

ARRAY BIOPHARMA INC  
Form S-8  
November 16, 2009

As filed with the Securities and Exchange Commission on November 16, 2009

Registration No. 333-

# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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## FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

### Array BioPharma Inc.

(Exact name of registrant as specified in its charter)

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

**84-1460811**  
(I.R.S. Employer  
Identification No.)

**3200 Walnut Street Boulder, CO 80301**

(Address of Principal Executive Offices)(Zip Code)

**ARRAY BIOPHARMA INC. EMPLOYEE STOCK PURCHASE PLAN**

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(Full title of the plan)

**Robert E. Conway**

**Chief Executive Officer**

**Array BioPharma Inc.**

**3200 Walnut Street**

**Boulder, Colorado 80301**

**(303) 381-6600**

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

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**

<b>Title of each class of securities to be registered</b>	<b>Amount to be registered(1)</b>	<b>Proposed maximum offering price per share (2)</b>	<b>Proposed maximum aggregate offering price (2)</b>	<b>Amount of registration fee</b>
EMPLOYEE STOCK PURCHASE PLAN Common Stock, par value \$.001	600,000	\$ 2.05	\$ 1,230,000	\$ 69.00

(1) This Registration Statement shall also cover any additional shares of common stock which become issuable under the Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the outstanding shares of Registrant's common stock.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act of 1933, as amended. The offering price per share and the aggregate offering price are based upon the average high and low prices of the Registrant's common stock as reported on the Nasdaq Stock Market on November 13, 2009 of \$2.05.

**EXPLANATORY NOTE**

Array BioPharma Inc. (the Registrant ) filed with the Securities and Exchange Commission (the Commission ) Registration Statements on Form S-8 under the Securities Act of 1933, as amended (the Securities Act ), (i) on December 6, 2000 (Reg. No. 333-51348) covering the registration of 8,000,000 shares of the common stock of the Registrant authorized for grant under the Array BioPharma Inc. Employee Stock Purchase Plan (the ESPP ), (ii) on November 4, 2002 (Reg. No. 333-100955) covering the registration of 400,000 shares of the common stock of the Registrant authorized for grant under the ESPP, (iii) on December 18, 2006 (Reg. No. 333-139450) covering the registration of 450,000 shares of the common stock of Registrant authorized for grant under the ESPP, and (iv) on November 7, 2008 (Reg. No. 333-155219) covering the registration of 600,000 shares of the common stock of the Registrant authorized for grant under the ESPP. As permitted by Instruction E of Form S-8, the contents of Registration Statement Nos. 333-51348, 333-100955, 333-139450 and 333-155219 filed by the Registrant on Form S-8 on December 6, 2000, November 4, 2002, December 18, 2006, and November 7, 2008, respectively, are incorporated herein by reference.

On September 8, 2009, the Registrant s Board of Directors approved an amendment to the ESPP increasing the number of shares of common stock available for issuance thereunder by 600,000 shares. The stockholders of the Registrant approved the amendment to the ESPP at the annual meeting of stockholders held on October 29, 2009. A description of the amendment to the ESPP is included in the Registrant s definitive proxy statement on Schedule 14A dated September 18, 2009, with respect to the Registrant s annual meeting of stockholders held on October 29, 2009. This registration statement registers the additional 600,000 shares of common stock authorized for issuance under the ESPP.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 8. Exhibits.**

See Exhibit Index.

**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 Boulder, State of Colorado, on this 16th day of November 2009.

**ARRAY BIOPHARMA INC.**

By /s/ Robert E. Conway  
Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert E. Conway, R. Michael Carruthers and John R. Moore, jointly and severally, each in his own capacity, his true and lawful attorneys-in-fact, with full power of substitution, for him and 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, with full power and authority to do so and perform each and every act and thing requisite and necessary to be done in and about the premises, 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 of any of them, or his or their substitute or substitutes, 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 indicated below, on this 16th day of November 2009.

Signature	Title	Date
/s/ Robert E. Conway Robert E. Conway	Chief Executive Officer and Director (Principal Executive Officer)	November 16, 2009
/s/ Kyle A. Lefkoff Kyle A. Lefkoff	Chairman of the Board of Directors	November 16, 2009
/s/ R. Michael Carruthers R. Michael Carruthers	Chief Financial Officer (Principal Financial and Accounting Officer)	November 16, 2009
/s/ Francis J. Bullock	Director	November 16, 2009

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Francis J. Bullock, Ph.D.

Director

Marvin H. Caruthers, Ph.D.

/s/ Kevin Koch  
Kevin Koch, Ph.D.

Director

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/s/ David L. Snitman  
David L. Snitman, Ph.D.

Director

November 16, 2009

/s/ Gil Van Lunsen  
Gil Van Lunsen

Director

November 16, 2009

/s/ Douglas E. Williams  
Douglas E. Williams

Director

November 16, 2009

/s/ John L. Zabriskie  
John L. Zabriskie, Ph.D.

Director

November 16, 2009

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
4.1 (1)	Specimen certificate representing the common stock.
4.2 (2)	Form of Warrant to purchase shares of the registrant's Common Stock issued to Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P., Deerfield International Limited
4.3 (3)	Registration Rights Agreement dated May 15, 2009 between the Registrant and Deerfield Private Design Fund, L.P. and Deerfield Private Design International, L.P.
5.1	Opinion of Hogan & Hartson L.L.P. with respect to the legality of the common stock registered hereby.
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm with respect to the Registrant.
23.2	Consent of Hogan & Hartson L.L.P. (contained in its opinion filed as Exhibit 5.1).
24.1	Power of Attorney (included on the signature page to this Registration Statement).
99.1 (4)	Amended and Restated Array BioPharma Inc. Employee Stock Purchase Plan.

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- (1) Filed as an exhibit to the Registrant's Registration Statement on Form S-1 (File No. 333-45922), as amended, and incorporated herein by reference.
  - (2) Filed as an exhibit to the Registrant's Current Report on Form 8-K/A filed with the SEC on September 24, 2009.
  - (3) Filed as an exhibit to the registrant's Annual Report on Form 10-K filed with the SEC for the fiscal year ended June 30, 2009.
  - (4) Filed as an appendix to the Registrant's definitive proxy statement on Schedule 14A dated September 18, 2009, with respect to the annual meeting of stockholders held on October 29, 2009.