principal accounting officer) | June 14, 2016 |
| /s/ Dominic P. Behan Dominic P. Behan, Ph.D., D.Sc. | Director | June 14, 2016 |
| /s/ Donald D. Belcher Donald D. Belcher | Director | June 14, 2016 |
| /s/ Scott H. Bice Scott H. Bice | Director | June 14, 2016 |
| /s/ Harry F. Hixson Harry F. Hixson, Jr., Ph.D. | Director | June 14, 2016 |
| /s/ Tina S. Nova Tina S. Nova, Ph.D. | Director | June 14, 2016 |
| /s/ Phillip M. Schneider Phillip M. Schneider | Director | June 14, 2016 |
| /s/ Christine A. White Christine A. White, M.D. | Director | June 14, 2016 |
| /s/ Randall E. Woods Randall E. Woods | Director | June 14, 2016 |

EXHIBIT INDEX

| Exhibit Number | Description of Document |
|----------------|--|
| 4.1 | Fifth Amended and Restated Certificate of Incorporation of Arena (incorporated by reference to Exhibit 3.1 to Arena's quarterly report on Form 10-Q for the quarter ended June 30, 2002, filed with the Securities and Exchange Commission on August 14, 2002, Commission File No. 000-31161) |
| 4.2 | Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Arena (incorporated by reference to Exhibit 4.2 to Arena's registration statement on Form S-8 filed with the Securities and Exchange Commission on June 28, 2006, Commission File No. 333-135398) |
| 4.3 | Certificate of Amendment No. 2 of the Fifth Amended and Restated Certificate of Incorporation of Arena, as amended (incorporated by reference to Exhibit 4.3 to Arena's registration statement on Form S-8 filed with the Securities and Exchange Commission on June 30, 2009, Commission File No. 333-160329) |
| 4.4 | Certificate of Amendment No. 3 of the Fifth Amended and Restated Certificate of Incorporation of Arena, as amended (incorporated by reference to Exhibit 3.4 to Arena's registration statement on Form S-8 filed with the Securities and Exchange Commission on June 20, 2012, Commission File No. 333-182238) |
| 4.5 | Amended and Restated Bylaws of Arena (incorporated by reference to Exhibit 3.1 to Arena's current report on Form 8-K filed with the Securities and Exchange Commission on October 9, 2014, Commission File No. 000-31161) |
| 4.6 | Form of common stock certificate (incorporated by reference to Exhibit 4.2 to Arena's registration statement on Form S-1, as amended, filed with the Securities and Exchange Commission on July 19, 2000, Commission File No. 333-35944) |
| 5.1 | Opinion of Cooley LLP |
| 23.1 | Consent of Independent Registered Public Accounting Firm |
| 23.2 | Consent of Cooley LLP (included in Exhibit 5.1) |
| 24.1 | Power of Attorney (included on signature page) |
| 99.1 | Arena's 2013 Long-Term Incentive Plan |