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

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

SERES THERAPEUTICS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

27-4326290
(I.R.S. Employer
Identification No.)

200 Sidney Street – 4th Floor
Cambridge, MA 02139
(Address of Principal Executive Offices) (Zip Code)

Seres Therapeutics, Inc. 2015 Incentive Award Plan
Seres Therapeutics, Inc. 2015 Employee Stock Purchase Plan
(Full Title of the Plan)

Eric D. Shaff.
President and Chief Executive Officer
Seres Therapeutics, Inc.
200 Sidney Street – 4th Floor
Cambridge, MA 02139
(Name and Address of Agent for Service)

(617) 945-9626
(Telephone Number, including Area Code, of Agent for Service)

Copies to:

Peter N. Handrinos, Esq.
Latham & Watkins LLP
200 Clarendon Street
Boston, MA 02116
(617) 948-6060

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 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 is being filed for the purpose of registering an additional 400,000 shares of the common stock of Seres Therapeutics, Inc. (the “**Registrant**”) to be issued pursuant to the Seres Therapeutics, Inc. 2015 Employee Stock Purchase Plan (the “**ESPP**”) and an additional 5,008,890 shares of the Registrant’s common stock to be issued pursuant to the Seres Therapeutics, Inc. 2015 Incentive Award Plan (the “**Incentive Plan**,” and together with the ESPP, the “**Plans**”). A Registration Statement of the Registrant on Form S-8 relating to the Plans is effective.

INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION STATEMENTS ON FORM S-8

Except as set forth below, the contents of the Registration Statements on Form S-8 (File Nos. [333-205253](#), [333-210171](#), [333-223514](#), [333-230092](#), [333-236824](#), [333-253776](#), and [333-263134](#)), including any amendments thereto, filed with the Securities and Exchange Commission, relating to the Plans, are incorporated by reference herein.

Item 6. Indemnification of Directors and Officers.

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (the “**DGCL**”), empowers a corporation to indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was 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, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person acted in any of the capacities set forth above, against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and the indemnification provided for by Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person’s heirs, executors and administrators. Section 145 also empowers the corporation to purchase and maintain insurance on behalf of any person who is or was 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 against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145.

Section 102(b)(7) of the DGCL provides that a corporation's certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit.

The Registrant's amended and restated bylaws (the "**Bylaws**") provide that it will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Registrant) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or, while a director or officer, is or was serving, or has agreed to serve, at the Registrant's request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan) (all such persons being referred to hereafter as an "**Indemnitee**"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974), and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the Registrant's best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Registrant, and, with respect to any criminal action or proceeding, had reasonable cause to believe that Indemnitee's conduct was unlawful.

The Bylaws provide that the Registrant will indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Registrant to procure a judgment in the Registrant's favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer, or, while a director or officer, is or was serving, or has agreed to serve, at the Registrant's request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Registrant, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Registrant, unless, and only to the extent, that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including, without limitation, attorneys' fees) which the Court of Chancery of Delaware or such other court shall deem proper. Notwithstanding the foregoing, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified to the fullest extent permitted by law against all expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

The Registrant has entered into indemnification agreements with each of its directors and executive officers in which the Registrant has agreed to indemnify, defend and hold harmless, and also advance expenses as incurred, to the fullest extent permitted under applicable law, from damage arising from the fact that such person is or was an officer or director of the Registrant or its subsidiaries.

The indemnification rights set forth above shall not be exclusive of any other right which an Indemnitee may have or hereafter acquire under any statute, the Registrant's restated certificate of incorporation, Bylaws, any agreement, any vote of stockholders or disinterested directors or otherwise.

The Registrant expects to maintain standard policies of insurance that provide coverage to (1) the Registrant's directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to the Registrant with respect to indemnification payments that we may make to such directors and officers.

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

Item 8. Exhibits.

Number	Description
4.1	<u>Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-37456) filed on July 1, 2015)</u>
4.2	<u>Amended and Restated By-Laws of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-37456) filed on December 7, 2020)</u>
5.1+	<u>Opinion of Latham & Watkins LLP, counsel to the Registrant</u>
23.1+	<u>Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm</u>
23.2+	<u>Consent of Latham & Watkins LLP (included in Exhibit 5.1)</u>
24.1+	<u>Power of attorney (included on signature pages below)</u>
99.1	<u>Seres Therapeutics, Inc. 2015 Incentive Award Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Annual Report on Form 10-K (File No. 001-37456) filed on March 7, 2023)</u>
99.2	<u>Seres Therapeutics, Inc. 2015 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 (Reg. No. 333-204484) filed on May 27, 2015)</u>
107+	<u>Filing Fee Table</u>

+ Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Cambridge, Commonwealth of Massachusetts, on this 7th day of March, 2023.

SERES THERAPEUTICS, INC.

By: /s/ Eric D. Shaff
Eric D. Shaff
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Eric D. Shaff and David Arkowitz, or either 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 file and sign any and all amendments, including post-effective amendments, to this registration statement, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, 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 their substitute or substitutes may lawfully do or cause to be done by virtue hereof. This power of attorney shall be governed by and construed with the laws of the State of Delaware and applicable federal securities laws.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
<u>/s/ Eric D. Shaff</u> Eric D. Shaff	President, Chief Executive Officer, Director (<i>principal executive officer</i>)	March 7, 2023
<u>/s/ David Arkowitz</u> David Arkowitz	Executive Vice President, Chief Financial Officer, and Head of Business Development (<i>principal accounting officer and principal financial officer</i>)	March 7, 2023
<u>/s/ Stephen Berenson</u> Stephen Berenson	Chairman of the Board	March 7, 2023
<u>/s/ Dennis Ausiello</u> Dennis Ausiello, M.D.	Director	March 7, 2023
<u>/s/ Grégory Behar</u> Grégory Behar	Director	March 7, 2023
<u>/s/ Paul R. Biondi</u> Paul R. Biondi	Director	March 7, 2023
<u>/s/ Willard H. Dere</u> Willard H. Dere, M.D.	Director	March 7, 2023

<u>/s/ Claire M. Fraser</u> Claire M. Fraser, Ph.D.	Director	March 7, 2023
<u>/s/ Kurt C. Graves</u> Kurt C. Graves	Director	March 7, 2023
<u>/s/ Richard N. Kender</u> Richard N. Kender	Director	March 7, 2023
<u>/s/ Meryl S. Zausner</u> Meryl S. Zausner	Director	March 7, 2023

200 Clarendon Street
 Boston, Massachusetts 02116
 Tel: +1.617.948.6000 Fax: +1.617.948.6001
 www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Shanghai
Hong Kong	Silicon Valley
Houston	Singapore
London	Tel Aviv
Los Angeles	Tokyo
Madrid	Washington, D.C.

March 7, 2023

Seres Therapeutics, Inc.
 200 Sidney Street – 4th Floor
 Cambridge, MA 02139

Re: Registration Statement on Form S-8; 5,408,890 shares of Seres Therapeutics, Inc. Common Stock, \$0.001 par value per share

To the addressee set forth above:

We have acted as special counsel to Seres Therapeutics, Inc., a Delaware corporation (the “*Company*”), in connection with the preparation and filing by the Company with the Securities and Exchange Commission (the “*Commission*”) of a registration statement on Form S-8 (the “*Registration Statement*”) under the Securities Act of 1933, as amended (the “*Act*”), relating to the issuance by the Company of up to an aggregate of 5,408,890 shares of common stock of the Company, \$0.001 par value per share (the “*Shares*”), issuable under the Seres Therapeutics, Inc. 2015 Incentive Award Plan (the “*2015 Plan*”) and the Seres Therapeutics, Inc. 2015 Employee Stock Purchase Plan (together with the 2015 Plan, the “*Plans*”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the prospectus forming a part thereof, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “*DGCL*”), and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the Plans, assuming in each case that the individual grants or awards under the Plans are duly authorized by all necessary corporate action and duly granted or awarded and exercised in accordance with the requirements of law and the Plans (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion 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 Act or the rules and regulations of the Commission thereunder.

Sincerely,

/s/ Latham & Watkins LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of Seres Therapeutics, Inc. of our report dated March 7, 2023 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Seres Therapeutics, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2022.

/s/PricewaterhouseCoopers LLP
Boston, Massachusetts
March 7, 2023

CALCULATION OF FILING FEE TABLE

FORM S-8
(Form Type)SERES THERAPEUTICS, INC.
(Exact Name of Registrant as Specified in its Charter)**Table I: Newly Registered Securities**

Plan	Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
2015 Incentive Award Plan	Equity	Common Stock, par value \$0.001 per share	Rule 457(c) and 457(h)	5,008,890 ⁽²⁾	\$5.01 ⁽⁴⁾	\$25,094,538.90	\$110.20 per million dollars	\$2,765.42
2015 Employee Stock Purchase Plan	Equity	Common Stock, par value \$0.001 per share	Rule 457(c) and 457(h)	400,000 ⁽³⁾	\$5.01 ⁽⁴⁾	\$2,004,000.00	\$110.20 per million dollars	\$ 220.85
Total Offering Amounts						\$27,098,538.90		\$2,986.27
Total Fee Offsets								\$ —
Net Fee Due								\$2,986.27

- (1) In accordance with Rule 416(a) under the Securities Act of 1933, as amended (“*Securities Act*”), this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued under the Seres Therapeutics, Inc. 2015 Incentive Award Plan (the “*Incentive Plan*”) and the Seres Therapeutics, Inc. 2015 Employee Stock Purchase Plan (the “*ESPP*”) to prevent dilution resulting from stock splits, stock dividends or similar transactions. In addition, pursuant to Rule 416(c) under the Securities Act, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Incentive Plan and the ESPP.
- (2) Consists of 5,008,890 shares of Common Stock that may become issuable under the Incentive Plan pursuant to its terms.
- (3) Consists of 400,000 shares of Common Stock that may become issuable under the ESPP pursuant to its terms.
- (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the Common Stock as reported on the Nasdaq Global Select Market on February 28, 2023.