

DYNAVAX TECHNOLOGIES CORP
Form S-8
June 01, 2016

As filed with the Securities and Exchange Commission on June 1, 2016

Registration No. 333 -

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

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

DYNAVAX TECHNOLOGIES CORPORATION
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State of Incorporation)

33-0728374
(I.R.S. Employer

Identification Number)
2929 Seventh Street, Suite 100

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Berkeley, CA 94710

(510) 848-5100

(Address, Including Zip Code, and Telephone Number,

Including Area Code, of Registrant's Principal Executive Offices)

Dynavax Technologies Corporation Amended and Restated 2011 Equity Incentive Plan

Dynavax Technologies Corporation Amended and Restated 2014 Employee Stock Purchase Plan

(Full Title of the Plan)

Michael Ostrach

Senior Vice President, Chief Financial Officer

Dynavax Technologies Corporation

2929 Seventh Street, Suite 100

Berkeley, CA 94710

(510) 848-5100

(Name, Address, Including Zip Code, and Telephone Number,

Including Area Code, of Agent for Service)

Copies to:

Glen Y. Sato, Esq.

Cooley LLP

3175 Hanover St.

Palo Alto, CA 94304

(650) 843-5000

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. (Check one):

Large accelerated filer Accelerated filer x
 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 ⁽²⁾ | Proposed maximum offering price per share ⁽³⁾ | Proposed maximum aggregate offering price | Amount of registration fee |
|---|--|---|--|-------------------------------|
| Common Stock, \$0.001 par value per share Amended and Restated 2011 Equity Incentive Plan, including related rights to purchase Series A Junior Participating Preferred Stock ⁽¹⁾ | 3,200,000 | \$15.71 | \$50,272,000 | \$5,062.39 |
| Amended and Restated 2014 Employee Stock Purchase Plan, including related rights to purchase Series A Junior Participating Preferred Stock ⁽¹⁾ | 200,000 | \$15.71 | \$3,142,000 | \$316.40 |
| Total | 3,400,000 | \$15.71 | \$53,414,000 | \$5,378.79 |

- (1) Each share of the Registrant's common stock, par value \$0.001 per share (Common Stock) being registered hereunder, if issued prior to the termination by the Registrant of its Rights Agreement, dated as of November 5, 2008, between the Registrant and the rights agent named therein, includes Series A Junior Participating Preferred Stock purchase rights (the Rights). Prior to the occurrence of certain events, the Rights will not be exercisable or evidenced separately from the Registrant's Common Stock and have no value except as reflected in the market price of the shares to which they are attached.
- (2) 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 the Registrant's Common Stock that become issuable under the Dynavax Technologies Corporation Amended and Restated 2011 Equity Incentive Plan (2011 Plan) or under the Dynavax Technologies Corporation Amended and Restated 2014 Employee Stock Purchase

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Plan (2014 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 the Registrant s Common Stock.

- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h)(1) of the Securities Act based on the average of the high (\$15.94) and low (\$15.48) sales prices for the Registrant s Common Stock reported by The NASDAQ Capital Market on May 27, 2016.

PART I

INFORMATION REQUIRED IN THE

SECTION 10(a) PROSPECTUS

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional (a) 3,200,000 shares of the Registrant's Common Stock reserved for issuance under the 2011 Plan, and (b) 200,000 shares of the Registrant's Common Stock reserved for issuance under the 2014 ESPP.

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

The contents of the Registration Statements on Form S-8 (File No. 333-171552, 333-190313, 333-197838 and 333-204506), filed with the Securities and Exchange Commission (the Commission) on January 6, 2011, August 1, 2013, August 4, 2014 and May 28, 2015, respectively, are incorporated by reference herein.

Item 8. Exhibits.

EXHIBITS

| Exhibit Number | Document | Exhibit Number | Incorporated by Reference | | | Filed Herewith |
|---------------------------|---|---------------------------|----------------------------------|--------------------|-----------------|---------------------------|
| | | | Filing | Filing Date | File No. | |
| 3.1 | Sixth Amended and Restated Certificate of Incorporation | 3.1 | S-1/A | February 5, 2004 | 333-109965 | |
| 3.2 | Amended and Restated Bylaws | 3.2 | S-1/A | February 5, 2004 | 333-109965 | |
| 3.3 | Form of Certificate of Designation of Series A Junior Participating Preferred Stock | 3.3 | 8-K | November 6, 2008 | 000-50577 | |
| 3.4 | Certificate of Amendment of Amended and Restated Certificate of Incorporation | 3.1 | 8-K | January 4, 2010 | 001-34207 | |
| 3.5 | Certificate of Amendment of Amended and Restated Certificate of Incorporation | 3.1 | 8-K | January 5, 2011 | 001-34207 | |
| 3.6 | Certificate of Amendment of Amended and Restated Certificate of Incorporation | 3.6 | 8-K | May 30, 2013 | 001-34207 | |
| 3.7 | Certificate of Amendment of the Sixth Amended and Restated Certificate of | 3.1 | 8-K | November 10, 2014 | 001-34207 | |

Incorporation

- 4.1 Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 above
- 4.2 Form of Specimen Common Stock Certificate 4.2 S-1/A January 16, 2004 333-109965

| Exhibit Number | Document | Incorporated by Reference | | | | Filed |
|---------------------------|---|----------------------------------|---------------|--------------------|-----------------|-----------------|
| | | Exhibit Number | Filing | Filing Date | File No. | Herewith |
| 4.3 | Rights Agreement dated as of November 5, 2008, by and between the Company and Mellon Investor Services LLC | 4.4 | 8-K | November 6, 2008 | 000-50577 | |
| 4.4 | Form of Right Certificate | 4.5 | 8-K | November 6, 2008 | 000-50577 | |
| 5.1 | Opinion of Cooley LLP | | | | | X |
| 23.1 | Consent of Independent Registered Public Accounting Firm | | | | | X |
| 23.2 | Consent of Cooley LLP (contained in Exhibit 5.1 to this Registration Statement) | | | | | |
| 24.1 | Power of Attorney (see Signature Page) | | | | | |
| 99.1 | Dynavax Technologies Corporation Amended and Restated 2011 Equity Incentive Plan | | | | | X |
| 99.2 | Form of Restricted Stock Unit Award Notice and Agreement used in connection with the 2011 Equity Incentive Plan | 99.2 | S-8 | January 6, 2011 | 333-171552 | |
| 99.3 | Form of Option Notice and Agreement used in connection with the 2011 Equity Incentive Plan | 99.3 | S-8 | January 6, 2011 | 333-171552 | |
| 99.4 | Dynavax Technologies Corporation Amended and Restated 2014 Employee Stock Purchase Plan | | | | | X |

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 Berkeley, State of California, on this 1st day of June, 2016.

DYNAVAX TECHNOLOGIES
CORPORATION

By: /s/ EDDIE GRAY
Eddie Gray
Chief Executive Officer
(*Principal Executive Officer*)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below does hereby constitute and appoint Eddie Gray and Michael Ostrach, and each of them, with full power of substitution and full power to act without the other, his true and lawful attorney-in-fact and agent to act for him 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, and to file this Registration Statement, 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 order to effectuate the same as fully, to all intents and purposes, as they or he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, 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/ EDDIE GRAY Eddie Gray | Chief Executive Officer and Director (<i>Principal Executive Officer</i>) | June 1, 2016 |
| /s/ MICHAEL OSTRACH Michael Ostrach | Senior Vice President, Chief Financial Officer (<i>Principal Financial Officer</i>) | June 1, 2016 |
| /s/ DAVID JOHNSON David Johnson | Vice President, Chief Accounting Officer (<i>Principal Accounting Officer</i>) | June 1, 2016 |
| /s/ ARNOLD L. ORONSKY, Ph.D. Arnold L. Oronsky, Ph.D. | Director | June 1, 2016 |
| /s/ LAURA BREGE Laura Brege | Director | June 1, 2016 |

/s/ FRANCIS R. CANO, Ph.D.
Francis R. Cano, Ph.D.

Director

June 1, 2016

| Signature | Title | Date |
|--|--------------|--------------|
| /s/ DENNIS A. CARSON, M.D. Dennis A. Carson, M.D. | Director | June 1, 2016 |
| /s/ DANIEL L. KISNER, M.D. Daniel L. Kisner, M.D. | Director | June 1, 2016 |
| /s/ PEGGY V. PHILLIPS Peggy V. Phillips | Director | June 1, 2016 |
| /s/ STANLEY A. PLOTKIN, M.D. Stanley A. Plotkin, M.D. | Director | June 1, 2016 |
| /s/ NATALE S. RICCIARDI Natale S. Ricciardi | Director | June 1, 2016 |

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