

MERRIMACK PHARMACEUTICALS INC

Form S-8

March 12, 2018

As filed with the Securities and Exchange Commission on March 12, 2018

Registration No. 333-

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

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

MERRIMACK PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)  
One Kendall Square, Suite B7201

04-3210530  
(I.R.S. Employer  
Identification No.)  
02139

**Cambridge, MA**  
**(Address of Principal Executive Offices)** **(Zip Code)**  
**2011 Stock Incentive Plan**

**(Full Title of the Plan)**

**Richard Peters**

**President and Chief Executive Officer**

**Merrimack Pharmaceuticals, Inc.**

**One Kendall Square, Suite B7201**

**Cambridge, Massachusetts 02139**

**(Name and Address of Agent for Service)**

**(617) 441-1000**

**(Telephone Number, Including Area Code, of Agent For Service)**

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

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

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.

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**CALCULATION OF REGISTRATION FEE**

<b>Title of</b>	<b>Amount</b>	<b>Proposed</b>	<b>Proposed</b>	<b>Amount of</b>
	<b>to be</b>	<b>Maximum</b>	<b>Maximum</b>	
<b>Securities to be Registered</b>	<b>Registered(1)</b>	<b>Offering Price</b>	<b>Aggregate</b>	<b>Registration Fee</b>
		<b>Per Share</b>	<b>Offering Price</b>	
Common Stock, \$0.01 par value per share	450,000 shares	\$11.23(2)	\$5,053,500(2)	\$630(3)

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Global Market on March 5, 2018.
- (3) Pursuant to Rule 457(p) under the Securities Act, the Registrant hereby offsets the total registration fee due hereunder by \$630, which represents a portion of the \$25,760 registration fee (the Previous Registration Fee ) previously paid with respect to \$200,000,000 of unsold securities (the Unsold Securities ) previously registered on the Registrant's Registration Statement on Form S-3 (File No. 333-194312) filed with the Securities and Exchange Commission on March 4, 2014 and declared effective on April 2, 2014. The offering of the Unsold Securities was deemed terminated as of December 15, 2017. The Registrant previously offset \$18,675 against the Previous Registration Fee in connection with the Registrant's Registration Statement on Form S-3 (File No. 333-222093) filed with the Securities and Exchange Commission on December 15, 2017 and declared effective on January 5, 2018.

**EXPLANATORY NOTE**

This Registration Statement on Form S-8, relating to the 2011 Stock Incentive Plan of Merrimack Pharmaceuticals, Inc. (the Registrant), is being filed for the purpose of registering additional securities of the same class as other securities for which a Registration Statement on Form S-8 has previously been filed and is effective. Accordingly, this Registration Statement incorporates by reference the contents of (i) the Registration Statement on Form S-8, File No. 333-180996, filed with the Securities and Exchange Commission (the SEC) on April 27, 2012 by the Registrant, relating to the Registrant's 1999 Stock Option Plan, as amended, 2008 Stock Incentive Plan, as amended, and 2011 Stock Incentive Plan, (ii) the Registration Statement on Form S-8, File No. 333-186370, filed with the SEC on February 1, 2013 by the Registrant, relating to the Registrant's 2011 Stock Incentive Plan, (iii) the Registration Statement on Form S-8, File No. 333-194313, filed with the SEC on March 4, 2014 by the Registrant, relating to the Registrant's 2011 Stock Incentive Plan, (iv) the Registration Statement on Form S-8, File No. 333-202346, filed with the SEC on February 27, 2015 by the Registrant, relating to the Registrant's 2011 Stock Incentive Plan and (v) the Registration Statement on Form S-8, File No. 333-209745, filed with the SEC on February 26, 2016 by the Registrant, relating to the Registrant's 2011 Stock Incentive Plan, in each case except for Item 8, Exhibits.

**Item 8. Exhibits**

Exhibit

No.	Description
4.1(1)	<u>Restated Certificate of Incorporation of the Registrant, as amended</u>
4.2(2)	<u>Amended and Restated Bylaws of the Registrant</u>
5.1	<u>Opinion of Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Registrant</u>
23.1	<u>Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5.1)</u>
23.2	<u>Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm for the Registrant</u>
24.1	<u>Powers of Attorney (included on the signature pages to the Registration Statement)</u>
99.1(3)	<u>2011 Stock Incentive Plan</u>

- (1) Previously filed with the Securities and Exchange Commission on November 8, 2017 as Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q and incorporated herein by reference.
- (2) Previously filed with the Securities and Exchange Commission on January 13, 2012 as Exhibit 3.5 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-175427), and incorporated herein by reference.
- (3) Previously filed with the Securities and Exchange Commission on January 13, 2012 as Exhibit 10.3 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-175427), and incorporated herein by reference.

**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 Cambridge, Commonwealth of Massachusetts, on this 12<sup>th</sup> day of March, 2018.

MERRIMACK PHARMACEUTICALS, INC.

By: /s/ Richard Peters, M.D., Ph.D.  
 Richard Peters, M.D., Ph.D.  
 President and Chief Executive Officer

**POWER OF ATTORNEY AND SIGNATURES**

We, the undersigned officers and directors of Merrimack Pharmaceuticals, Inc., hereby severally constitute and appoint Richard Peters and Jean M. Franchi, 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 the Registration Statement on Form S-8 filed herewith and any and all amendments to said Registration Statement, and generally to do all such things in our name and on our behalf in our capacities as officers and directors to enable Merrimack 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, as amended, 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/ Richard Peters, M.D., Ph.D.	President, Chief Executive Officer and Director	March 12, 2018
Richard Peters, M.D., Ph.D.	(Principal Executive Officer)	
/s/ Jean M. Franchi	Chief Financial Officer and Treasurer	March 12, 2018
Jean M. Franchi	(Principal Financial and Accounting Officer)	
/s/ Gary L. Crocker	Chairman of the Board	March 12, 2018
Gary L. Crocker		
/s/ George D. Demetri, M.D.	Director	March 12, 2018
George D. Demetri, M.D.		
/s/ John M. Dineen	Director	March 12, 2018

John M. Dineen

/s/ Vivian S. Lee, M.D., Ph.D.

Director

March 12, 2018

Vivian S. Lee, M.D., Ph.D.

/s/ Ulrik B. Nielsen, Ph.D.	Director	March 12, 2018
Ulrik B. Nielsen, Ph.D.		
/s/ Michael E. Porter, Ph.D.	Director	March 12, 2018
Michael E. Porter, Ph.D.		
/s/ James H. Quigley	Director	March 12, 2018
James H. Quigley		
/s/ Russell T. Ray	Director	March 12, 2018
Russell T. Ray		