

ARCA biopharma, Inc.  
Form S-8  
June 20, 2016

As filed with the Securities and Exchange Commission on June 20, 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***

**ARCA biopharma, Inc.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction of**

**Incorporation or organization)**

**11080 CirclePoint Road, Suite 140**

**36-3855489**  
**(I.R.S. Employer**

**Identification No.)**

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**Westminster, CO 80020**

**(Address of principal executive offices) (Zip code)**

**2013 Amended and Restated Equity Incentive Plan**

**(Full title of the plan)**

**Michael R. Bristow**

**President and Chief Executive Officer**

**ARCA biopharma, Inc.**

**11080 CirclePoint Road, Suite 140**

**Westminster, CO 80020**

**(720) 940-2200**

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

*Copies to:*

**Brent D. Fassett**

**Francis R. Wheeler**

**Cooley LLP**

**380 Interlocken Crescent, Suite 900**

**Broomfield, Colorado 80021**

**Tel: (720) 566-4000**

**Fax: (720) 566-4099**

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 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</b>	<b>Amount of Registration Fee</b>
Common Stock, par value \$0.001 per share	1,000,000	\$2.94 (2)	\$2,940,000.00	\$296.06

- (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 Registrant's common stock (the *Common Stock*) that become issuable under the Registrant's 2013 Amended and Restated Equity Incentive Plan (the *Amended 2013 Plan*) 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 Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. 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 Capital Market on June 16, 2016. The chart below details the calculations of the registration fee:

<b>Securities</b>	<b>Number of Shares</b>	<b>Offering Price Per Share</b>	<b>Aggregate Offering Price</b>
Additional shares reserved for future grant under the 2013 Plan	1,000,000	\$ 2.94	\$ 2,940,000.00
Proposed Maximum Aggregate Offering Price			\$ 2,940,000.00
<b>Registration Fee</b>			<b>\$ 296.06</b>



**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**ITEM 1. PLAN INFORMATION.**

Not required to be filed with this Registration Statement.

**ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.**

Not required to be filed with this Registration Statement.

**PART II**

**ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The following documents filed by ARCA biopharma, Inc. (the *Registrant* ) with the Securities and Exchange Commission (the *Commission* ) are incorporated by reference into this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2015 filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the *Exchange Act* ) that contains audited financial statements for the Company's latest fiscal year for which such statements have been filed;
- (b) All other reports filed pursuant to Sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (a) above; and
- (c) The description of the Registrant's common stock contained in the Registrant's Registration Statement on Form 8-A filed on July 27, 1997 (File No. 000-22873) under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after 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 have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the 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 purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that also 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 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**

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

The Registrant's amended and restated certificate of incorporation, as amended, contains provisions that eliminate the liability of its directors for monetary damages to the fullest extent under applicable law.

The Registrant's second amended and restated bylaws, as amended, provide that:

the Registrant is required to indemnify its directors and executive officers to the extent not prohibited by law, subject to certain limited exceptions;

the Registrant may indemnify its other officers, employees and agents to the extent not prohibited by law;

the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by law, subject to certain limited exceptions; and

the rights conferred in the second amended and restated bylaws, as amended, are not exclusive.

In addition, the Registrant has entered, and intends to continue to enter, into indemnification agreements with each of its current directors and officers. These agreements provide for the indemnification of directors and officers for all expenses and liabilities incurred in connection with any action or proceeding brought against them by reason of the fact that they are or were agents of the Registrant.

The Registrant currently carries liability insurance for its directors and officers for securities matters.

The indemnification provisions in the Registrant's amended and restated certificate of incorporation, as amended, and second amended and restated bylaws, as amended, and the indemnification agreements entered into or to be entered into between the Registrant and each of its directors and officers is sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

See also the undertakings set out in response to Item 9 hereof.

**ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED**

Not applicable.

**ITEM 8. EXHIBITS**

<b>Exhibit</b>		<b>Incorporated by Reference</b>			<b>Filed</b>
		<b>Filing</b>	<b>Date</b>	<b>Number</b>	
<b>No.</b>	<b>Description</b>	<b>Form</b>	<b>Date</b>	<b>Number</b>	<b>Herewith</b>
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended.	10-K	3/27/2009	3.1	
3.1(a)	Certificate of Amendment to Restated Certificate of Incorporation.	8-K	3/5/2013	5.1	
3.1(b)	Certificate of Amendment to Restated Certificate of Incorporation.	8-K	9/3/2015	3.1	
3.2	Second Amended and Restated Bylaws of the Registrant, as amended.	10-Q	11/16/2009	3.2	
5.1	Opinion of Cooley LLP.				X
23.1	Consent of Cooley LLP (included in Exhibit 5.1).				
23.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm.				X
24.1	Power of Attorney (included on the signature page of this Form S-8).				X
99.1	2013 Amended and Restated Equity Incentive Plan.				X



## ITEM 9. UNDERTAKINGS

1. The undersigned Registrant hereby undertakes:

(a) 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 a 20% 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)(i) and (a)(ii) 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.

(b) 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) 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.

2. 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 the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. 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.

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**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 the City of Westminster, State of Colorado, on June 20, 2016.

**ARCA BIOPHARMA, INC.**

By: /s/ Michael R. Bristow  
Michael R. Bristow  
*President and Chief Executive Officer*

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Michael R. Bristow and Brian L. Selby, and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in 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, 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 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 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.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Michael R. Bristow	President, Chief Executive Officer and Director	June 20, 2016
Michael R. Bristow	<i>(Principal Executive Officer)</i>	
/s/ Brian L. Selby	Vice President, Finance	June 20, 2016
Brian L. Selby	<i>(Principal Financial Officer and Principal Accounting Officer)</i>	
/s/ Robert E. Conway	Director	June 20, 2016
Robert E. Conway		
/s/ Linda Grais	Director	June 20, 2016
Linda Grais		

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/s/ Raymond L. Woosley

Director

June 20, 2016

Raymond L. Woosley

/s/ Daniel Mitchell

Director

June 20, 2016

Daniel Mitchell

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**EXHIBIT INDEX**

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	3.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm.				X
	4.1	Power of Attorney (included on the signature page of this Form S-8).				X
	9.1	2013 Amended and Restated Equity Incentive Plan.				X