

ORGANOVO HOLDINGS, INC.

Form S-8

August 14, 2018

As filed with the Securities and Exchange Commission on August 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

ORGANOVO HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

6275 Nancy Ridge Drive

27-1488943
(I.R.S. Employer

Identification No.)

San Diego, California 92121

(Address of Principal Executive Offices)(Zip Code)

Inducement Award Stock Option Agreement

Inducement Award Restricted Stock Unit Agreement

(Full titles of the plans)

Jennifer Bush, Esq.

Jeffrey C. Thacker, Esq.

**General Counsel, Corporate Secretary and Compliance
Officer**

Ryan J. Gunderson, Esq.

Organovo Holdings, Inc.

Gunderson Dettmer Stough Villeneuve

6275 Nancy Ridge Drive

Franklin & Hachigian, LLP

San Diego, California 92121

3570 Carmel Mountain Rd., Suite 200

(858) 550-9994

San Diego, CA 92130

Tel: (858) 436-8000

(Name, address, telephone number,

including area code, of agent for service)

(Copy to)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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.

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				
Inducement Award Stock Option Agreement	974,694	\$1.12	\$1,091,658	\$136.00
Inducement Award Restricted Stock Unit Agreement	160,714	\$1.12	\$180,000	\$23.00
Total	1,135,408	\$1.12	\$1,271,658	\$159.00

- (1) Represents the offer and sale of 1,135,408 shares of the Registrant's common stock pursuant to the terms of an Inducement Award Stock Option Agreement and an Inducement Award Restricted Stock Unit Agreement (collectively, the Inducement Award Agreements). In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), this registration statement shall also cover any additional securities that may be necessary to adjust the number of shares reserved for issuance pursuant to the Inducement Award Agreements by reason of any stock split, stock dividend or similar adjustment effected without the Registrant's receipt of consideration that results in an increase in the number of the Registrant's outstanding shares of common stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h) under the Securities Act. The proposed maximum offering price per share, proposed maximum aggregate offering price and the amount of the registration fee are based on the average of the high and low prices of Registrant's common stock on the Nasdaq Stock Market on August 14, 2018 of \$1.12.

This registration statement shall become effective upon filing in accordance with Rule 462 under the Securities Act.

INTRODUCTORY NOTES

Organovo Holdings, Inc. (the Company or the Registrant) has filed this Registration Statement to register under the Securities Act of 1933, as amended (the Securities Act), the offer and sale of 1,135,408 shares of the Company s Common Stock, par value \$0.001 per share (Common Stock), pursuant to the terms of an Inducement Award Stock Option Agreement and an Inducement Award Restricted Stock Unit Agreement (collectively, the Inducement Award Agreements) attached as exhibits to this registration statement.

On August 1, 2018, the Company announced that its Board of Directors had appointed Steven G. Hughes, M.D., to serve as its Chief Medical Officer. Pursuant to the terms of the offer letter between the Company and Dr. Hughes, the Compensation Committee of the Company s Board of Directors approved the issuance of a Stock Option Award for 974,694 shares of Common Stock and a Restricted Stock Unit Award for 160,714 shares of Common Stock on August 14, 2018. The Stock Option Award and the Restricted Stock Unit Award are evidenced by the respective Inducement Award Agreements attached hereto.

The Stock Option Award and the Restricted Stock Unit Award were adopted outside the terms of the Company s stockholder-approved equity plan as permitted by Nasdaq Listing Rule 5635(c)(4) as an inducement material to the acceptance of employment by its new Chief Medical Officer.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

As permitted by the rules of the Securities and Exchange Commission (the Commission), this registration statement omits the information specified in Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the Company s Chief Executive Officer and President as required by Rule 428(b) promulgated under the Securities Act. Such documents are not being filed with the Commission as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by the Registrant are incorporated by reference in this registration statement:

- (a) The Registrant s latest annual report on Form 10-K filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), containing audited financial statements for the Registrant s fiscal year ended March 31, 2018 as filed with the Commission on May 31, 2018;
- (b) The Registrant s quarterly report on Form 10-Q for its fiscal quarter ended June 30, 2018, filed with the Commission on August 9, 2018;

- (c) The Registrant's current reports on Form 8-K filed with the Commission on May 31, 2018, July 27, 2018 and August 9, 2018, in each case only to the extent filed and not furnished;
- (d) The Registrant's definitive proxy statement on Schedule 14A filed with the Commission on June 15, 2018; and
- (e) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A as filed with the SEC on July 9, 2013 (File No. 001-35996) pursuant to Section 12(b) of the Exchange Act.

All documents subsequently filed by the Registrant 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 in this registration statement and to be part hereof from the date of filing of such reports and other documents, except as to any portion of any such report or other document furnished under current Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions.

For the purposes of this registration statement, any statement contained in a report or document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded 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 such 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.

Under Section 145 of the General Corporation Law of the State of Delaware, we may indemnify our directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. Our certificate of incorporation provides that, pursuant to Delaware law, our directors shall not be liable for monetary damages for breach of the directors' fiduciary duty of care to us and our stockholders. This provision does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to us or our stockholders for acts or omissions not in good faith or involving intentional misconduct or knowing violations of the law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Our bylaws provide for the indemnification of its directors to the fullest extent permitted by the Delaware General Corporation Law. Our bylaws further provide that our Board of Directors has discretion to indemnify our officers and other employees. We are required to advance, prior to the final disposition of any proceeding, promptly on request, all expenses incurred by any director or executive officer in connection with that proceeding on receipt of an undertaking by or on behalf of that director or executive officer to repay those amounts if it should be determined ultimately that he or she is not entitled to be indemnified under our bylaws or otherwise. We are not, however, required to advance any expenses in connection with any proceeding if a determination is reasonably and promptly made (i) by a majority vote of the directors who are not parties to such proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the

corporation.

In addition, we have entered into indemnification agreements with each of our executive officers and directors. We also maintain an officers and directors liability insurance policy.

The foregoing may reduce the likelihood of derivative litigation against our directors and executive officers and may discourage or deter stockholders or management from suing directors or executive officers for breaches of their duty of care, even though such actions, if successful, might otherwise benefit the company and our stockholders.

We have been advised that in the opinion of the Commission indemnification for liabilities arising under the Securities Act 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 is asserted by one of our directors, officers, or controlling persons in connection with the securities being registered, we will, unless in the opinion of our legal counsel the matter has been settled by controlling precedent, submit the question of whether such indemnification is against public policy to a court of appropriate jurisdiction. We will then be governed by the court's decision.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following is a list of exhibits filed as part of this registration statement, which are incorporated herein:

Exhibit No.	Description
4.1	<u>Certificate of Incorporation (incorporated by reference from Exhibit 3.1 to Form 8-K filed on February 3, 2012)</u>
4.2	<u>Certificate of Amendment (incorporated by reference from Exhibit 3.1 to the Current Report on Form 8-K filed on July 27, 2018)</u>
4.3	<u>Bylaws of Organovo Holdings, Inc. (Delaware) (incorporated by reference from Exhibit 3.2 to Form 8-K filed on February 3, 2012)</u>
5.1	<u>Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP</u>
23.1	<u>Consent of Independent Registered Public Accounting Firm</u>
23.2	<u>Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (filed as a part of Exhibit 5.1)</u>
24.1	<u>Power of Attorney (contained on signature page)</u>
99.1+	<u>Organovo Holdings, Inc. Inducement Award Stock Option Agreement, dated August 14, 2018.</u>
99.2+	<u>Organovo Holdings, Inc. Inducement Award Restricted Stock Unit Agreement, dated August 14, 2018.</u>

+ Designates management contracts and compensation plans.

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 this 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 this Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) 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 this 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 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.

(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 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 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 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 the 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.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 San Diego, State of California, on this 14th day of August, 2018.

ORGANOVO HOLDINGS, INC.

By: /s/ Taylor Crouch
Taylor Crouch
Chief Executive Officer and President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Taylor Crouch and Jennifer Bush, and each of them individually, as the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the undersigned and in the undersigned's name, place, and stead, in any and all capacities, to sign any and all amendments to this Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming that all said attorneys-in-fact and agents, or any of them or their respective substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the date indicated:

Signature	Title	Date
/s/ Taylor Crouch	President, Chief Executive Officer and	August 14, 2018
Taylor Crouch	Director <i>(Principal Executive Officer)</i>	
/s/ Craig Kussman	Chief Financial Officer	August 14, 2018
Craig Kussman	<i>(Principal Financial and Accounting Officer)</i>	
/s/ Kirk Malloy	Chairman of the Board of Directors	August 14, 2018
Kirk Malloy		

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/s/ Robert Baltera, Jr.	Director	August 14, 2018
Robert Baltera, Jr.		
/s/ James Glover	Director	August 14, 2018
James Glover		
/s/ Tamar Howson	Director	August 14, 2018
Tamar Howson		
/s/ Mark Kessel	Director	August 14, 2018
Mark Kessel		
/s/ Richard Maroun	Director	August 14, 2018
Richard Maroun		