

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

*UNDER
THE SECURITIES ACT OF 1933*

EVOKE PHARMA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

20-8447886
(I.R.S. Employer
Identification No.)

420 Stevens Avenue, Suite 370
Solana Beach, CA 92075
(858) 345-1494

(Address of Principal Executive Offices)

**EVOKE PHARMA, INC. 2013 EQUITY INCENTIVE AWARD PLAN
EVOKE PHARMA, INC. 2013 EMPLOYEE STOCK PURCHASE PLAN**
(Full Title of the Plan)

David A. Gonyer, R.Ph.
Chief Executive Officer
Evoke Pharma, Inc.
420 Stevens Avenue, Suite 370
Solana Beach, CA 92075
(858) 345-1494

Copy to:

Cheston J. Larson, Esq.
Matthew T. Bush, Esq.
Anthony Gostanian, Esq.
Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
(858) 523-5400

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

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 | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input checked="" type="checkbox"/> | Smaller reporting company | <input checked="" type="checkbox"/> |
| | | Emerging growth company | <input type="checkbox"/> |

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 on Form S-8 (the “Registration Statement”) registers the offer and sale of an additional 810,000 shares of our common stock under the Evoke Pharma, Inc. 2013 Equity Incentive Award Plan (as amended and restated, the “2013 Plan”) and an additional 170,000 shares of our common stock under the Evoke Pharma, Inc. 2013 Employee Stock Purchase Plan (as amended and restated, the “ESPP”). In accordance with Instruction E to Form S-8, the contents of the prior registration statements (File Nos. 333-191518, 333-211302, 333-219960, and 333-224897) are hereby incorporated by reference.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the “Securities Act”). Such documents are not being filed with the Securities and Exchange Commission (the “SEC”) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

In this Registration Statement, Evoke Pharma, Inc. is sometimes referred to as “Registrant,” “we,” “us” or “our.”

Item 3. Incorporation of Documents by Reference.

The SEC allows us to “incorporate by reference” the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this Registration Statement, and later information filed with the SEC will update and supersede this information. We hereby incorporate by reference into this Registration Statement the following documents previously filed with the SEC:

- (a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 filed with the SEC on [March 21, 2023](#);
- (b) Our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2023 and June 30, 2023, filed with the SEC on [May 15, 2023](#) and [August 10, 2023](#), respectively;
- (c) Our Current Reports on Form 8-K filed with the SEC on [January 30, 2023](#), [February 13, 2023](#), [February 21, 2023](#), [March 23, 2023](#), [April 6, 2023](#), [April 20, 2023](#), [May 1, 2023](#), [May 9, 2023](#), [May 11, 2023](#), [May 26, 2023](#), and [July 21, 2023](#);
- (d) The description of our common stock set forth in our registration statement on Form 8-A (Registration No. 001-36075) filed with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on [September 17, 2013](#), including any amendments or reports filed for the purpose of updating such description.

All documents that we subsequently file pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to the Registration Statement which indicates that all of the shares of common stock offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents; except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under Item 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions. For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or 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. Under no circumstances will any information furnished

under Item 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

You should rely only on the information provided or incorporated by reference in this Registration Statement or any related prospectus. We have not authorized anyone to provide you with different information. You should not assume that the information in this Registration Statement or any related prospectus is accurate as of any date other than the date on the front of the document.

Item 8. Exhibits.

| Exhibit Number | Exhibit Description | Incorporated by Reference | | | | Filed Herewith |
|----------------|--|---------------------------|------------|------------|-------------|----------------|
| | | Form | File No. | Exhibit | Filing Date | |
| 3.1 | Amended and Restated Certificate of Incorporation | 8-K | 001-36003 | 3.1 | 9/30/2013 | |
| 3.2 | Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Company | 8-K | 001-36075 | 3.1 | 5/20/2022 | |
| 3.3 | Amended and Restated Bylaws | 8-K | 001-36003 | 3.2 | 9/30/2013 | |
| 4.3 | Specimen Common Stock Certificate | S-1/A | 333-188838 | 4.1 | 8/16/2013 | |
| 5.1 | Opinion of Latham & Watkins LLP | | | | | X |
| 10.1 | Evoke Pharma, Inc. 2013 Equity Incentive Award Plan, as amended and restated effective May 10, 2023 | DEF 14A | 001-36075 | Appendix A | 3/29/2023 | |
| 10.2 | Evoke Pharma, Inc. 2013 Employee Stock Purchase Plan, as amended and restated effective May 10, 2023 | DEF 14A | 001-36075 | Appendix B | 3/29/2023 | |
| 23.1 | Consent of BDO USA, LLP, independent registered public accounting firm | | | | | X |
| 23.2 | Consent of Latham & Watkins LLP (included in Exhibit 5.1) | | | | | X |
| 24.1 | Power of Attorney (see signature page) | | | | | X |
| 107.1 | Calculation of Filing Fee Table | | | | | X |

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 this 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 this 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 20% change in the maximum aggregate offering price set forth in the "Calculation of Filing Fee Tables" in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section 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 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;

(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; and

(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 this 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.

(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 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, 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 Solana Beach, State of California, on August 11, 2023.

EVOKE PHARMA, INC.

By: /s/ David A. Gonyer

David A. Gonyer, R.Ph.

Chief Executive Officer and Director

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints David A. Gonyer, R.Ph. and Matthew J. D'Onofrio, jointly and severally, his attorneys-in-fact, each with the full power of substitution, for him in any and all capacities, to sign this Registration Statement, and any amendments thereto (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the SEC, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|-----------------|
| <u>/s/ David A. Gonyer</u> David A. Gonyer, R.Ph. | Chief Executive Officer and Director (Principal Executive Officer) | August 11, 2023 |
| <u>/s/ Matthew J. D'Onofrio</u> Matthew J. D'Onofrio | President, Chief Operating Officer, Secretary and Treasurer (Principal Financial and Accounting Officer) | August 11, 2023 |
| <u>/s/ Cam L. Garner</u> Cam L. Garner | Chairman of the Board of Directors | August 11, 2023 |
| <u>/s/ Todd C. Brady</u> Todd C. Brady, M.D., Ph.D. | Director | August 11, 2023 |
| <u>/s/ Malcolm R. Hill</u> Malcolm R. Hill, Pharm.D. | Director | August 11, 2023 |
| <u>/s/ Vickie W. Reed</u> Vickie W. Reed | Director | August 11, 2023 |
| <u>/s/ Kenneth J. Widder</u> Kenneth J. Widder, M.D. | Director | August 11, 2023 |

LATHAM & WATKINS LLP

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FIRM / AFFILIATE OFFICES
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August 11, 2023

Evoke Pharma, Inc.
 420 Stevens Avenue, Suite 370
 Solana Beach, California 92075

Re: Registration Statement on Form S-8; 980,000 Shares of Common Stock, par value \$0.0001 per share

To the addressee set forth above:

We have acted as special counsel to Evoke Pharma, Inc., a Delaware corporation (the “**Company**”), in connection with the proposed issuance of an aggregate of 980,000 shares of common stock, \$0.0001 par value per share (the “**Shares**”), of the Company, pursuant to the Company’s 2013 Equity Incentive Award Plan (as amended and restated, the “**2013 Plan**”) and the Company’s 2013 Employee Stock Purchase Plan (as amended and restated, the “**ESPP**,” and together with the 2013 Plan, the “**Plans**”). The Shares are included in a registration statement on Form S-8 under the Securities Act of 1933, as amended (the “**Act**”), filed with the Securities and Exchange Commission (the “**Commission**”) on August 11, 2023 (the “**Registration Statement**”). 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, other than as expressly stated herein with respect to the issue 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, and we express no opinion with respect to any other laws.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as copies.

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 recipients, or certificates representing the Shares (in the form of the specimen certificate most recently filed as an exhibit to the Registration Statement) have been manually signed by an

LATHAM & WATKINS^{LLP}

authorized officer of the transfer agent and registrar therefor, and subject to the Company completing all actions and proceedings required on its part to be taken prior to the issuance of the Shares, and when the Shares have been issued by the Company in the circumstances contemplated by the Plans for legal consideration in excess of par value, the issuance 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 General Corporation Law of the State of Delaware.

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

Evoke Pharma, Inc.
Solana Beach, California

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 21, 2023, relating to the financial statements of Evoke Pharma, Inc. (the "Company"), appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2022. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, P.A.

San Diego, California
August 11, 2023

BDO USA, P.A., a Delaware professional service corporation, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.
BDO is the brand name for the BDO network and for each of the BDO Member Firms.

R-220 (7/23)

CALCULATION OF FILING FEE TABLE

Form S-8
(Form Type)Evoke Pharma, 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 (1) | Proposed Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|------------------------|----------------------|-----------------------------|-----------------------|--|----------------------------------|--------------------------|----------------------------|
| Equity | Common Stock | Rule 457(c) and Rule 457(h) | 810,000 (2) | \$1.44 (3) | \$1,166,400 (3) | \$110.20 per \$1,000,000 | \$128.54 |
| Equity | Common Stock | Rule 457(c) and Rule 457(h) | 170,000 (4) | \$1.44 (3) | \$244,800 (3) | \$110.20 per \$1,000,000 | \$26.98 |
| Total Offering Amounts | | | | | \$1,411,200 | | \$155.52 |
| Total Fee Offsets (5) | | | | | | | \$ - |
| Net Fee Due | | | | | | | \$155.52 |

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also registers an indeterminate number of additional shares that may be issued pursuant to the Evoke Pharma, Inc. 2013 Equity Incentive Award Plan (as amended and restated, the "2023 Plan") and the Evoke Pharma, Inc. 2013 Employee Stock Purchase Plan (as amended and restated, the "ESPP") as the result of any future stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of shares of our outstanding common stock.
- (2) Represents 810,000 shares of common stock available for future issuance under the 2013 Plan or that may become issuable under the 2013 Plan pursuant to its terms.
- (3) Estimated in accordance with Rules 457(c) and 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The maximum price per share and the maximum 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 Select Market on August 8, 2023, which date is within five business days prior to filing this Registration Statement.
- (4) Represents 170,000 shares of common stock available for future issuance under the ESPP or that may become issuable under the ESPP pursuant to its terms.
- (5) The Registrant does not have any fee offsets.

