

Recro Pharma, Inc.
Form S-8
March 21, 2014

As filed with the Securities and Exchange Commission on March 21, 2014

Registration No. 333-

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

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

RECRO PHARMA, INC.

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction of
incorporation or organization)

490 Lapp Road

26-1523233
(I.R.S. Employer

Identification No.)

19355

Malvern, Pennsylvania
(Address of Principal Executive Offices) **(Zip Code)**
RECRO PHARMA, INC. 2008 STOCK OPTION PLAN

RECRO PHARMA, INC. 2013 EQUITY INCENTIVE PLAN

(Full title of the plan)

Gerri A. Henwood

President and Chief Executive Officer

Recro Pharma, Inc.

490 Lapp Road

Malvern, PA 19355

(Name and address of agent for service)

(484) 395-2400

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

with a copy to:

Justin P. Klein, Esq.

Katayun I. Jaffari, Esq.

Ballard Spahr LLP

1735 Market Street, 51st Floor

Philadelphia, PA 19103

(215) 665-8500

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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(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, par value \$0.01 per share	334,800 shares(3)	\$6.00	\$2,008,800.00	\$258.73
Common Stock, par value \$0.01 per share	109,026 shares(3)	\$8.00	\$872,208.00	\$112.34
Common Stock, par value \$0.01 per share	192,000 shares(4)	\$8.00	\$1,536,000.00	\$197.84
Common Stock, par value \$0.01 per share	408,174 shares(5)	\$8.01	\$3,269,473.74	\$421.11

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers an indeterminate number of additional shares of common stock issuable under the Recro Pharma, Inc. 2008 Stock Option Plan (the 2008 Plan) and the Recro Pharma, Inc. 2013 Equity Incentive Plan (the 2013 Plan) in the event the number of outstanding shares of the Registrant is increased by reason of any stock dividend, stock split, recapitalization, merger, consolidation or reorganization or similar transaction.
- (2) This estimate is made pursuant to Rule 457(h) and Rule 457(c) of the Securities Act. As to the shares subject to outstanding but unexercised options, the price and fee are computed based upon the highest exercise price at which such options may be exercised. As to the remaining shares, the price shown is based upon the average of the high and low prices reported for the common stock on the NASDAQ Capital Market on March 18, 2014.
- (3) Represents shares of common stock subject to outstanding but unexercised option awards under the Registrant's 2008 Plan.
- (4) Represents shares of common stock subject to outstanding but unexercised option awards under the Registrant's 2013 Plan.
- (5) Represents 174 shares of common stock reserved for issuance under the Registrant's 2008 Plan and 408,000 shares of common stock reserved for issuance under the Registrant's 2013 Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The Registrant shall deliver or cause to be delivered documents containing the information specified by Part I of this Registration Statement to participants in the Recro Pharma, Inc. 2008 Stock Option Plan (the 2008 Plan) and the Recro Pharma, Inc. 2013 Equity Incentive Plan (the 2013 Plan) (collectively, the Plans) to which this Registration Statement relates, as specified in Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the Commission) under the Securities Act of 1933, as amended (the Securities Act). The Registrant is not filing such documents with the Commission, but these documents (along with the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II hereof) constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The Registrant will furnish without charge to each person to whom the prospectus is delivered pursuant to Rule 428(b)(1) of the Securities Act, upon the written or oral request of such person, a copy of any and all of the documents incorporated by reference, other than exhibits to such documents (unless such exhibits are specifically incorporated by reference to the information that is incorporated). Requests should be directed to Recro Pharma, Inc., 490 Lapp Road, Malvern, PA 19355, Attention: Charles Garner, Chief Financial Officer, telephone number (484) 395-2400.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents of the Registrant, filed or to be filed with the Commission, are incorporated by reference in this Registration Statement as of their respective dates:

- (a) The Registrant's prospectus dated March 6, 2014 filed with the Commission pursuant to Rule 424(b) of the Securities Act in connection with its registration statement on the Form S-1 originally filed by the Registrant on October 24, 2014, as amended (File No. 333-191879) (the Form S-1), which contains audited financial statements for the Registrant's fiscal year ended December 31, 2013;
- (b) The description of the Registrant's common stock contained in the Registrant's Form S-1, which description is incorporated by reference into the Form 8-A filed with the Commission on March 4, 2014 (Registration No. 001-36329) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), and any amendment or report filed for the purpose of further updating such description; and
- (c) All documents subsequently filed by the Registrant 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 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; provided, however, that documents, reports and

definitive proxy or information statements, or portions thereof, which are furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement.

Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be 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 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 amended, 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.

The Registrant's bylaws provide, to the fullest extent permitted by Pennsylvania law, that any officer or director of the Registrant who was or is a party or is threatened to be made a party to, any threatened, or pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of fact that he/she is or was acting as a representative of the corporation, or is or was serving at the request or for the benefit of the Registrant as a director, officer, employee, agent, partner, or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, shall be indemnified by the Registrant for any losses or expenses incurred in connection with service as an officer or director of the Registrant, if the director or officer acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Pennsylvania law requires that to the extent that a director or officer of the Registrant has been successful on the merits or otherwise in defense of any action or proceeding referred to above or in defense of any claim, issue or matter therein, that director or officer shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith. The Registrant's bylaws further provide that the right to indemnification includes the right to have expenses reasonably incurred in defending any action or proceeding described above paid by the Registrant in advance of the final disposition of the action or proceeding to the fullest extent permitted by Pennsylvania law; provided that, if required by Pennsylvania law, the payment of such expenses incurred in advance of the final disposition of the action or proceeding shall be made only upon delivery to the Registrant of an undertaking to repay all amounts so advanced without interest if it is ultimately determined that the director or officer is not entitled to be indemnified.

Indemnification shall not be made in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Registrant unless and only to the extent that a court determines that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses that the court deems proper. Nor shall indemnification be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Description

**Exhibit
Number**

- 4.1 2008 Stock Option Plan (filed herewith).
- 4.2 2013 Equity Incentive Plan (filed herewith).
- 5.1 Opinion of Ballard Spahr LLP (filed herewith).
- 23.1 Consent of KPMG LLP (filed herewith).
- 23.2 Consent of Ballard Spahr LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (included in signature page to this Registration Statement).

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 20 percent 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;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-8, and 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 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement; and

(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.

(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 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.

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 Malvern, Pennsylvania, on the 21st of March, 2014.

RECRO PHARMA, INC.

By: /s/ Gerri A. Henwood
 Gerri A. Henwood
 Chief Executive Officer

POWER OF ATTORNEY

We, the undersigned officers and directors of Recro Pharma, Inc., hereby severally constitute and appoint Gerri A. Henwood and Charles Garner, our true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution in her or him for her or him and in her or his name, place and stead, and 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 attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as full to all intents and purposes as she or he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or her or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Gerri A. Henwood Gerri A. Henwood	President, Chief Executive Officer and Director (Principal Executive Officer)	March 21, 2014
/s/ Charles Garner Charles Garner	Chief Financial Officer (Principal Financial Officer)	March 21, 2014
/s/ Donna Nichols Donna Nichols	Chief Accounting Officer (Principal Accounting Officer)	March 21, 2014
/s/ Alfred Altomari Alfred Altomari	Director	March 21, 2014
/s/ William L. Ashton	Director	March 21, 2014

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William L. Ashton

/s/ Michael Berelowitz

Director

March 21, 2014

Michael Berelowitz

/s/ Winston J. Churchill

Director

March 21, 2014

Winston J. Churchill

/s/ Abraham Ludomirski

Director

March 21, 2014

Abraham Ludomirski

/s/ Wayne B. Weisman

Director

March 21, 2014

Wayne B. Weisman