

INTERCEPT PHARMACEUTICALS INC

Form S-8

November 07, 2012

As filed with the Securities and Exchange Commission on November 7, 2012

REGISTRATION NO. 333 -

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

under the

SECURITIES ACT OF 1933

INTERCEPT PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

22-3868459
(I.R.S. Employer
Identification No.)

18 Desbrosses Street

New York, NY 10013

(646) 747-1000

(Address, Including Zip Code, of Principal Executive Offices)

INTERCEPT PHARMACEUTICALS, INC. AMENDED AND RESTATED 2003 STOCK INCENTIVE PLAN

INTERCEPT PHARMACEUTICALS, INC. 2012 EQUITY INCENTIVE PLAN

(Full Titles of the Plans)

Mark Pruzanski, M.D.

President and Chief Executive Officer

Intercept Pharmaceuticals, Inc.

18 Desbrosses Street

New York, NY

(646) 747-1000

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

William T. Whelan, Esq.

Scott A. Samuels, Esq.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center

Boston, Massachusetts 02111

(617) 542-6000

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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 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 \$0.001 per share	2,051,028 shares	\$8.98 - \$18.49	\$25,350,260.64	\$3,457.78

The number of shares of common stock, par value \$0.001 per share (“Common Stock”), of Intercept Pharmaceuticals, Inc. (the “Registrant”), stated above consists of the aggregate number of shares which may be sold (i) upon the exercise of options which have been granted under the Intercept Pharmaceuticals, Inc. Amended and Restated 2003 Stock Incentive Plan, as amended (the “2003 Plan”), and (ii) upon the exercise of options or issuance of stock-based awards which may hereafter be granted under the Intercept Pharmaceuticals, Inc. 2012 Equity Incentive Plan (the “2012 Plan” and, together with the 2003 Plan, the “Plans”). The maximum number of shares which may be sold upon the exercise of such options or issuance of stock-based awards granted under the Plans are subject to adjustment in accordance with certain anti-dilution and other provisions of the Plans. Accordingly, pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement covers, in addition to the number of shares stated above, an indeterminate number of shares which may be subject to grant or otherwise issuable after the operation of any such anti-dilution and other provisions.

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 (a) for outstanding options granted under the 2003 Plan are based upon the weighted-average exercise price of such (2) outstanding options, and (b) for shares reserved for future grant or issuance under the 2012 Plan are based on the average of the high and the low price of Registrant's Common Stock as reported on The NASDAQ Global Market as of a date (November 1, 2012) within five business days prior to filing this Registration Statement. The chart below details the calculations of the registration fee:

Securities	Number of Shares	Offering Price Per Share(2)	Aggregate Offering Price
Shares issuable upon the exercise of outstanding options granted under the 2003 Plan	1,322,108	\$8.98 (2)(a)	\$11,872,529.84
Shares reserved for future grant under the 2012 Equity Incentive Plan	728,920	\$18.49(2)(b)	\$13,477,730.80
Proposed Maximum Aggregate Offering Price			\$25,350,260.64
Registration Fee			\$3,457.78

EXPLANATORY NOTE

In accordance with the instructional Note to Part I of Form S-8 as promulgated by the Securities and Exchange Commission (the “Commission”), the information specified by Part I of Form S-8 has been omitted from this Registration Statement on Form S-8 for offers of Common Stock pursuant to the Plans.

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 are incorporated herein by reference:

- (a) The prospectus filed by the Registrant with the SEC pursuant to Rule 424(b)(4) under the Securities Act, dated October 11, 2012, relating to the registration statement on Form S-1 originally filed on September 4, 2012, as amended (No. 333-183706), which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed;
- (b) The Registrant's Current Report on Form 8-K (Items 5.02, 5.03, 8.01 and the portions of 9.01 related thereto), filed on October 16, 2012.
- (c) The description of the Registrant's common stock contained in the Registrant's registration statement on Form 8-A (No. 001-35668), filed by the Registrant with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on September 27, 2012, including any amendments or reports filed for the purpose of updating such 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.

None.

Item 6. Indemnification of Directors and Officers.

The Registrant's restated certificate of incorporation and restated bylaws provide that the Registrant shall indemnify, to the fullest extent authorized by the Delaware General Corporation Law, each person who is involved in any litigation or other proceeding because such person is or was a director or officer of the Registrant or is or was serving as an officer or director of another entity at the Registrant's request, against all expense, loss or liability reasonably incurred or suffered in connection therewith. The Registrant's restated certificate of incorporation provides that the right to indemnification includes the right to be paid expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that such advance payment will only be made upon delivery to the Registrant of an undertaking, by or on behalf of the director or officer, to repay all amounts so advanced if it is ultimately determined that such director is not entitled to indemnification. If the Registrant does not pay a proper claim for indemnification in full within 60 days after the Registrant receives a written claim for such indemnification, except in the case of a claim for an advancement of expenses, in which case such period is 20 days, the Registrant's restated certificate of incorporation and restated by-laws authorize the claimant to bring an action against the Registrant and prescribe what constitutes a defense to such action.

Section 145 of the Delaware General Corporation Law permits a corporation to indemnify any director or officer of the corporation against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reason to believe his or her conduct was unlawful. In a derivative action, (*i.e.*, one brought by or on behalf of the corporation), indemnification may be provided only for expenses actually and reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be provided if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

The rights conferred in the restated certificate of incorporation and the restated bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons. The Registrant has entered into or plans to enter into indemnification agreements with each of its officers and directors.

Pursuant to Section 102(b)(7) of the Delaware General Corporation Law, the Registrant's restated certificate of incorporation eliminates the liability of a director to the Registrant or its stockholders for monetary damages for such a breach of fiduciary duty as a director, except for liabilities arising:

- from any breach of the director's duty of loyalty to the Registrant or its stockholders;
- from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law; or
- from any transaction from which the director derived an improper personal benefit.

The Registrant carries insurance policies insuring its directors and officers against certain liabilities that they may incur in their capacity as directors and officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See the Exhibit Index on the page immediately following the signature pages to the Registration Statement on Form S-8, which Exhibit Index 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;

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(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)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-8, Form S-3 or Form F-3, 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 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.

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 that is incorporated by reference in this 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 indemnification provisions summarized in Item 6, 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 the 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. 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 New York, New York on November 7, 2012.

INTERCEPT PHARMACEUTICALS, INC.

By/s/ Mark Pruzanski
 Mark Pruzanski, M.D.
 President and Chief Executive Officer

We the undersigned officers and directors of Intercept Pharmaceuticals, Inc., hereby severally constitute and appoint Mark Pruzanski, M.D. and Barbara Duncan, and each of them singly, our true and lawful attorneys with full power to any of them, and to each of them singly, to sign for us and in our names in the capacities indicated below any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8 of Intercept Pharmaceuticals, Inc., and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, and generally to do all such things in our name and behalf in our capacities as officers and directors to enable Intercept Pharmaceuticals, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

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/ Mark Pruzanski Mark Pruzanski, M.D.	President and Chief Executive Officer (Principal Executive Officer)	November 7, 2012
/s/ Barbara Duncan Barbara Duncan	Chief Financial Officer, Secretary and Treasurer (Principal Financial and Accounting Officer)	November 7, 2012
/s/ Lorenzo Tallarigo Lorenzo Tallarigo, M.D.	Chairman of the Board of Directors	November 7, 2012
/s/ Paolo Fundaro	Director	November 7, 2012

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Paolo Fundaro

/s/ Jonathan T. Silverstein Director November 7, 2012
Jonathan T. Silverstein

/s/ Klaus Veitinger Director November 7, 2012
Klaus Veitinger, M.D.

/s/ Nicole Williams Director November 7, 2012
Nicole Williams

/s/ Srinivas Akkaraju Director November 7, 2012
Srinivas Akkaraju

EXHIBIT INDEX

Exhibit

Number Description

- (4.1) Restated Certificate of Incorporation of Intercept Pharmaceuticals, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on October 16, 2012).
- (4.2) Restated Bylaws of Intercept Pharmaceuticals, Inc. (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on October 16, 2012).
- (4.3)* Form of Common Stock Certificate of Intercept Pharmaceuticals, Inc.

Third Amended and Restated Stockholders Agreement by and among the Registrant, the holders of the Registrant's convertible preferred stock, the Registrant's founders and certain other Investors, dated August 9, 2012 (incorporated by reference to Exhibit 4.2 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).
- (4.4) Form of Series A Warrant to purchase Common Stock issued in 2003 (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).
- (4.5) Form of Series B Warrant to purchase Common Stock issued in 2003 (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).
- (4.6) Form of Series A Warrant to purchase Common Stock issued in 2004, expiring in October 2013 (incorporated by reference to Exhibit 4.5 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).
- (4.7) Form of Series A Warrant to purchase Common Stock issued in 2004, expiring in May 2014 (incorporated by reference to Exhibit 4.6 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).
- (4.8) Form of Series B Warrant to purchase Common Stock issued in 2004 (incorporated by reference to Exhibit 4.7 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).
- (4.9) Form of Warrant to purchase Common Stock issued in 2008 (incorporated by reference to Exhibit 4.8 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).
- (4.10) Form of Warrant to purchase Common Stock issued in 2010 (incorporated by reference to Exhibit 4.9 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012,

as amended).

(5.1)* Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. as to the legality of shares being registered.

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(23.1)* Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in opinion of counsel filed as Exhibit 5.1).

(23.2)* Consent of KPMG LLP, independent registered public accounting firm.

(23.3)* Consent of EisnerAmper LLP, independent registered public accounting firm.

(24.1)* Power of Attorney to file future amendments (set forth on the signature page of this Registration Statement).

(99.1) Intercept Pharmaceuticals, Inc. 2003 Amended and Restated Stock Option Plan, as amended, and forms of agreements thereunder (incorporated by reference to Exhibits 10.1.1, 10.1.2, 10.1.3 and 10.1.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).

(99.2) Intercept Pharmaceuticals, Inc. 2012 Equity Incentive Plan and forms of agreements thereunder (incorporated by reference to Exhibits 10.2.1, 10.2.2, 10.2.3, 10.2.4 and 10.2.5 to the Registrant's Registration Statement on Form S-1 (File No. 333-183706), initially filed on September 4, 2012, as amended).

* Filed herewith.