

TESARO, Inc.  
Form S-8  
August 07, 2015

As filed with the Securities and Exchange Commission on August 7, 2015

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

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**TESARO, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**27-2249687**  
(IRS employer identification  
number)

**1000 Winter Street, Suite 3300**

**Waltham, Massachusetts 02451**

**(339) 970-0900**

(Address of principal executive offices)

**TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan**

**Inducement Stock Option Award for Joseph L. Farmer**

(Full title of the Plans)

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**Leon O. Moulder, Jr.**

**Chief Executive Officer**

**TESARO, Inc.**

**1000 Winter Street, Suite 3300**

**Waltham, Massachusetts 02451**

**(339) 970-0900**

(Name, address and telephone number of Agent for Service)

**Copies to:**

**Asher M. Rubin**

**William I. Intner**

Hogan Lovells US LLP

100 International Drive, Suite 2000

Baltimore, Maryland 21202

(410) 659-2700

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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. (Check one):

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

Accelerated filer   
Smaller reporting company

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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, \$0.0001 par value per share	410,625(2)	\$	58.26(3)	\$	23,923,012.50(3)	\$	2,779.86
Common stock, \$0.0001 par value per share	164,375(4)	\$	59.3510(5)	\$	9,755,818.75(5)	\$	1,133.63
Total						\$	3,913.49

(1) In accordance with Rule 416 under the Securities Act of 1933, as amended, or the Securities Act, this Registration Statement shall also cover any additional shares of common stock which become issuable under the above-named plans by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without receipt of consideration which results in an increase in the number of outstanding shares of common stock of TESARO, Inc., or the Registrant.

(2) Consists of shares of common stock, \$0.0001 par value per share of the Registrant, or Common Stock, authorized for issuance under the TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan, or the Director Plan.

(3) Estimated pursuant to Rule 457(c) and Rule 457(h) of the Securities Act solely for the purpose of calculating the registration fee. The price of \$58.26 per share represents the average of the high and low prices per share of Common Stock on August 3, 2015 as reported on The NASDAQ Global Market.

(4) Consists of 89,375 shares of Common Stock issuable upon exercise of options granted under the Director Plan and 75,000 shares of Common Stock issuable pursuant to the award agreement for Joseph L. Farmer, Senior Vice President, General Counsel and Secretary of the Registrant, issued as an inducement material to employment with the Registrant, or the Inducement Award.

(5) Estimated pursuant to Rule 457(h) solely for the purpose of calculating the registration fee. The price per share represents the weighted average of the exercise prices for outstanding options under the Director Plan and the Inducement Award.

**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed by TESARO, Inc., a Delaware corporation, or the Registrant, to register (a) 500,000 shares of the Registrant's common stock, \$0.0001 par value per share, or Common Stock, issuable under the TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan and (b) 75,000 shares of Common Stock issuable upon exercise of a non-qualified stock option granted to Joseph L. Farmer, Senior Vice President, General Counsel and Secretary of the Registrant, on March 30, 2015, in accordance with Nasdaq Listing Rule 5635(c)(4), as an inducement material to entry into employment with the Registrant.

**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, or the Securities Act, and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission, or 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.**

TESARO, Inc. hereby incorporates by reference into this Registration Statement the following documents filed by it with the Commission:

- (a) the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (File No. 001-35587);
- (b) the Registrant's Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2015 and June 30, 2015 (File No. 001-35587);
- (c) the Registrant's Current Reports on Form 8-K filed on March 9, 2015 and May 14, 2015 (File No. 001-35587);  
and
- (d) the description of the Registrant's common stock contained in the Registrant's Registration Statement on Form 8-A (File No. 333-180309) filed with the Commission on June 27, 2012 under Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents. Unless specifically stated to the contrary, none of the information that we disclose under Items 2.02 or 7.01 of any Current Report on Form 8-K that we have or may from time to time furnish to the Commission will be incorporated by reference into, or otherwise be included in, this Registration Statement.

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 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.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 102(b)(7) of the Delaware General Corporation Law, or the DGCL, provides that a Delaware corporation, in its certificate of incorporation, may limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- transaction from which the director derived an improper personal benefit;
  
- act or omission not in good faith or that involved intentional misconduct or a knowing violation of law;
  
- unlawful payment of dividends or redemption of shares; or
  
- breach of the director's duty of loyalty to the corporation or its stockholders.

Section 145(a) of the DGCL provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) because that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, so long as the person acted in good faith and in a manner he or she reasonably believed was in or not opposed to the corporation's best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the corporation to obtain a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action, so long as the person acted in good faith and in a manner the person reasonably believed was in or not opposed to the corporation's best interests, except that no indemnification shall be permitted without judicial approval if a court has determined that the person is to be liable to the corporation with respect to such claim. Section 145(c) of the DGCL further provides that, if a present or former director or officer has been successful in defense of any action referred to above, the corporation must indemnify such officer or director against the expenses (including attorneys' fees) he or she actually and reasonably incurred in connection with such action.

Section 145(g) of the DGCL provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise against any liability asserted against and incurred by such person, in any such capacity, or arising out of his or her status as such, whether or not the corporation could indemnify the person against such liability under Section 145 of the DGCL.

Our amended and restated certificate of incorporation and our amended and restated bylaws, provide for the indemnification of our directors and officers to the fullest extent permitted under the DGCL.

We have entered into indemnification agreements with each of our directors. These indemnification agreements may require us, among other things, to indemnify each such director for some expenses, including, among other things, attorneys' fees, judgments, fines and settlement amounts incurred by him or her in any action or proceeding arising out of his or her service as one of our directors. Certain of our non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

We maintain a directors' and officers' insurance policy pursuant to which our directors and officers are insured against liability for actions taken in their capacities as directors and officers.

We have entered into underwriting agreements, which provide for indemnification by the underwriters of us, our officers and directors, for certain liabilities, including liabilities arising under the Securities Act.

The foregoing descriptions are only general summaries.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The exhibits to this Registration Statement are listed on the exhibit index, which appears elsewhere in this Registration Statement and 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;

(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) above do not apply if 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 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 herein, 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 herein, 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, 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.

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## 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 Waltham, Commonwealth of Massachusetts on August 7, 2015.

TESARO, Inc.

By: /s/ Leon O. Moulder, Jr.  
Leon O. Moulder, Jr.  
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Leon O. Moulder, Jr. Leon O. Moulder, Jr.	Chief Executive Officer and Director (Principal Executive Officer)	August 7, 2015
*		
Mary Lynne Hedley, Ph.D.	President, Chief Operating Officer and Director	August 7, 2015
*		
Timothy R. Pearson	Executive Vice President, Chief Financial Officer and Secretary (Principal Financial Officer)	August 7, 2015
*		
Edward C. English	Vice President of Finance and Administration (Principal Accounting Officer)	August 7, 2015
*		
David M. Mott	Chairman of the Board of Directors	August 7, 2015
*		
Lawrence M. Alleva	Director	August 7, 2015
*		
James O. Armitage, M.D.	Director	August 7, 2015
*		
Earl M. Collier, Jr.	Director	August 7, 2015
*		
Garry A. Nicholson	Director	August 7, 2015
*		
Arnold L. Oronsky, Ph.D.	Director	August 7, 2015

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Beth Seidenberg, M.D.<sup>\*</sup>

Director

August 7, 2015

6

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\* By: /s/ Joseph L. Farmer  
Joseph L. Farmer, Attorney in Fact

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Exhibit</b>
4.1	Specimen common stock certificate for TESARO Inc.'s common stock (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A filed on June 19, 2012 (File No. 333-180309)).
4.2	Second Amended and Restated Investors' Rights Agreement, dated as of June 6, 2011, as amended, between the Registrant and certain investors named therein (incorporated by reference to Exhibit 4.2 to the Registrant's Form S-1/A filed on May 17, 2012 (File No. 333-180309)).
4.3	Amendment No. 1 to the Second Amended and Restated Investors' Rights Agreement (incorporated by reference to Exhibit 4.3 to the Registrant's Form S-1/A filed on May 17, 2012 (File No. 333-180309)).
5.1	Opinion of Hogan Lovells US LLP as to the validity of the securities registered hereunder.
10.1	TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed on August 7, 2015 (File No. 001-35587)).
10.2	Non-Qualified Stock Option Inducement Award Agreement, dated as of March 30, 2015, by and between the Registrant and Joseph L. Farmer (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed on August 7, 2015 (File No. 001-35587)).
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Hogan Lovells US LLP (included in Exhibit 5.1).
24.1	Power of Attorney.