

LIGAND PHARMACEUTICALS INC
Form 425
September 24, 2008

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): September 24, 2008

LIGAND PHARMACEUTICALS INCORPORATED
(Exact Name of Registrant as Specified in Its Charter)

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| Delaware (State or Other Jurisdiction of Incorporation or Organization) | 001-33093 (Commission File Number) | 77-0160744 (I.R.S. Employer Identification No.) |
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10275 Science Center Drive, San Diego, California, 92121-1117
(Address of Principal Executive Offices) (Zip Code)

(858) 550-7500
(Registrant's Telephone Number, Including Area Code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))



Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreement

On September 24, 2008, Ligand Pharmaceuticals Incorporated (the “Company” or “Ligand”) entered into an Agreement and Plan of Merger (the “Merger Agreement”), with Pharmacoepia, Inc., a Delaware corporation (“Pharmacoepia”), Margaux Acquisition Corp, a direct wholly-owned subsidiary of the Company (“Merger Sub 1”) and Latour Acquisition, LLC, a Delaware limited liability company (“Merger Sub 2”). Under the Merger Agreement, the Company will acquire Pharmacoepia pursuant to a two-step merger, whereby Merger Sub 1 will merge with and into Pharmacoepia, with Pharmacoepia as the surviving corporation, and Pharmacoepia will immediately thereafter merge with and into Merger Sub 2, with Merger Sub 2 as the surviving entity (collectively, the “Merger”).

Under the terms of the Merger Agreement, the Company will issue to Pharmacoepia stockholders 17.6 million Ligand shares, subject to specified adjustments as provided therein. The Merger Agreement includes a collar provision that provides for a fixed exchange ratio within a stock price range of Ligand common stock of \$3.00 and \$3.75. At Ligand stock prices greater than \$3.75 but not greater than \$4.50, the value of the transaction is fixed at \$66 million. At Ligand stock prices greater than \$4.50, the number of Ligand’s shares to be issued to Pharmacoepia stockholders is reduced to 14.7 million. At Ligand stock prices below \$3.00, the value of the transaction is fixed at \$52.8 million, including some cash consideration at varying stock price levels. If Ligand’s stock price is below \$2.38, the number of Ligand’s shares to be issued to Pharmacoepia’s stockholders would not be greater than 18.0 million, and Pharmacoepia stockholders would receive cash of \$10 million in the aggregate. The number of shares issuable is subject to potential adjustments as provided in the Merger Agreement. In addition, each share of Pharmacoepia common stock will be entitled to receive one contingent value right (“CVR”), which is subject to the terms and conditions of the Contingent Value Right Agreement described below.

The Company and Pharmacoepia each made representations, warranties and covenants in the Merger Agreement that are similar to those made by parties in similar business combinations. The Merger is subject to customary closing conditions, including obtaining the approval of Pharmacoepia’s stockholders and termination or expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. The Board of Directors of the Company and Pharmacoepia have approved the Merger and the Merger Agreement. Pharmacoepia has agreed, unless the Merger Agreement is terminated earlier, to cause a stockholders meeting to be held, for the purpose of considering approval of the Merger and the Merger Agreement. If the Merger Agreement is terminated under certain circumstances specified in the Merger Agreement, Pharmacoepia may be required to pay a termination fee of \$3.375 million and/or reimbursement of actual documented reasonable expenses up to a maximum of \$1.4 million.

The Company expects to incur substantial additional costs in connection with the Merger, including costs associated with severance payments, repayment of outstanding debt, advisors’ fees and other transaction-related expenses.

Contingent Value Rights Agreement

At the closing of the Merger, the Company, Pharmacoepia and a rights agent will enter into a Contingent Value Rights Agreement (the “CVR Agreement”), a form of which is attached to the Merger Agreement. The CVR Agreement sets forth the rights that former Pharmacoepia securityholders will have with respect to each CVR to be held by them after the closing of the Merger. The CVR Agreement provides for the payment of an aggregate of \$15 million in cash payable to the holders of the CVRs if, on or prior to December 31, 2011, Ligand enters into a license or sale agreement related to DARA (as defined in the CVR Agreement) or any other agreement for the development, marketing or sale of DARA, or any option to enter into such agreement, with any party other than Bristol-Myers Squibb Company or any of its affiliates.

Additional Information and Where to Find It

Ligand intends to file with the SEC a Registration Statement on Form S-4, which will include a proxy statement of Pharmacoepia and other relevant materials in connection with the proposed transaction. The proxy statement will be mailed to the stockholders of Pharmacoepia. Investors and security holders of Pharmacoepia are urged to read the proxy statement and the other relevant materials when they become available because they will contain important information about Ligand, Pharmacoepia and the proposed transaction. The proxy statement and other relevant materials (when they become available), and any other documents filed by Ligand or Pharmacoepia with the SEC, may be obtained free of charge at the SEC's web site at www.sec.gov. In addition, investors and security holders may obtain free copies of the documents filed with the SEC by Ligand by going to Ligand's Investor Relations website at www.ligand.com. Investors and security holders may obtain free copies of the documents filed with the SEC by Pharmacoepia by going to Pharmacoepia's Investor Relations page on its corporate website at www.pharmacoepia.com. Investors and security holders of Pharmacoepia are urged to read the proxy statement and the other relevant materials when they become available before making any voting or investment decision with respect to the proposed transaction.

Ligand and its respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Pharmacoepia in favor of the proposed transaction. Information concerning Ligand's directors and executive officers is set forth in Ligand's proxy statement for its 2008 annual meeting of shareholders, which was filed with the SEC on April 29, 2008, and annual report on Form 10-K filed with the SEC on March 5, 2008.

Pharmacoepia and its respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Pharmacoepia in favor of the proposed transaction. Information about Pharmacoepia's executive officers and directors and their ownership of Pharmacoepia common stock is set forth in the proxy statement for the Pharmacoepia 2008 annual meeting of shareholders, which was filed with the SEC on March 24, 2008. Investors and security holders may obtain more detailed information regarding the direct and indirect interests of Pharmacoepia and its respective executive officers and directors in the acquisition by reading the proxy statement regarding the merger, which will be filed with the SEC.

Item 7.01 Regulation FD Disclosure.

Ligand and Pharmacoepia will host a joint conference call on September 24, 2008 at 5:00 p.m. Eastern time to discuss the planned merger and a business overview. A live audio webcast of the management presentation will be available at <http://www.ligand.com>. Alternatively, callers may listen to the conference call on the phone by dialing (877) 356-5578 from the U.S. or (706) 679-0565 from outside the U.S. The passcode for the call is 65791831.

The presentation materials attached hereto as Exhibit 99.1, and incorporated by reference herein, will be made available by Ligand on its website. A copy of the joint press release issued by Ligand and Pharmacoepia announcing the merger is attached to this report as Exhibit 99.2 and is incorporated by reference herein.

By filing the information in this Item 7.01 of this Current Report on Form 8-K, Ligand makes no admission as to the materiality of any information in this report. The information contained in the script is summary information that is intended to be considered in the context of Ligand filings with the SEC and other public announcements that Ligand makes, by press release or otherwise, from time to time. Ligand undertakes no duty or obligation to publicly update or revise the information contained in this report, although it may do so from time to time as its management believes is appropriate. Any such updating may be made through the filing of other reports or documents with the SEC, through press releases or through other public disclosure.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No. Description

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| 99.1 | Presentation Materials |
| 99.2 | Press release dated September 24, 2008 |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has caused this report to be signed on its behalf by the undersigned.

**LIGAND PHARMACEUTICALS
INCORPORATED**

Date: September 24, 2008 By: /s/ Charles S. Berkman
Name: Charles S. Berkman
Title: Vice President, General Counsel and Secretary

EXHIBIT INDEX

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