

JAZZ PHARMACEUTICALS INC

Form S-8

March 09, 2011

As filed with the Securities and Exchange Commission on March 9, 2011

Registration No. 333-\_\_\_\_\_

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

Washington, D.C. 20549

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

*UNDER*

*THE SECURITIES ACT OF 1933*

**JAZZ PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

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

**05-0563787**  
(I.R.S. Employer  
Identification No.)

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**3180 Porter Drive**

**Palo Alto, CA 94304**

**(650) 496-3777**

(Address of principal executive offices)

**2007 Equity Incentive Plan**

**2007 Employee Stock Purchase Plan**

**Amended and Restated 2007 Non-Employee Directors Stock Option Plan**

(Full titles of the plans)

**Bruce C. Cozadd**

**Chairman and Chief Executive Officer**

**Jazz Pharmaceuticals, Inc.**

**3180 Porter Drive**

**Palo Alto, CA 94304**

**(650) 496-3777**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Suzanne Sawochka Hooper, Esq.  
Chadwick Mills, Esq.  
Cooley LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
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**Carol A. Gamble, Esq.  
Philip J. Honerkamp, Esq.  
Jazz Pharmaceuticals, Inc.  
3180 Porter Drive  
Palo Alto, CA 94304  
(650) 496-3777**

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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**

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 \$0.0001 per share	2,345,666 shares	\$24.68	\$57,891,036.88	\$6,721.15

- Pursuant to Rule 416 promulgated 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 plans set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.
- Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The offering price per share and the aggregate offering price are 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 2, 2011. The chart below details the calculations of the registration fee:

Securities	Number of Shares	Offering Price Per Share(2)	Aggregate Offering Price(2)
Common Stock, par value \$0.0001 per share, reserved for future issuance under the 2007 Equity Incentive Plan	1,798,166	\$24.68	\$44,378,736.88
Common Stock, par value \$0.0001 per share, reserved for future issuance under the 2007 Employee Stock Purchase Plan	350,000	\$24.68	\$8,638,000.00
Common Stock, par value \$0.0001 per share, reserved for future issuance under the Amended and Restated 2007 Non-Employee Directors Stock Option Plan	197,500	\$24.68	\$4,874,300.00
Proposed Maximum Aggregate Offering Price			\$57,891,036.88
<b>Registration Fee</b>			<b>\$6,721.15</b>

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**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional (i) 1,798,166 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2007 Equity Incentive Plan, (ii) 350,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2007 Employee Stock Purchase Plan and (iii) 197,500 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's Amended and Restated 2007 Non-Employee Directors Stock Option Plan.

**INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION**

**STATEMENTS ON FORM S-8**

The contents of the Registration Statements on Form S-8 (File Nos. 333-143553, 333-150008, 333-158242 and 333-165354) are incorporated by reference herein.

**EXHIBITS**

**Exhibit**

**Number Description of Document**

- 3.1 Fourth Amended and Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to exhibit 3.1 in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007).
- 3.2 Amended and Restated Bylaws (incorporated herein by reference to exhibit 3.4 in the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007).
- 4.1 Reference is made to Exhibits 3.1 and 3.2.
- 4.2 Specimen Common Stock Certificate (incorporated herein by reference to exhibit 4.2 in the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007).
- 4.3A Third Amended and Restated Investor Rights Agreement, made effective as of June 6, 2007, by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.3 in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007).
- 4.3B Waiver and Amendment Agreement, dated as of March 12, 2008, by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.3B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008).
- 4.3C Waiver and Amendment Agreement, dated as of May 7, 2008, by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.3C in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008).
- 4.3D Waiver and Amendment Agreement, dated as of July 6, 2009 by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.3D in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2009, as filed with the SEC on August 14, 2009).
- 4.4A Form of Series BB Preferred Stock Warrant of the Registrant (incorporated by reference to exhibit 4.6 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007).
- 4.4B Form of Series BB Preferred Stock Warrant of the Registrant, as amended (incorporated herein by reference to exhibit 4.4B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008).
- 4.5A Form of Common Stock Warrant of the Registrant (incorporated herein by reference to exhibit 4.5D in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008).
- 4.5B Registration Rights Agreement, dated as of March 17, 2008, by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.5E in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008).



**Exhibit**

<b>Number</b>	<b>Description of Document</b>
4.5C	Amendment and Waiver Agreement, dated as of November 10, 2009, by and among the Registrant, JPI Commercial, LLC and the other parties named therein (incorporated by reference to exhibit 4.5F in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on November 10, 2009).
4.6A	Warrant issued to Kingsbridge Capital Limited, dated May 7, 2008 (incorporated herein by reference to exhibit 4.6A in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008).
4.6B	Registration Rights Agreement, dated as of May 7, 2008, by and between the Registrant and Kingsbridge Capital Limited (incorporated herein by reference to exhibit 4.6B in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008).
4.6C	Amendment Agreement No. 1, dated as of November 20, 2009, by and between the Registrant and Kingsbridge Capital Limited (incorporated by reference to exhibit 4.6C in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on November 23, 2009).
4.7	Form of Registered Direct Common Stock Warrant (incorporated herein by reference to exhibit 4.7 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 16, 2008).
4.8	NOL Preservation Lock-Up Agreement, effective as of July 7, 2009, by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.8 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009).
4.9A	Form of Common Stock Warrant of the Registrant issued on July 7, 2009 (incorporated herein by reference to exhibit 4.9 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009).
4.9B	Investor Rights Agreement, dated July 7, 2009 by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 10.88 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009).
5.1	Opinion of Registrant's General Counsel.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Registrant's General Counsel. Reference is made to Exhibit 5.1.
24.1	Power of Attorney. Reference is made to the signature page of this Form S-8.
99.1	2007 Equity Incentive Plan (incorporated herein by reference to exhibit 10.23 in the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007).
99.2	2007 Employee Stock Purchase Plan, as amended and restated (incorporated herein by reference to exhibit 10.3 in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended September 30, 2010, as filed with the SEC on November 5, 2010).
99.3	Amended and Restated 2007 Non-Employee Directors Stock Option Plan (incorporated herein by reference to exhibit 10.2 in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended September 30, 2010, as filed with the SEC on November 5, 2010).

**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 Palo Alto, State of California, on March 9, 2011.

**JAZZ PHARMACEUTICALS, INC.**

By: /s/ BRUCE C. COZADD  
**Bruce C. Cozadd**

**Chairman and Chief Executive Officer**

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**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints BRUCE C. COZADD, KATHRYN E. FALBERG and CAROL A. GAMBLE, and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, 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 he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes or substitute, 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
/s/ BRUCE C. COZADD  <b>Bruce C. Cozadd</b>	Chairman, Chief Executive Officer and Director  <i>(Principal Executive Officer)</i>	March 9, 2011
/s/ KATHRYN E. FALBERG  <b>Kathryn E. Falberg</b>	Senior Vice President and Chief Financial Officer  <i>(Principal Financial Officer)</i>	March 9, 2011
/s/ KAREN J. WILSON  <b>Karen J. Wilson</b>	Vice President of Finance and Principal Accounting Officer  <i>(Principal Accounting Officer)</i>	March 9, 2011
/s/ PAUL L. BERNS  <b>Paul L. Berns</b>	Director	March 9, 2011
/s/ SAMUEL D. COLELLA  <b>Samuel D. Colella</b>	Director	March 9, 2011
/s/ BRYAN C. CRESSEY  <b>Bryan C. Cressey</b>	Director	March 9, 2011
/s/ PATRICK G. ENRIGHT  <b>Patrick G. Enright</b>	Director	March 9, 2011
/s/ MICHAEL W. MICHELSON  <b>Michael W. Michelson</b>	Director	March 9, 2011
/s/ JAMES C. MONTAZEE  <b>James C. Montazee</b>	Director	March 9, 2011
/s/ KENNETH W. O KEEFE  <b>Kenneth W. O Keefe</b>	Director	March 9, 2011



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/s/ ALAN M. SEBULSKY	Director	March 9, 2011
<b>Alan M. Sebulsky</b>		
/s/ JAMES B. TANANBAUM, M.D.	Director	March 9, 2011
<b>James B. Tananbaum, M.D.</b>		
/s/ RICK E WINNINGHAM	Director	March 9, 2011
<b>Rick E Winningham</b>		
/s/ NATHANIEL M. ZILKHA	Director	March 9, 2011
<b>Nathaniel M. Zilkha</b>		

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- 4.3C Waiver and Amendment Agreement, dated as of May 7, 2008, by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.3C in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008).
- 4.3D Waiver and Amendment Agreement, dated as of July 6, 2009 by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 4.3D in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2009, as filed with the SEC on August 14, 2009).
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- 4.4B Form of Series BB Preferred Stock Warrant of the Registrant, as amended (incorporated herein by reference to exhibit 4.4B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008).
- 4.5A Form of Common Stock Warrant of the Registrant (incorporated herein by reference to exhibit 4.5D in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008).
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- 4.6A Warrant issued to Kingsbridge Capital Limited, dated May 7, 2008 (incorporated herein by reference to exhibit 4.6A in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008).
- 4.6B Registration Rights Agreement, dated as of May 7, 2008, by and between the Registrant and Kingsbridge Capital Limited (incorporated herein by reference to exhibit 4.6B in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008).

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4.9A	Form of Common Stock Warrant of the Registrant issued on July 7, 2009 (incorporated herein by reference to exhibit 4.9 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009).
4.9B	Investor Rights Agreement, dated July 7, 2009 by and between the Registrant and the other parties named therein (incorporated herein by reference to exhibit 10.88 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009).
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