

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

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

TOCAGEN INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

26-1243872
(I.R.S. Employer
Identification No.)

3030 Bunker Hill Street, Suite 230
San Diego, California
(Address of Principal Executive Offices)

92109
(Zip Code)

2009 Equity Incentive Plan
2017 Equity Incentive Plan
2017 Employee Stock Purchase Plan
(Full titles of the plans)

Martin J. Duvall
Chief Executive Officer
Tocagen Inc.
3030 Bunker Hill Street, Suite 230
San Diego, California 92109
(858) 412-8400

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

Copies to:

Frederick T. Muto, Esq.
Kenneth J. Rollins, Esq.
Karen E. Deschaine, Esq.
Cooley LLP
4401 Eastgate Mall
San Diego, California 92121
(858) 550-6000

Mark Foletta
Executive Vice President and Chief Financial Officer
Tocagen Inc.
3030 Bunker Hill Street, Suite 230
San Diego, California 92109
(858) 412-8400

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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
- Accelerated filer
- Non-accelerated filer (Do not check if a smaller reporting company)
- 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.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
2009 Equity Incentive Plan				
Common Stock, \$0.001 par value per share	1,452,028 shares (2)	\$11.85 (3)	\$17,206,531.80 (3)	\$1,994.24
2017 Equity Incentive Plan				
Common Stock, \$0.001 par value per share	3,127,545 shares (4)	\$10.00 (5)	\$31,275,450.00 (5)	\$3,624.83
2017 Employee Stock Purchase Plan				
Common Stock, \$0.001 par value per share	250,000 shares (6)	\$10.00 (5)	\$2,500,000.00 (5)	\$289.75

- (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 ("Common Stock") that become issuable under the Tocagen Inc. 2009 Equity Incentive Plan, as amended (the "2009 Plan"), the Tocagen Inc. 2017 Equity Incentive Plan (the "2017 Plan") or the Tocagen Inc. 2017 Employee Stock Purchase Plan (the "2017 ESPP") by reason of any stock dividend, stock split, recapitalization or other similar transaction.
- (2) Represents shares of Common Stock reserved for issuance upon the exercise of outstanding stock options granted under the 2009 Plan. Upon the date of the underwriting agreement between the Registrant and the underwriters managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering (the "Effective Date"), no additional stock awards will be granted under the 2009 Plan and the shares remaining available for the grant of future stock awards under the 2009 Plan (the "2009 Plan Pool"), plus any shares underlying then-outstanding stock awards granted under the 2009 Plan that on or after the Effective Date expire or terminate for any reason prior to exercise or settlement, or are forfeited because of the failure to meet a contingency or condition required to vest such shares, or otherwise return to the Registrant or are reacquired, withheld or not issued to satisfy a tax withholding obligation in connection with an award (such shares, the "2009 Returning Shares"), will become available for the grant of stock awards under the 2017 Plan.
- (3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The proposed maximum aggregate offering price per share and proposed maximum aggregate offering price for the 1,452,028 shares of Common Stock reserved for issuance upon the exercise of outstanding stock options granted under the 2009 Plan are calculated using a weighted average exercise price of \$11.85 per share based on exercise prices for such outstanding stock options ranging from \$0.35 to \$19.67 per share.
- (4) Represents 184,861 shares of Common Stock reserved for issuance upon the exercise of outstanding stock options granted under the 2017 Plan and up to 2,942,684 shares of Common Stock, which includes (i) the 2009 Plan Pool and (ii) the 2009 Returning Shares. The 2017 Plan provides that an additional number of shares will automatically be added to the shares authorized for issuance under the 2017 Plan on January 1 of each calendar year, from January 1, 2018 through January 1, 2027. The number of shares added each year will be equal to the lesser of: (a) 4% of the total number of shares of capital stock outstanding on December 31 of the preceding calendar year; or (b) such lesser number of shares of Common Stock as is determined by the Registrant's board of directors (the "Board") for the applicable year.
- (5) This estimate is made pursuant to Rule 457(h) and Rule 457(c) of the Securities Act solely for purposes of calculating the registration fee, and is based on the price per share of Common Stock in the initial public offering of the Common Stock as set forth in the Registrant's prospectus filed with the Securities and Exchange Commission (the "Commission") on April 13, 2017 pursuant to Rule 424(b) under the Securities Act.
- (6) Represents 250,000 shares of Common Stock reserved for future grant under the 2017 ESPP. The 2017 ESPP provides that an additional number of shares will automatically be added to the shares authorized for issuance under the 2017 ESPP on January 1 of each calendar year, from January 1, 2018 through January 1, 2027. The number of shares of Common Stock added each year will be equal to the lesser of: (a) 1% of the total number of shares of capital stock outstanding on December 31 of the preceding calendar year; (b) 300,000 shares; or (c) a lesser number of shares of Common Stock as is determined by the Board that is less than (a) and (b).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

ITEM 1. PLAN INFORMATION.

Not required to be filed with this Registration Statement.

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.

Not required to be filed with this Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed by the Registrant with the Commission:

(a) The Registrant's prospectus filed on April 13, 2017 pursuant to Rule 424(b) under the Securities Act, relating to the registration statement on Form S-1 originally filed on March 9, 2017, as amended (File No. 333-216574), which contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed.

(b) The description of the Registrant's Common Stock contained in the Registrant's registration statement on Form 8-A filed on April 4, 2017 (File No. 001-38052) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of updating such description.

All documents, reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents; provided, however, that documents, reports and definitive proxy or information statements, or portions thereof, which are furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes that statement. Any such statement so modified or superseded shall not constitute a part of this Registration Statement, except as so modified or superseded.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any persons who were, are, or are threatened to be made, parties 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 such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as an officer, director, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who were, are, or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit; provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses (including attorneys' fees) actually and reasonably incurred.

The Registrant's amended and restated certificate of incorporation and amended and restated bylaws, each of which will become effective immediately prior to the closing of the Registrant's initial public offering, provide for the indemnification of its directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 102(b)(7) of the Delaware General Corporation Law 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 duties as a director, except for liability for any:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

The Registrant's amended and restated certificate of incorporation includes such a provision. Expenses incurred by any officer or director in defending any such action, suit or proceeding in advance of its final disposition shall be paid by the Registrant upon delivery to it of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Registrant.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director who willfully or negligently approves of an

unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved, or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

As permitted by the Delaware General Corporation Law, the Registrant has entered into indemnity agreements with each of its directors and executive officers, that require the Registrant to indemnify such persons against any and all costs and expenses (including attorneys', witness or other professional fees) actually and reasonably incurred by such persons in connection with any action, suit or proceeding (including derivative actions), whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or officer or is or was acting or serving as an officer, director, employee or agent of the Registrant or any of its affiliated enterprises, provided that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the Registrant's best interests and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

At present, there is no pending litigation or proceeding involving any of the Registrant's directors or executive officers as to which indemnification is required or permitted, and the Registrant is not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

The Registrant has an insurance policy in place that covers its officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act, or otherwise.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

<u>Exhibit Number</u>	<u>Description</u>
4.1(1)	Amended and Restated Certificate of Incorporation of the Registrant.
4.2(2)	Amended and Restated Bylaws of the Registrant.
4.3(3)	Form of Common Stock Certificate of the Registrant.
5.1	Opinion of Cooley LLP.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Cooley LLP. Reference is made to Exhibit 5.1.
24.1	Power of Attorney. Reference is made to the signature page hereto.
99.1(4)	Tocagen Inc. 2009 Equity Incentive Plan and Forms of Option Grant Notice, Option Agreement and Notice of Exercise thereunder, as amended.
99.2(5)	Tocagen Inc. 2017 Equity Incentive Plan and Forms of Stock Option Grant Notice, Option Agreement and Notice of Exercise thereunder.
99.3(6)	Tocagen Inc. 2017 Employee Stock Purchase Plan.
(1)	Previously filed as Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 (File No. 333-216574), originally filed with the Commission on March 9, 2017, as amended, and incorporated herein by reference.
(2)	Previously filed as Exhibit 3.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-216574), originally filed with the Commission on March 9, 2017, as amended, and incorporated herein by reference.
(3)	Previously filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-1 (File No. 333-216574), originally filed with the Commission on March 9, 2017, as amended, and incorporated herein by reference.
(4)	Previously filed as Exhibit 10.2 to the Registrant's Registration Statement on Form S-1 (File No. 333-216574), originally filed with the Commission on March 9, 2017, as amended, and incorporated herein by reference.
(5)	Previously filed as Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 (File No. 333-216574), originally filed with the Commission on March 9, 2017, as amended, and incorporated herein by reference.
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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 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)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-8, and 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; and

- (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 April 13, 2017.

TOCAGEN INC.

By: /s/ Martin J. Duvall
Martin J. Duvall
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Martin J. Duvall and Mark Foletta, and each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in his or her name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with 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 and about the premises, 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.

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>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Martin J. Duvall</u> Martin J. Duvall	Chief Executive Officer and Member of the Board of Directors <i>(Principal Executive Officer)</i>	April 13, 2017
<u>/s/ Mark Foletta</u> Mark Foletta	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	April 13, 2017
<u>/s/ Faheem Hasnain</u> Faheem Hasnain	Chairman of the Board of Directors	April 13, 2017
<u>/s/ Franklin M. Berger</u> Franklin M. Berger	Member of the Board of Directors	April 13, 2017
<u>/s/ Dennis N. Berman</u> Dennis N. Berman	Member of the Board of Directors	April 13, 2017
<u>/s/ Thomas E. Darcy</u> Thomas E. Darcy	Member of the Board of Directors	April 13, 2017
<u>/s/ Harry E. Gruber, M.D.</u> Harry E. Gruber, M.D.	Member of the Board of Directors	April 13, 2017
<u>/s/ Lori Kunkel, M.D.</u> Lori Kunkel, M.D.	Member of the Board of Directors	April 13, 2017
<u>/s/ David Parkinson, M.D.</u> David Parkinson, M.D.	Member of the Board of Directors	April 13, 2017
<u>/s/ Paul Schimmel, Ph.D.</u> Paul Schimmel, Ph.D.	Member of the Board of Directors	April 13, 2017

EXHIBIT INDEX

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Karen E. Deschaine
+1 858 550 6088
kdeschaine@cooley.com

April 13, 2017

Tocagen Inc.
3030 Bunker Hill Street, Suite 230
San Diego, CA 92109

Ladies and Gentlemen:

We have represented Tocagen Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission, covering the offering of up to an aggregate of 4,829,573 shares of the Company's Common Stock, \$0.001 par value (the "**Shares**"), including (i) 1,452,028 shares (the "**2009 Plan Shares**") reserved for issuance upon the exercise of options issued under the Company's 2009 Equity Incentive Plan, as amended (the "**2009 Plan**"), (ii) 3,127,545 shares (the "**2017 Plan Shares**") reserved for issuance pursuant to the Company's 2017 Equity Incentive Plan (the "**2017 Plan**"), and (iii) 250,000 shares (the "**ESPP Shares**") reserved for issuance pursuant to the Company's 2017 Employee Stock Purchase Plan (the "**ESPP**," and collectively with the 2009 Plan and the 2017 Plan, the "**Plans**").

In connection with this opinion, we have examined and relied upon the Registration Statement and the related prospectuses, the Company's Fifteenth Amended and Restated Certificate of Incorporation, as amended, and Bylaws, as currently in effect, its forms of Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws to be effective upon the closing of the Company's initial public offering, the Plans and such other documents, records, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as copies thereof.

Our opinion is expressed only with respect to the federal laws of the United States of America and the General Corporation Law of the State of Delaware. We express no opinion as to whether the laws of any particular jurisdiction other than those identified above are applicable to the subject matter hereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the 2009 Plan Shares, when sold and issued in accordance with the 2009 Plan, the 2017 Plan Shares, when sold and issued in accordance with the 2017 Plan, and the ESPP Shares, when sold and issued in accordance with the ESPP, and in each case when sold and issued in accordance with the Registration Statement and related prospectuses, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

4401 EASTGATE MALL, SAN DIEGO, CA 92121 T: (858) 550-6000 F: (858) 550-6420 WWW.COOLEY.COM



Tocagen Inc.
April 13, 2017
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We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

COOLEY LLP

By: /s/ Karen E. Deschaine
Karen E. Deschaine

4401 EASTGATE MALL, SAN DIEGO, CA 92121 T: (858) 550-6000 F: (858) 550-6420 WWW.COOLEY.COM

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2009 Equity Incentive Plan, the 2017 Equity Incentive Plan and the 2017 Employee Stock Purchase Plan of Tocagen Inc. of our report dated March 9, 2017 (except for paragraphs 3 through 7 in Note 14, as to which the date is March 31, 2017), with respect to the financial statements of Tocagen Inc. included in its Registration Statement (Form S-1 333-216574), filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Diego, California
April 13, 2017