

DEPOMED INC
Form S-8
May 14, 2018

As filed with the Securities and Exchange Commission on May 14, 2018

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Depomed, Inc.

(Exact Name of Registrant as Specified in its Charter)

California
(State or Other Jurisdiction of
Incorporation or Organization)

94-3229046
(I.R.S. Employer
Identification No.)

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7999 Gateway Blvd., Suite 300
Newark, California 94560

(Address of Principal Executive Offices)

Depomed, Inc. Amended and Restated 2014 Omnibus Incentive Plan

(Full Title of the Plan)

Arthur J. Higgins

**President and Chief Executive Officer
7999 Gateway Blvd., Suite 300
Newark, California 94560
Telephone: (510) 744-8000**

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

Copy to:

Ryan A. Murr, Esq.

Gibson, Dunn & Crutcher LLP

555 Mission Street, Suite 3000

San Francisco, California 94105

Telephone: (415) 393-8373

Facsimile: (415) 374-8430

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. "

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, no par value, issuable under the Amended and Restated 2014 Omnibus Incentive Plan	3,580,000	\$ 6.11(2)	\$ 21,873,800(2)	2,724

(1) Pursuant to Rule 416 of the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers any additional shares of common stock, no par value (the Common Stock), which become issuable by reason of any stock split, stock dividend or similar transaction effected without the receipt of consideration which results in an increase in the number of the registrant s outstanding shares of Common Stock.

(2) Estimated solely for the purpose of computing the amount of registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act based on the average of the high and low prices of the registrant s Common Stock reported on the Nasdaq Global Market on May 8, 2018.

Explanatory Note

This Registration Statement on Form S-8 (this Registration Statement) is being filed in accordance with General Instruction E to Form S-8 solely to register the issuance of an aggregate of up to 3,580,000 additional shares of common stock of Depomed, Inc. (the Company) available for issuance under the Depomed, Inc. Amended and Restated 2014 Omnibus Incentive Plan (the Plan). The Company previously filed a Registration Statement on Form S-8 with the Securities and Exchange Commission (the SEC) on May 23, 2014 (File No. 333-196263) covering 6,150,000 shares of common stock authorized for issuance under the Plan and on May 26, 2016 (File No. 333-211642) covering 2,400,000 shares of common stock authorized for issuance under the Plan (collectively, the Prior Registration Statements). Except as supplemented by the information set forth herein, the contents of the Prior Registration Statements are incorporated herein by reference.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits

Exhibit No.	Description
4.1	<u>Senior Indenture dated as of September 9, 2014 by and between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (incorporated by reference to the Company s Form 8-K filed on September 9, 2014)</u>
4.2	<u>First Supplemental Indenture dated as of September 9, 2014 between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee, supplementing the Senior Indenture dated as of September 9, 2014 (incorporated by reference to the Company s Form 8-K filed on September 9, 2014)</u>
4.3	<u>Amended and Restated Articles of Incorporation of Depomed, Inc. (incorporated by reference to the Company s registration statement on Form SB-2 (File No. 333-25445))</u>
4.4	<u>Certificate of Amendment to Amended and Restated Articles of Incorporation (incorporated by reference to the Company s Form 10-K filed on March 31, 2003)</u>
4.5	<u>Certificate of Amendment to Amended and Restated Articles of Incorporation (incorporated by reference to the Company s Form 8-K filed on May 19, 2015)</u>
4.6	<u>Amended and Restated Bylaws of Depomed, Inc. (incorporated by reference to the Company s Form 8-K filed on May 22, 2017)</u>
5.1	<u>Opinion of Gibson, Dunn & Crutcher LLP*</u>
23.1	<u>Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm*</u>
23.2	<u>Consent of Gibson, Dunn & Crutcher LLP (filed as a part of Exhibit 5.1)</u>
24.1	<u>Power of attorney (set forth on signature page)</u>

99.1 Amended and Restated 2014 Omnibus Incentive Plan*

* Filed herewith.

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 Newark, State of California, on May 14, 2018.

Depomed, Inc.

By: */s/ Arthur J. Higgins*
 Arthur J. Higgins
 President and Chief Executive Officer

POWER OF ATTORNEY

Each of the undersigned hereby constitutes and appoints each of Arthur J. Higgins and August J. Moretti, his or her attorney-in-fact, with power of substitution, in his or her name and in the capacity indicated below, to sign any and all further amendments (including post-effective amendments) to this registration statement on Form S-8 and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact, or his substitute or substitutes, may 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 date indicated.

Signature	Title	Date
<i>/s/ Arthur J. Higgins</i> Arthur J. Higgins	President, Chief Executive Officer and Director (Principal Executive Officer)	May 14, 2018
<i>/s/ August J. Moretti</i> August J. Moretti	Chief Financial Officer (Principal Financial and Accounting Officer)	May 14, 2018
<i>/s/ James P. Fogarty</i> James P. Fogarty	Chairman of the Board of Director	May 14, 2018
<i>/s/ Karen A. Dawes</i> Karen A. Dawes	Director	May 14, 2018
<i>/s/ Louis J. Lavigne Jr.</i> Louis J. Lavigne Jr.	Director	May 14, 2018
<i>/s/ William T. McKee</i> William T. McKee	Director	May 14, 2018
<i>/s/ Peter D. Staple</i> Peter D. Staple	Director	May 14, 2018

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/s/ James L. Tyree
James L. Tyree

Director

May 14, 2018