

OvaScience, Inc.
Form S-8
November 03, 2016

As filed with the Securities and Exchange Commission on November 3, 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**

OvaScience, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

45-1472564
(I.R.S. Employer
Identification No.)

9 Fourth Street
Waltham, MA
(Address of Principal Executive Offices)

02451
(Zip Code)

2016 New Employee Inducement Grant Plan, as Amended

Inducement Stock Option Award for Paul Chapman

Inducement Stock Option Award for Christophe Couturier

(Full Title of the Plans)

Harald Stock, Ph.D.
President and Chief Executive Officer
OvaScience, Inc.

9 Fourth Street

Waltham, MA 02451
(Name and Address of Agent For Service)

(617) 500-2802

(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 X

Accelerated filer O

Non-accelerated filer O

Smaller reporting company O

(Do not check if a 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, \$0.001 par value per share	885,950(2) \$	7.20(3) \$	6,378,840 \$	739.31
Common Stock, \$0.001 par value per share	350,000(4) \$	6.96(5) \$	2,436,000 \$	282.33
Common Stock, \$0.001 par value per share	200,000(6) \$	7.15(5) \$	1,430,000 \$	165.74
Total:			\$	1,187.38

(1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers an indeterminate number of shares which may be subject to grant or otherwise issuable after the operation of certain anti-dilution and other provisions of the non-qualified option agreements.

(2) Consists of shares of common stock, \$0.001 par value per share (the Common Stock) of OvaScience, Inc. (the Registrant) that are issuable upon exercise of outstanding non-qualified stock options with fixed exercise prices under the Registrant's 2016 New Employee Inducement Grant Plan, as Amended (the Inducement Plan).

(3) Pursuant to Rule 457(h) promulgated under the Securities Act, the proposed maximum offering price per share is equal to \$7.20, the weighted-average price per share of unexercised awards outstanding under the Inducement Plan as of the filing date of this Registration Statement.

(4) Consists of shares of Common Stock of the Registrant issuable upon exercise of a non-qualified stock option granted to Paul Chapman, Chief Operating Officer of the Registrant, on March 3, 2016.

(5) Pursuant to Rule 457(h) promulgated under the Securities Act, the proposed maximum offering price per share is equal to the per share exercise price of the stock option granted pursuant to a stock option agreement.

(6) Consists of shares of Common Stock of the Registrant issuable upon exercise of a non-qualified stock option granted to Christophe Couturier, Chief Financial Officer of the Registrant, on September 8, 2016.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

This Registration Statement on Form S-8 is filed to register: (a) 885,950 shares of the Registrant's common stock, par value \$0.001 par value per share (the Common Stock) (this Registration Statement) issuable for compensatory purposes under the 2016 New Employee Inducement Grant Plan, as Amended (the Inducement Plan); (b) 350,000 shares of Common Stock issuable upon exercise of a non-qualified stock option granted to Paul Chapman, Chief Operating Officer of the Registrant, on March 3, 2016, as an inducement material to his entering into employment with the Registrant; and (c) 200,000 shares of Common Stock issuable upon exercise of a non-qualified stock option granted to Christophe Couturier, Chief Financial Officer of the Registrant, on September 8, 2016, as an inducement material to his entering into employment with the Registrant.

The documents containing the information specified in Item 1. Plan Information and Item 2. Registrant Information and Employee Plan Annual Information of this Part I of this Registration Statement will be sent or given to participants in the Inducement Plan and Messrs. Chapman and Couturier, as applicable, as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act). In accordance with the Note to Part I of Form S-8, such documents are not required to be, and are not, filed with the U.S. Securities and Exchange Commission (the SEC) either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement 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 by the Registrant with the SEC are incorporated herein by reference:

- Annual Report on Form 10-K for the year ended December 31, 2015 filed with the SEC on February 26, 2016 (File No. 001-35890);
- Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2016, June 30, 2016 and September 30, 2016 that we filed with the SEC on May 5, 2016, August 4, 2016 and November 3, 2016, respectively
- Current Reports on Form 8-K filed with the SEC on January 6, 2016, March 31, 2016, May 25, 2016, May 26, 2016, June 3, 2016, July 1, 2016 and September 6, 2016 (except for the information furnished under Items 2.02 or 7.01 and the exhibits furnished thereto) (File No. 001-35890);

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- The portions of the Registrant's Definitive Proxy Statement on Schedule 14A filed on April 18, 2016 that are deemed filed with the Commission under the Securities Exchange Act of 1934, as amended (the Exchange Act) (File No. 001-35890).
- The description of the Common Stock contained in the Registrant's Registration Statement on Form 8-A filed on April 25, 2013 (File No. 001-35890), including any amendments or reports filed for the purpose of updating that description.

All reports and other documents filed by the Registrant after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment 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 herein and to be part hereof from the date of filing of such reports and documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the 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 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.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. has opined as to the legality of the securities being offered by this registration statement.

Item 6. Indemnification of Directors and Officers.

Delaware Law

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to 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 other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Amended and Restated Certificate of Incorporation

Our certificate of incorporation limits the personal liability of directors for breach of fiduciary duty to the maximum extent permitted by the Delaware General Corporation Law and provides that no director will have personal liability to us or to our stockholders for monetary damages for breach of fiduciary duty or other duty as a director. However, these provisions do not eliminate or limit the liability of any of our directors for:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- for voting for or assenting to unlawful payments of dividends, stock repurchases or other distributions; or
- for any transaction from which the director derived an improper personal benefit.

In addition, our certificate of incorporation provides that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, other than an action by or in the right of us, by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an Indemnitee), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses, including attorneys fees, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

Our certificate of incorporation also provides that we will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses, including attorneys fees, and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses, including attorneys fees, actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

Indemnification Agreements

We have entered into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

A list of exhibits included as part of this Registration Statement is set forth in the Exhibit Index to this Registration Statement and is incorporated herein by reference.

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 of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this 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;

(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) of this section 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 Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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; and

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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 of 1933 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 Securities and Exchange Commission such indemnification is against public policy as expressed in such 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 such 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 Waltham, Commonwealth of Massachusetts, on this 3rd day of November, 2016.

OVASCIENCE, INC.

By: /s/ Harald Stock, Ph.D.
Harald Stock, Ph.D.
President and Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of OvaScience, Inc., hereby severally constitute and appoint Harald Stock, Ph.D. and Christophe Couturier, and each of them singly, our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them 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 attorneys-in-fact and agents, and each of them, 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 attorneys-in-fact and agents or any of them or their 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, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Harald Stock, Ph.D. Harald Stock, Ph.D.	President and Chief Executive Officer and Director (Principal executive officer)	November 3, 2016
/s/ Christophe Couturier Christophe Couturier	Chief Financial Officer and Treasurer (Principal financial and accounting officer)	November 3, 2016
/s/ Michelle Dipp, M.D., Ph.D. Michelle Dipp, M.D., Ph.D.	Executive Chairman of the Board of Directors	November 3, 2016
/s/ Richard Aldrich Richard Aldrich	Director	November 3, 2016

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/s/ Jeffrey D. Capello
Jeffrey D. Capello

Director

November 3, 2016

/s/ Mary Fisher
Mary Fisher

Director

November 3, 2016

/s/ John P. Howe, III, M.D.
John P. Howe, III, M.D.

Director

November 3, 2016

/s/ Marc Kozin
Marc Kozin

Director

November 3, 2016

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/s/ Thomas Malley
Thomas Malley

Director

November 3, 2016

/s/ John Sexton, Ph.D.
John Sexton, Ph.D.

Director

November 3, 2016

INDEX TO EXHIBITS

Number	Description
5.1@	Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., counsel to the Registrant
23.1@	Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1)
23.2@	Consent of Ernst & Young LLP
24.1	Power of attorney (included on the signature pages of this registration statement)
99.1@	2016 New Employee Inducement Grant Plan, as Amended, and Form of Stock Option Agreement pursuant to the New Employee Inducement Grant Plan
99.2	Nonstatutory Stock Option Agreement, dated as of March 3, 2016, by and between the Registrant and Paul Chapman (incorporated by reference to Exhibit 10.7 of the Registrant's Quarterly Report on Form 10-Q for the Quarter Ended March 31, 2016, filed May 5, 2016 (File No. 001-35890))
99.3	Nonstatutory Stock Option Agreement, dated as of September 8, 2016, by and between the Registrant and Christophe Couturier (incorporated by reference to Exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the Quarter Ended September 30, 2016, filed November 3, 2016 (File No. 001-35890))

@ Filed herewith.