

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

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

VAXART, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of Incorporation or
organization)

59-1212264
(I.R.S. Employer Identification No.)

170 Harbor Way, Suite 300
South San Francisco, CA 94080
(Address of principal executive offices) (Zip code)

Vaxart, Inc. 2019 Equity Incentive Plan
Vaxart, Inc. 2022 Employee Stock Purchase Plan
(Full title of the plan)

Andrei Floroiu
Chief Executive Officer
170 Harbor Way, Suite 300
South San Francisco, CA 94080
(Name and address of agent for service)

(650) 550-3500
(Telephone number, including area code, of agent for service)

Copies to:
Faith L. Charles, Esq.
Thompson Hine LLP
335 Madison Avenue, 12th Floor
New York, NY 10017-4611
(212) 344-5680

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

Accelerated filer
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.

EXPLANATORY NOTE

This Registration Statement is being filed by Vaxart, Inc. (the “*Registrant*”) for the purposes of (1) registering an additional 12,000,000 shares (the “*Additional Plan Shares*”) of the Registrant’s common stock, par value \$0.0001 (“*Common Stock*”), that are issuable at any time or from time to time under the Registrant’s 2019 Equity Incentive Plan (as amended to date, the “*Incentive Plan*”), and (2) registering 1,800,000 shares of Common Stock (the “*ESPP Shares*”) that are issuable at any time or from time to time under the Registrant’s 2022 Employee Stock Purchase Plan (the “*ESPP*”).

The Additional Plan Shares are authorized for issuance under the Incentive Plan pursuant to an amendment and restatement to the Incentive Plan which was approved by the Registrant’s stockholders at the 2022 reconvened annual meeting of stockholders held on August 4, 2022. The ESPP and the ESPP Shares authorized for issuance thereunder were also approved by the Registrant’s stockholders at the 2022 reconvened annual meeting of stockholders held on August 4, 2022.

The Registrant previously filed: a [Registration Statement on Form S-8](#) (File No. 333-231013) with the U.S. Securities and Exchange Commission (the “*SEC*”) to register 1,600,000 shares of Common Stock for issuance pursuant to the Incentive Plan; a [Registration Statement on Form S-8](#) (File No. 333-239727) with the SEC to register an additional 6,400,000 shares of Common Stock for issuance pursuant to the Incentive Plan; and a [Registration Statement on Form S-8](#) (File No. 333-257245) with the SEC to register an additional 8,900,000 shares of Common Stock for issuance pursuant to the Incentive Plan.

Upon the effectiveness of this Registration Statement, an aggregate of 28,900,000 shares of Common Stock will be registered for issuance from time to time under the Incentive Plan, and an aggregate of 1,800,000 shares of Common Stock will be registered for issuance from time to time under the ESPP. The contents of the Registration Statements on Form S-8 (File Nos. 333-231013, 333-239727, and 333-257245) filed with the SEC on April 24, 2019, July 7, 2020, and June 21, 2021, respectively, are hereby incorporated by reference, except to the extent supplemented, amended or superseded by the information set forth herein. Only those items of Form S-8 containing new information not contained in the earlier registration statements are presented herein.

PART II

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by Registrant with the SEC are incorporated by reference into this Registration Statement:

- (a) [The Registrant's Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on February 24, 2022.](#)
 - (b) The Registrant's Quarterly Reports on Form 10-Q, filed with the SEC on [May 9, 2022](#) and [August 8, 2022](#).
 - (c) [The definitive proxy statement relating to the Registrant's 2022 annual meeting of stockholders, filed with the SEC on April 28, 2022.](#)
 - (d) The Registrant's Current Reports on Form 8-K filed with the SEC on [March 31, 2022](#), [May 11, 2022](#), [June 6, 2022](#), [June 8, 2022](#), [June 28, 2022](#), [July 6, 2022](#), [July 8, 2022](#), [July 28, 2022](#), [August 5, 2022](#), [August 25, 2022](#), and [September 1, 2022](#).
 - (e) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 10, filed with the SEC on May 4, 1970, as amended by the Registrant's Current Report on Form 8-K filed with the SEC on August 15, 2003.
 - (f) 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.
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ITEM 8. EXHIBITS

Exhibit Number	Description of Document	Schedule/Form	File Number	Exhibit	Filing Date
3.1	Restated Certificate of Incorporation of Aviragen Therapeutics, Inc.	10-K	001-35285	3.1	September 13, 2016
3.2	Certificate of Amendment to Restated Certificate of Incorporation of Aviragen Therapeutics, Inc.	8-K	001-35285	3.1	February 20, 2018
3.3	Certificate of Amendment to Restated Certificate of Incorporation of Vaxart, Inc.	8-K	001-35285	3.2	February 20, 2018
3.4	Certificate of Amendment to Restated Certificate of Incorporation of Vaxart, Inc.	8-K	001-35285	3.1	April 24, 2019
3.5	Certificate of Amendment to Restated Certificate of Incorporation of Vaxart, Inc.	8-K	001-35285	3.1	June 9, 2020
3.6	Certificate of Amendment to Restated Certificate of Incorporation of Vaxart, Inc.	10-Q	001-35285	3.3	August 8, 2022
3.7	Amended and Restated Bylaws of Vaxart, Inc.	8-K	001-35285	3.1	April 13, 2021
4.1	Reference is made to Exhibits 3.1 through 3.7				
4.2	Specimen Common Stock Certificate	S-3	333-228910	4.2	December 20, 2018
5.1*	Opinion of Thompson Hine LLP				
10.1	2019 Equity Incentive Plan, as amended	8-K	001-35285	10.1	June 21, 2021
10.2	2022 Employee Stock Purchase Plan	8-K/A	001-35285	10.2	August 5, 2022
23.1*	Consent of WithumSmith+Brown, PC, Independent Registered Public Accounting Firm				
23.2*	Consent of OUM & Co. LLP, Independent Registered Public Accounting Firm				
23.3*	Consent of Thompson Hine LLP (included in Exhibit 5.1)				
24.1*	Power of Attorney. Reference is made to the signature page hereto.				
107*	Filing Fee Table				

* Filed herewith

ITEM 9. UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

(a) 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) 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)(i) and (a)(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 SEC by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(b) 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.

(c) 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.

(d) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

2. 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.

3. 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 South San Francisco, State of California, on October 21, 2022.

VAXART, INC.

/s/ Andrei Floroiu

Andrei Floroiu

Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, THAT EACH PERSON WHOSE SIGNATURE APPEARS BELOW CONSTITUTES AND APPOINTS ANDREI FLOROIU AND MARGARET A. ECHERD, AND EACH OF THEM, AS HIS OR HER TRUE AND LAWFUL ATTORNEYS-IN-FACT AND AGENTS, WITH FULL POWER OF SUBSTITUTION AND RESUBSTITUTION, FOR HIM OR HER AND IN HIS OR 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 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 OR SHE 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 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.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Andrei Floroiu</u> Andrei Floroiu	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	October 21, 2022
<u>/s/ Fuad Ahmad</u> Fuad Ahmad	Chief Financial Officer <i>(Principal Accounting Officer and Principal Financial Officer)</i>	October 21, 2022
<u>/s/ Todd C. Davis</u> Todd C. Davis	Director	October 21, 2022
<u>/s/ Michael J. Finney, Ph.D.</u> Michael J. Finney, Ph.D.	Director	October 21, 2022
<u>/s/ Elaine Heron</u> Elaine Heron	Director	October 21, 2022
<u>/s/ W. Mark Watson</u> W. Mark Watson	Director	October 21, 2022
<u>/s/ David Wheadon, M.D.</u> David Wheadon, M.D.	Director	October 21, 2022
<u>/s/ Robert A. Yedid</u> Robert A. Yedid	Director	October 21, 2022



October 21, 2022

Vaxart, Inc.
170 Harbor Way
Suite 300
South San Francisco, CA 94080

Ladies and Gentlemen:

Vaxart, Inc., a Delaware corporation (the “*Company*”), is filing with the U.S. Securities and Exchange Commission (the “*Commission*”) a Registration Statement on Form S-8 (the “*Registration Statement*”) for the registration, under the Securities Act of 1933, as amended (the “*Securities Act*”), of a total of 13,800,000 shares of common stock, \$0.0001 par value, of the Company (the “*Common Stock*”), consisting of (1) 12,000,000 shares of Common Stock that are issuable at any time or from time to time under the Company’s 2019 Equity Incentive Plan (as amended to date, the “*Incentive Plan*”), and (2) 1,800,000 shares of Common Stock that are issuable at any time or from time to time under the Company’s 2022 Employee Stock Purchase Plan (the “*ESPP*”).

Item 601 of Regulation S-K and the instructions to Form S-8 require that an opinion of counsel concerning the legality of the securities to be registered be filed as an exhibit to a Form S-8 registration statement if the securities are original issue shares. This opinion is provided in satisfaction of that requirement as it relates to the Registration Statement.

In rendering this opinion, we have examined the Incentive Plan, ESPP, Registration Statement, the certificate of incorporation, as amended, and by-laws of the Company (each as amended and restated as of the date hereof) and such other records, instruments and documents as we have deemed advisable in order to render this opinion. In such examination, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents, certificates and instruments submitted to us as originals, the conformity to original documents of all documents, certificates and instruments submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. Our opinion set forth below is based on the text of the Incentive Plan and the ESPP as referenced in the Exhibits Index to the Registration Statement and is limited to the General Corporation Laws of the State of Delaware as currently in effect, and we express no opinion as to the effect on the matters covered by this letter of the laws of any other jurisdiction.

As a result of the foregoing, and subject to the further limitations, qualifications and assumptions set forth herein, we are of the opinion that, under the laws of the State of Delaware, when issued pursuant to the Incentive Plan or the ESPP, the Common Stock that is the subject of the Registration Statement will be validly issued, fully paid and non-assessable.

In rendering this opinion, we have assumed that the resolutions authorizing the Company to issue the Common Stock pursuant to the Incentive Plan and the ESPP will be in full force and effect at all times at which the Common Stock is issued by the Company, and that the Company will take no action inconsistent with such resolutions. We have further assumed that each award under the Incentive Plan and the ESPP will be approved by the Board of Directors of the Company or an authorized committee of the Board of Directors.

This opinion letter speaks only as of the date hereof. We expressly disclaim any responsibility to advise you of any development or circumstance of any kind, including any change of law or fact that may occur after the date of this opinion letter that might affect the opinion expressed herein.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Thompson Hine LLP

Thompson Hine LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference, in the Registration Statement on Form S-8 pertaining to the Vaxart, Inc. 2019 Equity Incentive Plan and the Vaxart, Inc. 2022 Employee Stock Purchase Plan, of our report dated February 24, 2022 relating to the consolidated financial statements and the effectiveness of Vaxart, Inc.'s internal control over financial reporting, included in its Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ WithumSmith+Brown, PC

San Francisco, California
October 21, 2022

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference, in the Registration Statement on Form S-8 pertaining to the Vaxart, Inc. 2019 Equity Incentive Plan and the Vaxart, Inc. 2022 Employee Stock Purchase Plan, of our report dated February 25, 2021 relating to the consolidated financial statements of Vaxart, Inc. for each of the two years in the period ended December 31, 2020, included in its Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ OUM & CO. LLP

San Francisco, California
October 21, 2022

Calculation of Filing Fee Tables

Form S-8

(Form Type)

Vaxart, 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	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock	Other	13,800,000 ⁽¹⁾	\$1.665 ⁽²⁾	\$22,977,000 ⁽¹⁾⁽²⁾	0.00011020	\$2,533
Total Offering Amounts					\$22,977,000		\$2,533
Total Fee Offsets							\$0
Net Fee Due							\$2,533

(1)	Consists of shares of Vaxart, Inc.'s (the "Registrant") common stock, par value \$0.0001 ("Common Stock"), not previously registered, consisting of (1) 12,000,000 shares of Common Stock that are issuable at any time or from time to time under the Registrant's 2019 Equity Incentive Plan (as amended to date, the "Incentive Plan"), and (2) 1,800,000 shares of Common Stock that are issuable at any time or from time to time under the Registrant's 2022 Employee Stock Purchase Plan (the "ESPP"). Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended, (the "Securities Act"), this Registration Statement shall also cover any additional shares of Registrant's Common Stock that become issuable under the Incentive Plan or the ESPP 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 Registrant's Common Stock, as applicable.
(2)	Estimated in accordance with Rules 457(c) and 457(h) under the Securities Act solely for the purpose of calculating the registration fee on the basis of \$1.665 per share, the average of the high and low prices of the Registrant's Common Stock as reported on The Nasdaq Capital Market on October 19, 2022.