

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

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

ARCADIA BIOSCIENCES, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

81-0571538
(I.R.S. Employer
Identification No.)

5950 Sherry Lane, Suite 215
Dallas, TX 75225
(Address of Principal Executive Offices) (Zip Code)

2015 Omnibus Equity Incentive Plan
2015 Employee Stock Purchase Plan
(Full title of the plan)

Stanley E. Jacot, Jr.
President and Chief Executive Officer
5950 Sherry Lane, Suite 215
Dallas, TX 75225
(214) 974-8921
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

Thomas J. Schaefer
Chief Financial Officer
5950 Sherry Lane, Suite 215
Dallas, TX 75225

Michael De Angelis, Esq.
Jeffrey Pietsch, Esq.
Weintraub Tobin Chediak Coleman Grodin Law Corporation
400 Capitol Mall, Suite 1100
Sacramento, CA 95814

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
Non-accelerated filer
Emerging growth company

Accelerated filer
Smaller reporting 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.

EXPLANATORY NOTE

This Registration Statement on Form S-8 (“Registration Statement”) is filed by Arcadia Biosciences, Inc. (“Registrant”) to register (i) an additional 546 shares of the Registrant’s common stock, \$0.001 par value per share (“Common Stock”), that are issuable pursuant to the Registrant’s 2015 Employee Stock Purchase Plan, and (ii) an additional 24,642 shares of Common Stock that issuable pursuant to the Registrant’s 2015 Omnibus Equity Incentive Plan (“2015 Omnibus Plan”).

PART I

Information Required in the Section 10(a) Prospectus

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the “Securities Act”), and the introductory note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed by Registrant with the Securities and Exchange Commission (the “SEC”) are incorporated by reference into this Registration Statement:

- The Registrant’s Annual Report on [Form 10-K for the fiscal year ended December 31, 2022](#), filed with the SEC on March 30, 2023 (“Annual Report”);
- Amendment No. 1 to the Registrant’s Annual Report on [Form 10-K/A for the fiscal year ended December 31, 2022](#), filed with the SEC on April 13, 2023;
- The information specifically incorporated by reference into the Registrant’s [Annual Report on Form 10-K](#) for the fiscal year ended December 31, 2022, from the Registrant’s [Definitive Proxy Statement on Schedule 14A](#), filed with the SEC on April 25, 2023;
- The Registrant’s Quarterly Report on [Form 10-Q for the fiscal quarter ended March 31, 2023](#), filed with the SEC on May 15, 2023;
- The Registrant’s Current Reports on Form 8-K/A filed with the SEC on [January 5, 2023](#) and Form 8-K filed with the SEC on [February 22, 2023](#), [February 28, 2023](#), [March 3, 2023](#), [March 30, 2023](#) and [May 11, 2023](#);
- All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Annual Report; and
- The description of the Registrant’s common stock contained in the [Description of Registrant’s Securities filed as Exhibit 4.7 to the Annual Report](#), including any amendments or reports filed for purposes of updating such description.

All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and documents.

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 subsequently filed document that also 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.

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been 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, partnership, joint venture, trust or other enterprise. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The Registrant's certificate of incorporation (the "Charter") and amended and restated bylaws (the "Restated Bylaws") provide for indemnification by the Registrant of its directors and officers to the fullest extent permitted by the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) for unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions or (4) for any transaction from which the director derived an improper personal benefit. The Charter provides for such limitation of liability to the fullest extent permitted by the DGCL.

The Restated Bylaws provide that the Registrant must indemnify its directors and executive officers and may indemnify its employees and other agents to the fullest extent permitted by the DGCL.

The Registrant has entered into indemnification agreements with its directors and executive officers, in addition to the indemnification provided for in its certificate of incorporation and bylaws, and intends to enter into indemnification agreements with any new directors and executive officers in the future.

The Registrant has purchased and intends to maintain insurance on behalf of each and any person who is or was a director or officer of the Registrant against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

| Exhibit No. | Description of Exhibit |
|--------------------|--|
| 4.1 | <u>Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on May 26, 2015 and incorporated herein by reference).</u> |
| 4.2 | <u>Certificate of Amendment to the Certificate of Incorporation (previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on February 28, 2023 and incorporated herein by reference).</u> |
| 4.3 | <u>Amended and Restated Bylaws (previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on May 26, 2015 and incorporated herein by reference).</u> |
| 4.4 | <u>Amendment to the Amended and Restated Bylaws (previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on December 8, 2022 and incorporated herein by reference).</u> |
| 5.1 | <u>Opinion of Weintraub Tobin Chediak Coleman Grodin Law Corporation.</u> |
| 99.1 | <u>2015 Omnibus Equity Incentive Plan and form of agreement thereunder (previously filed as Exhibit 10.9 to the Registrant's Registration Statement on Form S-1 filed on July 26, 2019 and incorporated herein by reference).</u> |
| 99.2 | <u>2015 Employee Stock Purchase Plan and form of agreement thereunder (previously filed as Exhibit 10.10 to the Registrant's Registration Statement on Form S-1/A filed on May 11, 2015 and incorporated herein by reference).</u> |
| 23.1 | <u>Consent of Deloitte & Touche LLP, independent registered public accounting firm.</u> |
| 23.2 | <u>Consent of Weintraub Tobin Chediak Coleman Grodin Law Corporation (included in Exhibit 5.1).</u> |
| 24.1 | <u>Power of Attorney (included on the signature page to this Form S-8).</u> |
| 107 | <u>Filing Fee Table.</u> |

Item 9. Undertakings.

(a) The 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 SEC pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 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) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC 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 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 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 SEC 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 Dallas, State of Texas, on this 25th day of May, 2023.

ARCADIA BIOSCIENCES, INC.

By: /s/ THOMAS J. SCHAEFER

Name: Thomas J. Schaefer

Title: Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Stanley E. Jacot, Jr. as his or her true and lawful attorney-in-fact and agent, with the power of substitution, for him/her and in his/her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that such attorney-in-fact and agent, or any substitute or substitutes for him, may lawfully 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.

| Signature | Title | Date |
|---|--|--------------|
| <hr/> <i>/s/</i> STANLEY E. JACOT, JR. Stanley E. Jacot, Jr. | President, Chief Executive Officer and Director (principal executive officer) | May 25, 2023 |
| <hr/> <i>/s/</i> THOMAS J. SCHAEFER Thomas J. Schaefer | Chief Financial Officer (principal financial and accounting officer) | May 25, 2023 |
| <hr/> <i>/s/</i> KEVIN COMCOWICH Kevin Comcowich | Director | May 25, 2023 |
| <hr/> <i>/s/</i> ALBERT D. BOLLES Albert D. Bolles | Director | May 25, 2023 |
| <hr/> <i>/s/</i> LILIAN SHACKELFORD MURRAY Lilian Shackelford Murray | Director | May 25, 2023 |
| <hr/> <i>/s/</i> GREGORY D. WALLER Gregory D. Waller | Director | May 25, 2023 |
| <hr/> <i>/s/</i> AMY YODER Amy Yoder | Director | May 25, 2023 |
| <hr/> <i>/s/</i> DEBORAH D. CAROSELLA Deborah D. Carosella | Director | May 25, 2023 |

May 25, 2023

Arcadia Biosciences, Inc.
5950 Sherry Lane, Suite 215
Dallas, TX 75225

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

At your request, we have examined the Registration Statement on Form S-8 (the "Registration Statement") to be filed by Arcadia Biosciences, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") on or about May 25, 2023, in connection with the registration under the Securities Act of 1933, as amended, of 24,642 shares of the Company's Common Stock, par value \$0.001 per share (the "Common Stock") reserved for issuance pursuant to the Company's 2015 Omnibus Equity Incentive Plan and 546 shares of Common Stock reserved for issuance pursuant to the Company's 2015 Employee Stock Purchase Plan (which plans are referred to herein as the "Plans" and which shares of Common Stock are referred to herein as the "Shares"). This opinion is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5)(i) of Regulation S-K.

In rendering this opinion, we have examined such documents, certificates and records as we have deemed appropriate for purposes of this letter.

In our examination of documents for purposes of this opinion, we have assumed, and express no opinion as to, the genuineness of all signatures on original documents, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the legal capacity of all persons or entities executing the same, the lack of any undisclosed termination, modification, waiver or amendment to any document reviewed by us and the due authorization, execution and delivery of all documents where due authorization, execution and delivery are prerequisites to the effectiveness thereof.

As to matters of fact relevant to this opinion, we have relied solely upon the foregoing and upon certificates and other assurances of officers of the Company and others as to factual matters, without having independently verified such factual matters; however, we are not aware of any facts that would cause us to believe that the opinion expressed herein is not accurate.

We are admitted to practice law in the State of California, and we render this opinion only with respect to, and express no opinion herein with concerning the application or effect of the laws of any jurisdiction other than, the existing laws of the United States of America, of the State of California and of the Delaware General Corporation Law, the Delaware constitution and reported judicial decisions relating thereto.

In connection with our opinion expressed below, we have assumed that, at or before the time of the delivery of any Shares, the Registration Statement will have been declared effective

under the Securities Act, that the registration will apply to such Shares and will not have been modified or rescinded and that there will not have occurred any change in law affecting the validity of the issuance of such Shares.

Based on the foregoing, and subject to the qualifications stated herein, we are of the opinion that the Shares to be issued pursuant to the terms of the Plans have been duly authorized and, when issued, delivered and paid for in accordance with the terms of the Plans, will be validly issued, fully paid and non-assessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the prospectus constituting a part thereof and any amendments thereto. This opinion speaks only as of its date and we assume no obligation to update this opinion should circumstances change after the date hereof. This opinion is intended solely for your use in connection with issuance and sale of Shares subject to the Registration Statement and is not to be relied upon for any other purpose. This opinion is rendered as of the date first written above and based solely on our understanding of facts in existence as of such date after the aforementioned examination. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify the opinions expressed herein.

Very truly yours,

/s/ Weintraub Tobin Chediak Coleman Grodin Law Corporation
WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN LAW CORPORATION

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 30, 2023 relating to the financial statements of Arcadia Biosciences, Inc., appearing in the Annual Report on Form 10-K of Arcadia Biosciences, Inc. for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

Tempe, Arizona

May 25, 2023

Calculation of Filing Fee Tables

Form S-8
(Form Type)Arcadia Biosciences, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

| Security Type | Security Class Title | Fee Calculation Rule | Amount Registered(1) | Proposed Maximum Offering Price Per Share | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|------------------------|---|-------------------------|----------------------|---|----------------------------------|-------------|----------------------------|
| Equity | Common Stock, par value \$0.001 per share, to be issued under the ESPP | Rules 457(c) and 457(h) | 546(2) | \$3.90(3) | \$2,129 | \$0.0001102 | \$0.23 |
| Equity | Common Stock, par value \$0.001 per share, to be issued under the 2015 Plan | Rules 457(c) and 457(h) | 24,642(4) | \$4.58(5) | \$112,860 | \$0.0001102 | \$12.44 |
| Total Offering Amounts | | | | | | | \$12.67 |
| Total Fee Offsets | | | | | | | \$0 |
| Net Fee Due | | | | | | | \$12.67 |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall also cover any additional shares of the Registrant's common stock that become issuable under the Registrant's 2015 Employee Stock Purchase Plan, as amended (the "ESPP"), or the 2015 Omnibus Equity Incentive Plan, as amended (the "2015 Plan"), by reason of any stock dividend, stock split, recapitalization or similar transactions.
- (2) Represents 546 additional shares of common stock authorized as of January 1, 2023, under the evergreen provision of the ESPP.
- (3) Estimated in accordance with Rules 457(c) and (h) under the Securities Act, solely for the purpose of computing the amount of the registration fee and is equal to 85% of \$4.58, the average of the high and low sales price of a share of the registrant's common stock as reported on The NASDAQ Capital Market on May 18, 2023. Pursuant to the ESPP, shares are sold at 85% of the lesser of the fair market value of such shares on the first trading day of the offering period and the last trading day of the purchase period.
- (4) Represents 24,642 additional shares of common stock authorized as of January 1, 2023, under the evergreen provision of the 2015 Plan.
- (5) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and (h) promulgated under the Securities Act, based upon the average of the high and low prices of the registrant's common stock as reported on The NASDAQ Capital Market on May 18, 2023.