
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

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

OBALON THERAPEUTICS, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

26-1828101
(I.R.S. Employer
Identification Number)

**5421 Avenida Encinas, Suite F
Carlsbad, California 92008
(760) 795-6558**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**2016 Equity Incentive Plan
2016 Employee Stock Purchase Plan
2008 Stock Plan
(Full title of the plans)**

**Andrew Rasdal
President and Chief Executive Officer
Obalon Therapeutics, Inc.
5421 Avenida Encinas, Suite F
Carlsbad, California 92008
(760) 795-6558**

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

Please send copies of all communications to:

**Gordon K. Davidson
Robert A. Freedman
Matthew S. Rossiter
Fenwick & West LLP
555 California Street, 12th Floor
San Francisco, California 94104
(415) 875-2300**

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company (as defined 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 Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value				
— To be issued under the 2016 Equity Incentive Plan	2,423,371(2)	\$15.00(3)	\$36,350,565	\$4,214
— To be issued under the 2016 Employee Stock Purchase Plan	180,000	\$12.75(4)	\$2,295,000	\$266
— Outstanding under the 2008 Stock Plan	1,189,248(5)	\$1.75(6)	\$2,081,184	\$242
Total	3,792,619		\$40,726,749	\$4,722

- (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 the Registrant’s common stock that becomes issuable under the Registrant’s 2016 Equity Incentive Plan, 2016 Employee Stock Purchase Plan or 2008 Stock Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of the Registrant’s outstanding shares of common stock.
- (2) Shares of common stock reserved for issuance under the 2016 Equity Incentive Plan consists of (a) 2,200,000 shares of common stock reserved for future issuance under the 2016 Equity Incentive Plan and (b) 223,371 shares of common stock previously reserved but unissued under the 2008 Stock Plan on the effective date of the 2016 Equity Incentive Plan that are now available for issuance under the 2016 Equity Incentive Plan. In addition, any shares subject to outstanding awards under the 2008 Stock Plan that are issuable upon the exercise of options that expire without having been exercised in full, are forfeited or repurchased by us at the original purchase price or are used to pay the exercise price or withholding obligations related to any award will be available for future grant and issuance under the 2016 Equity Incentive Plan.
- (3) Estimated solely for the purpose of calculating the registration fee under Rule 457(h) of the Securities Act and based upon the initial public offering price of \$15.00.
- (4) Estimated solely for the purpose of calculating the registration fee under Rule 457(h) of the Securities Act and based upon the initial public offering price of \$15.00, multiplied by 85%, which is the percentage of the trading price per share applicable to purchasers under the 2016 Employee Stock Purchase Plan.
- (5) Represents shares of common stock reserved for issuance pursuant to outstanding stock option awards under the 2008 Stock Plan.
- (6) Estimated solely for the purpose of calculating the registration fee under Rule 457(h) of the Securities Act on the basis of the weighted-average exercise price of \$1.75 per share (rounded up to the nearest cent).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended (the “Securities Act”) and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission pursuant to the Securities Act and the Securities Exchange Act of 1934, as amended (the “Exchange Act”) are incorporated herein by reference:

- (a) the Registrant’s prospectus to be filed pursuant to Rule 424(b) under the Securities Act relating to the Registration Statement on Form S-1, as amended (File No. 333-213551), which contains audited financial statements for the Registrant’s latest fiscal year for which such statements have been filed; and
- (b) The description of the Registrant’s common stock contained in the Registrant’s registration statement on Form 8-A (File No. 001-37897) filed on September 27, 2016 under Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and 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 into this Registration Statement and to be a part hereof from the date of filing such documents, except as to specific sections of such documents as set forth therein. 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 in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such 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 is incorporated under the laws of the State of Delaware. 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.

As permitted by the Delaware General Corporation Law, the Registrant’s restated certificate of incorporation includes a provision that eliminates, to the fullest extent permitted by law, the personal liability of a director for monetary damages resulting from breach of his fiduciary duty as a director, except for liability:

- for any breach of the director’s duty of loyalty to the Registrant or its stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends, stock purchases or redemptions); or
- for any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant’s bylaws provide that:

- the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to certain very limited exceptions;
- the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;
- the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to certain very limited exceptions; and
- the rights conferred in the bylaws are not exclusive.

In addition, the Registrant intends to enter into indemnity agreements with each of its current directors and executive officers. These agreements will provide for the indemnification of directors and executive officers for all reasonable 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 executive officers for securities matters.

The indemnification provisions in the Registrant's restated certificate of incorporation and bylaws and the indemnification agreements to be entered into between the Registrant and each of its directors and executive 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.

The following exhibits are filed herewith:

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.1	Seventh Amended and Restated Certificate of Incorporation, as currently in effect	S-1	333-213551	3.1	9/26/2016	
4.2	Form of Restated Certificate of Incorporation to be effective immediately prior to the closing of the Registrant's initial public offering	S-1	333-213551	3.2	9/26/2016	
4.3	By-laws, as currently in effect	S-1	333-213551	3.3	9/9/2016	
4.4	Form of Restated Bylaws to be effective immediately prior to the closing of the Registrant's initial public offering	S-1	333-213551	3.4	9/26/2016	
4.5	Form of Common Stock Certificate	S-1	333-213551	4.1	9/9/2016	
5.1	Opinion of Fenwick & West LLP					X
23.1	Consent of Fenwick & West LLP (contained in Exhibit 5.1)					X
23.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm					X
24.1	Power of Attorney (included on the signature page to this Registration Statement)					X
99.1	2008 Stock Plan and form of award agreement thereunder	S-1	333-213551	10.2	9/9/2016	
99.2	2016 Equity Incentive Plan and form of award agreements thereunder	S-1	333-213551	10.3	9/26/2016	
99.3	2016 Employee Stock Purchase Plan and form of enrollment agreement	S-1	333-213551	10.4	9/26/2016	

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 the 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 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) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic 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.

(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 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 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 hereby, 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, 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 Carlsbad, State of California, on this 6th day of October 2016.

OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal
Andrew Rasdal
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Andrew Rasdal and William Plovanic, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, 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 and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Andrew Rasdal</u> Andrew Rasdal	President, Chief Executive Officer and Director (Principal Executive Officer)	October 6, 2016
<u>/s/ William Plovanic</u> William Plovanic	Chief Financial Officer (Principal Financial Officer)	October 6, 2016
<u>/s/ Nooshin Hussainy</u> Nooshin Hussainy	Vice President of Finance (Principal Accounting Officer)	October 6, 2016
<u>/s/ Kim Kamdar</u> Kim Kamdar	Chairperson of the Board of Directors	October 6, 2016
<u>/s/ Ray Dittamore</u> Ray Dittamore	Director	October 6, 2016
<u>/s/ Douglas Fisher</u> Douglas Fisher	Director	October 6, 2016
<u>/s/ Les Howe</u> Les Howe	Director	October 6, 2016
<u>/s/ Sharon Stevenson</u> Sharon Stevenson	Director	October 6, 2016

EXHIBIT INDEX

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October 6, 2016

Obalon Therapeutics, Inc.
5421 Avenida Encinas, Suite F
Carlsbad, California 92008

Gentlemen and Ladies:

At your request, we have examined the Registration Statement on Form S-8 (the “**Registration Statement**”) filed by Obalon Therapeutics, Inc., a Delaware corporation (the “**Company**”), with the Securities and Exchange Commission (the “**Commission**”) on October 6, 2016 in connection with the registration under the Securities Act of 1933, as amended, of an aggregate of 3,792,619 shares of the Company’s Common Stock (the “**Stock**”), par value \$0.001 per share, that are subject to issuance by the Company upon (a) the exercise of stock options granted under the Company’s 2008 Stock Plan, as amended (the “**2008 Plan**”), (b) the exercise or settlement of awards to be granted under the Company’s 2016 Equity Incentive Plan (the “**2016 Plan**”) and (c) the exercise of purchase rights to be granted under the Company’s 2016 Employee Stock Purchase Plan (the “**2016 Purchase Plan**”). The plans referred to in clauses (a) through (c) above are collectively referred to in this letter as the “**Plans**” and are each, a “**Plan**.”

In rendering this opinion, we have examined such matters of fact as we have deemed necessary in order to render the opinion set forth herein, which included examination of the following:

1. The Company’s Seventh Amended and Restated Certificate of Incorporation, as amended, certified by the Delaware Secretary of State on September 23, 2016 (the “**Current Certificate**”) and the Restated Certificate of Incorporation that the Company intends to file and that will be effective upon the consummation of the Company’s initial public offering (the “**Post-Effective Restated Certificate**”).
2. The Company’s By-laws, adopted by the Company’s Board of Directors (the “**Board**”) on January 30, 2008 (the “**Current Bylaws**”), and the Restated Bylaws that the Company has adopted in connection with, and that will be effective upon the consummation of the Company’s initial public offering (the “**Post-Effective Bylaws**”).
3. The Registration Statement, together with the Exhibits filed as a part thereof or incorporated therein by reference.
4. The prospectuses prepared in connection with the Registration Statement (the “**Prospectuses**”).
5. The Plans and related forms of Plan agreements.
6. Minutes of meetings and actions by written consent of the Board and the Company’s stockholders (the “**Stockholders**”) provided to us by the Company relating to the adoption, approval, authorization and/or ratification of (i) the Current Certificate, (ii) the Post-Effective Restated Certificate, (iii) the Current Bylaws, (iv) the Post-Effective Bylaws, (v) the Plans and (vi) the filing of the Registration Statement, the reservation of the Stock for sale and issuance pursuant to the Plans and the sale and issuance of the Stock pursuant to the Plans.

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7. The stock records for the Company that the Company has provided to us (consisting of a list of Stockholders, a list of the Company's option holders and of any rights to purchase capital stock that was prepared by the Company and dated October 5, 2016, verifying the number of such issued and outstanding securities).
 8. A Certificate of Good Standing issued by the Secretary of State of the State of Delaware dated October 5, 2016, stating that the Company is qualified to do business and in good standing under the laws of the State of Delaware (the "***Certificate of Good Standing***").
 9. A Management Certificate addressed to us and dated of even date herewith executed by the Company containing certain factual representations (the "***Management Certificate***").

In our examination of documents for purposes of this opinion, we have relied on the accuracy of representations to us by officers of the Company with respect to the genuineness of all signatures on original documents, the authenticity and completeness of all documents submitted to us as originals, the conformity to originals and completeness of all documents submitted to us as copies, the legal capacity of all persons or entities executing the same, and the lack of any undisclosed termination, modification, waiver or amendment to any document referenced in clause (6) above to us.

We render this opinion only with respect to, and express no opinion herein concerning the application or effect of the laws of any jurisdiction other than, the existing laws of the United States of America and the Delaware General Corporation Law and reported judicial decisions relating thereto.

Based upon the foregoing, it is our opinion that the 3,792,619 shares of Stock that may be issued and sold by the Company upon (a) the exercise of stock options granted under the 2008 Plan, (b) the exercise or settlement of awards to be granted under the 2016 Plan and (c) the exercise of purchase rights to be granted under the 2016 Purchase Plan, when issued, sold and delivered in accordance with the applicable Plan and purchase agreements to be entered into thereunder and in the manner and for the consideration stated in the Registration Statement and the relevant Prospectus, will be validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the Prospectuses constituting a part thereof and any amendments thereto.

This opinion is intended solely for use in connection with issuance and sale of shares of Stock subject to the Registration Statement and is not to be relied upon for any other purpose. This opinion is rendered as of the date first written above and based solely on our understanding of facts in existence as of such date after the aforementioned examination. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify the opinions expressed herein.

[signature page follows]

Very truly yours,

/s/ Fenwick & West LLP

FENWICK & WEST LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Obalon Therapeutics, Inc.:

We consent to the use of our report dated May 4, 2016, except for the seventh paragraph of Note 1, as to which the date is September 23, 2016, with respect to the consolidated balance sheets of Obalon Therapeutics, Inc. and subsidiaries as of December 31, 2014 and 2015, and the related consolidated statements of operations and comprehensive loss, convertible preferred stock and stockholders' deficit, and cash flows for each of the years in the two-year period ended December 31, 2015, incorporated by reference herein.

/s/ KPMG LLP

San Diego, California
October 5, 2016