

LIGAND PHARMACEUTICALS INC

Form S-8

June 22, 2009

As filed with the Securities and Exchange Commission on June 19, 2009

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

**Ligand Pharmaceuticals Incorporated**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

77-0160744  
(I.R.S. Employer  
Identification No.)

**10275 Science Center Drive**

**San Diego, California 92121-1117**

**(Address of Principal Executive Offices)**

**Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, as amended and restated**

**Ligand Pharmaceuticals Incorporated Employee Stock Purchase Plan, as amended and restated**

**(Full title of the plan)**

**John L. Higgins**

**President and Chief Executive Officer**

**Ligand Pharmaceuticals Incorporated**

**10275 Science Center Drive**

**San Diego, California 92121-1117**

**(Name and address of agent for service)**

**(858) 550-7500**

**(Telephone number, including area code, of agent for service)**

*Copies to:*

**Scott N. Wolfe, Esq.**

**Latham & Watkins LLP**

**12636 High Bluff Drive, Suite 400**

**San Diego, California 92130**

**(858) 523-5400**

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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 a smaller reporting company) Smaller reporting company ☐

### CALCULATION OF REGISTRATION FEE

|                                                              |                  | Proposed       | Maximum             |                   |
|--------------------------------------------------------------|------------------|----------------|---------------------|-------------------|
|                                                              | Amount           | Maximum        | Amount of           |                   |
|                                                              | to be            | Offering Price | Offering            | Amount of         |
| Title of Securities to be Registered                         | Registered(1)    | Per Share(2)   | Price(2)            | Registration      |
|                                                              |                  |                |                     | Fee               |
| <b>2002 Stock Incentive Plan, as amended and restated</b>    |                  |                |                     |                   |
| Common Stock, \$0.001 par value                              | 7,600,000(3)     | \$2.80         | \$21,280,000        | \$1,187.42        |
| <b>Employee Stock Purchase Plan, as amended and restated</b> |                  |                |                     |                   |
| Common Stock, \$0.001 par value                              | 800,000(4)       | \$2.80         | \$2,240,000         | \$124.99          |
| <b>Total</b>                                                 | <b>8,400,000</b> |                | <b>\$23,520,000</b> | <b>\$1,312.41</b> |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, 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 the receipt of consideration which results in an increase in the number of the Registrant's outstanding shares of common stock. Each share of common stock includes a right to purchase one one-thousandth of a share of Series A Participating Preferred Stock of the Company, subject to adjustment.
- (2) This estimate is made pursuant to paragraphs (c) and (h) of Rule 457 solely for purposes of calculating the registration fee, and is based on the average of the high and low sale prices for the Registrant's common stock as reported on the Nasdaq Global Market on June 17, 2009, within five business days prior to filing.
- (3) This Registration Statement registers the issuance of an additional 7,600,000 shares of common stock, which are issuable under the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, as amended and restated (the "2002 Plan"). The amendment and restatement, which authorized the issuance of such additional shares, was approved by the stockholders of the Registrant on May 29, 2009.
- (4) This Registration Statement registers the issuance of an additional 800,000 shares of common stock, which are issuable under the Ligand Pharmaceuticals Incorporated Employee Stock Purchase Plan, as amended and restated (the "ESPP"). The amendment and restatement, which authorized the issuance of such additional shares, was approved by the stockholders of the Registrant on May 29, 2009.

**Proposed sales to take place as soon after the effective date of this Registration Statement**

**as awards granted under the 2002 Plan and ESPP are granted, exercised and/or distributed.**



## EXPLANATORY NOTE

This Registration Statement on Form S-8 registers the offer and sale of an additional 7,600,000 shares of common stock available for issuance under the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, as amended and restated (the "2002 Plan"), and registers the offer and sale of an additional 800,000 shares of common stock available for issuance under the Ligand Pharmaceuticals Incorporated Employee Stock Purchase Plan, as amended and restated (the "ESPP"). The amendment and restatement of each of the 2002 Plan and the ESPP, which authorized the increase of the additional shares, was approved by our stockholders on May 29, 2009.

We previously filed a Registration Statement on Form S-1 (File No. 333-131029) with the Securities and Exchange Commission (the "Commission"), to register shares of common stock available for issuance under the 2002 Plan and the ESPP at a time when Ligand was not eligible to file a Registration Statement on Form S-8. However, Ligand later became eligible to file a Registration Statement on Form S-8 and opted to file a Post-Effective Amendment No. 2 on Form S-8 to the Registration Statement on Form S-1 for the purpose of converting the Registration Statement on Form S-1 into a Registration Statement on Form S-8. Please see the Registration Statement on Form S-1 filed with the Commission on January 13, 2006, Amendment No. 1 to Form S-1 Registration Statement filed with the Commission on February 10, 2006 and Post-Effective Amendment No. 2 on Form S-8 to Form S-1 Registration Statement filed with the Commission on June 18, 2007 for further detail.

## PART I

The information called for in Part I of Form S-8 is not being filed with or included in this Registration Statement (by incorporation or reference or otherwise) in accordance with the rules and regulations of the Commission.

## PART II

### Item 3. Incorporation of Documents by Reference.

The Commission allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this Registration Statement, and information that we file later with the Commission will automatically update and supersede this information. We incorporate by reference the following documents we have filed, or may file, with the Commission:

- (1) the description of our common stock contained in our Registration Statement on Form 8-A filed with the Commission on November 21, 1994, and any amendment or report filed for the purpose of updating such description;
- (2) the description of our preferred shares purchase rights contained in our Registration Statement on Form 8-A filed on October 17, 2006, and any amendment or report filed for the purpose of updating such description;
- (3) our Annual Report on Form 10-K for the fiscal year ended December 31, 2008 filed with the Commission on March 16, 2009;
- (4) our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2009 filed with the Commission on May 11, 2009;
- (5) our Current Reports on Form 8-K filed with the Commission on January 26, 2009, February 6, 2009, February 18, 2009, February 20, 2009, March 27, 2009, April 16, 2009, April 22, 2009 and June 1, 2009;
- (6) our Current Report on Form 8-K/A filed on February 25, 2009; and

- (7) all documents filed by us with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), after the date of this Registration Statement and prior to the termination of this offering of securities.

Any statement incorporated herein shall be deemed to be modified or superseded for purposes of this prospectus 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 prospectus. Under no circumstances will any information filed under current item 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

You may request a free copy of any of the documents incorporated by reference in this prospectus by writing to us or telephoning us at the address and telephone number set forth below.

Ligand Pharmaceuticals Incorporated

Attention: Investor Relations

10275 Science Center Drive

San Diego, California 92121

Telephone: (858) 550-7500

Ligand Pharmaceuticals Incorporated's trademarks, trade names and service marks referenced in this prospectus include Ligand. All other trademarks, trade names or service marks are owned by their respective owners.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

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

As permitted by Section 102 of the Delaware General Corporation Law, we have adopted provisions in our certificate of incorporation and Bylaws that limit or eliminate the personal liability of our directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to us or our stockholders for monetary damages or breach of fiduciary duty as a director, except for liability for: any breach of the director's duty of loyalty to us or our stockholders; any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. As permitted by Section 145 of the Delaware General Corporation Law, the certificates of incorporation and Bylaws provide that we may indemnify our directors, officers, employees and agents to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; we may advance expenses to our directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and the rights provided in the certificates of incorporation and Bylaws are not exclusive.

In addition, we have entered into separate indemnification agreements with our directors and officers which may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements may require us, among other things, to indemnify our officers and directors against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also may require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. In addition, we have purchased a policy of directors' and officers' liability insurance that insures our directors



and officers against the cost of defense, settlement or payment of a judgment in some circumstances. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of our officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended (the Securities Act ).

In addition, Pharmacopeia, LLC, or Pharmacopeia, a wholly owned subsidiary of ours, maintains and honors all indemnification arrangements in place for all past and present directors, officers, employees and agents of Pharmacopeia, Inc. as of the date of the merger agreement between us and Pharmacopeia, Inc. for acts or omissions occurring at or prior to the effective time of the merger of Margaux Acquisition Corp., a wholly owned subsidiary of Ligand, with and into Pharmacopeia, Inc.

Pharmacopeia will also indemnify and hold harmless such persons to the fullest extent permitted by applicable Delaware law for acts or omissions occurring in connection with the approval of the merger agreement and the consummation of the transactions contemplated thereby. The organizational documents of Pharmacopeia contain provisions with respect to exculpation and indemnification that are at least as favorable to the past and present indemnified directors, officers, employees and agents of Pharmacopeia as those contained in Pharmacopeia's certificate of incorporation and bylaws as in effect on the date of the merger agreement. Such provisions will not be amended, repealed or otherwise modified for six years from the effective time of the merger of Margaux Acquisition Corp. with and into Pharmacopeia, Inc. in any manner that would adversely affect the rights thereunder of such indemnified persons.

Subject to certain exceptions, Ligand also maintains a directors' and officers' insurance and indemnification policy which covers those persons who are covered by Pharmacopeia's directors' and officers' insurance and indemnification policy as of the date of the merger agreement for events occurring prior to the effective time of the merger of Margaux Acquisition Corp. with and into Pharmacopeia on terms no less favorable than those applicable to the current directors and officers of Pharmacopeia for six years; provided that the Pharmacopeia shall not be obligated to make aggregate annual premium payments which exceed 250% of the annual premium payments on Pharmacopeia's current policy in effect as of the date of the merger agreement.

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

Not applicable.



## Item 8. Exhibits.

The following is a list of the exhibits filed as part of this Registration Statement, which are incorporated herein:

| Exhibit Number | Document                                                                                                                                                  |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1(1)         | Amended and Restated Certificate of Incorporation of the Company (Filed as Exhibit 3.1).                                                                  |
| 4.2(2)         | Bylaws of the Company, as amended (Filed as Exhibit 3.3).                                                                                                 |
| 4.3(2)         | Amended Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock of the Company (Filed as Exhibit 3.3). |
| 4.4(3)         | Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company dated June 14, 2000 (Filed as Exhibit 3.5).              |
| 4.5(4)         | Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company dated June 30, 2004 (Filed as Exhibit 3.6).              |
| 4.6(5)         | Amendment of Bylaws of the Company dated November 8, 2005 (Filed as Exhibit 3.1).                                                                         |
| 4.7(6)         | Amendment of Bylaws of the Company dated December 4, 2007 (Filed as Exhibit 3.1).                                                                         |
| 4.8(7)         | Specimen stock certificate for shares of Common Stock of the Company.                                                                                     |
| 5.1            | Opinion of Latham & Watkins LLP.                                                                                                                          |
| 10.1           | Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan (as amended and restated effective May 29, 2009).                                           |
| 10.2           | Ligand Pharmaceuticals Incorporated Employee Stock Purchase Plan (as amended and restated effective July 1, 2009).                                        |
| 23.1           | Consent of Grant Thornton LLP, independent registered public accounting firm.                                                                             |
| 23.2           | Consent of BDO Seidman, LLP, independent registered public accounting firm.                                                                               |
| 23.3           | Consent of Latham & Watkins LLP (included in Exhibit 5.1).                                                                                                |
| 24.1           | Power of Attorney (included on signature page of this Registration Statement).                                                                            |

- (1) This exhibit was previously filed as part of, and is hereby incorporated by reference to the numbered exhibit filed with the Company's Registration Statement on Form S-4 (No. 333-58823) filed on July 9, 1998.
- (2) This exhibit was previously filed as part of and is hereby incorporated by reference to same numbered exhibit filed with the Company's Quarterly Report on Form 10-Q for the period ended March 31, 1999.
- (3) This exhibit was previously filed as part of, and are hereby incorporated by reference to the numbered exhibit filed with the Company's Annual Report on Form 10-K for the year ended December 31, 2000.
- (4) This exhibit was previously filed as part of, and is hereby incorporated by reference to the numbered exhibit filed with the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2004.
- (5) This exhibit was previously filed as part of, and is being incorporated by reference to the numbered exhibit filed with the Company's Current Report on Form 8-K filed on November 14, 2005.
- (6) This exhibit was previously filed as part of, and is hereby incorporated by reference to the numbered exhibit filed with the Company's Current Report on Form 8-K filed on December 6, 2007.
- (7) This exhibit was previously filed as part of, and is hereby incorporated by reference to the same numbered exhibit filed with the Company's Registration Statement on Form S-1 (No. 33-47257) filed on April 16, 1992 as amended.

## 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 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 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(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 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 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 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 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 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 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 San Diego, State of California, on June 19, 2009.

**Ligand Pharmaceuticals Incorporated**

By */s/ John L. Higgins*  
John L. Higgins

*Chief Executive Officer, President and Director*

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints John L. Higgins, John P. Sharp and Charles S. Berkman, and each of them acting individually, as his or her attorney-in-fact, each with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post-effective amendments), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or any substitute, may do or cause to be done by virtue hereof.

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>   |
|-------------------------------|--------------------------------------------|---------------|
| <i>/s/ John L. Higgins</i>    | President, Chief Executive Officer and     |               |
| John L. Higgins               | Director                                   | June 19, 2009 |
|                               | (Principal Executive Officer)              |               |
| <i>/s/ John P. Sharp</i>      | Vice President, Finance and Chief          |               |
| John P. Sharp                 | Financial Officer (Principal Financial and | June 19, 2009 |
|                               | Accounting Officer)                        |               |
| <i>/s/ Jason M. Aryeh</i>     |                                            |               |
|                               | Director                                   | June 19, 2009 |
| Jason M. Aryeh                |                                            |               |
| <i>/s/ Steven J. Burakoff</i> |                                            |               |
|                               | Director                                   | June 19, 2009 |
| Steven J. Burakoff            |                                            |               |
| <i>/s/ Todd C. Davis</i>      |                                            |               |
|                               | Director                                   | June 19, 2009 |
| Todd C. Davis                 |                                            |               |
| <i>/s/ David M. Knott</i>     |                                            |               |
|                               | Director                                   | June 19, 2009 |

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David M. Knott

/s/ John W. Kozarich

Director

June 19, 2009

John W. Kozarich

/s/ Stephen L. Sabba

Director

June 19, 2009

Stephen L. Sabba

**EXHIBIT INDEX**

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