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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

DIFFUSION PHARMACEUTICALS INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

30-0645032
(I.R.S. Employer Identification Number)

1317 Carlton Avenue
Suite 200
Charlottesville, VA 22902
(434) 220-0718

(Address, Including Zip Code, and Telephone Number, Including Area Code,
of Registrant's Principal Executive Offices)

**DIFFUSION PHARMACEUTICALS INC.
2015 EQUITY INCENTIVE PLAN, AS AMENDED**

INDUCEMENT STOCK OPTION AWARDS
(Full Title of Plans)

Robert J. Cobuzzi, Jr.
President and Chief Executive Officer
Diffusion Pharmaceuticals Inc.
1317 Carlton Avenue, Suite 200
Charlottesville, VA 22902
(434) 220-0718

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

With a Copy to:

William Elder, Esq
General Counsel and Corporate Secretary
Diffusion Pharmaceuticals Inc.
1317 Carlton Avenue, Suite 200
Charlottesville, VA 22902
(434) 220-0718

David S. Rosenthal, Esq.
Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or 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 Accelerated filer
 Non-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.

CALCULATION OF REGISTRATION FEE

Title of each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Diffusion Pharmaceuticals Inc. 2015 Equity Incentive Plan, as amended – Common Stock, \$0.001 par value per share (2)	2,326,313	\$0.88 (4)	\$2,041,691 (4)	\$222.75
Diffusion Pharmaceuticals Inc. 2015 Equity Incentive Plan, as amended – Common Stock, \$0.001 par value per share (3)	234,429	\$0.54 (5)	\$126,592 (5)	\$13.82
Inducement Stock Option Awards – Common Stock, \$0.001 par value per share (2) (6)	270,000	\$0.85 (4)	\$227,400 (4)	\$24.81
TOTAL	2,830,742		\$2,395,683	\$261.37

- (1) This Registration Statement relates to 2,830,742 shares of common stock, \$0.001 par value per share (“common stock”) of Diffusion Pharmaceuticals Inc. (the “Registrant”) not previously registered, including (i) 2,560,742 shares of common stock subject to awards outstanding or available for issuance under the Registrant’s 2015 Equity Incentive Plan, as amended (the “Plan,”) and (ii) 270,000 shares of common stock subject to certain outstanding inducement stock option awards granted in accordance with Nasdaq Listing Rule 5635(c)(4) (the “Inducement Awards”). Pursuant to Rule 416 of 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 which become issuable by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration or to prevent dilution.
- (2) Represents shares of the Registrant’s common stock not previously registered and subject to awards outstanding under the Plan or the Inducement Awards (the “Outstanding Awards”).
- (3) Represents shares of the Registrant’s common stock not previously registered and available for issuance under the Plan.
- (4) Calculated solely for purposes of determining the registration fee for this offering under Rule 457(h) of the Securities Act and based on the weighted average exercise price of the applicable Outstanding Awards.
- (5) Calculated solely for purposes of determining the registration fee for this offering under Rules 457(c) and (h) of the Securities Act on the basis of the average of the high and low selling price per share of the Registrant’s common stock on August 11, 2021, as reported by Nasdaq.
- (6) Consists of shares of common stock issuable pursuant to inducement stock option agreements entered into by the Registrant and certain of its executive officers in accordance with Nasdaq Listing Rule 5635(c)(4), including (i) 70,000 shares granted to William Elder, the Registrant’s General Counsel and Corporate Secretary, on September 22, 2020 and (ii) 200,000 shares granted to Christopher D. Galloway, the Registrant’s Chief Medical Officer, on October 19, 2020.

EXPLANATORY NOTE

This Registration Statement has been filed by the Registrant with the United States Securities and Exchange Commission (the “Commission”) to register (i) 2,560,742 additional shares of common stock (the “Plan Shares”) to be offered under the Plan, all of which are related to an automatic increase in the number of shares reserved for issuance under the Plan on January 1, 2021 pursuant to Section 4.1(a) and certain other provisions thereof, and (ii) 270,000 shares of common stock (the “Inducement Shares”) to be offered pursuant to individual inducement stock option awards.

This Registration Statement relates to securities of the same class as those that were previously registered by the Registrant on the Registrant's registration statements on Form S-8 filed with the Commission on each of August 14, 2015 (Registration No. 333-206408), May 17, 2017 (Registration No. 333-218060), August 10, 2018 (Registration No. 333-226782), August 20, 2019 (Registration No. 333-233381), and May 13, 2020 (Registration No. 333-238233) (collectively, the “Previous Registration Statements”). Pursuant to General Instruction E to Form S-8 regarding registration of additional securities, solely with respect to the Plan Shares, the entire contents of the Previous Registration Statements are hereby incorporated herein by reference.

PART I

INFORMATION REQUIRED IN SECTION 10(a) PROSPECTUS

Information required in Part I of Form S-8 to be contained in a prospectus meeting the requirements of Section 10(a) of the Securities Act is not required to be filed with the Commission and is omitted from this Registration Statement in accordance with the explanatory note to Part I of Form S-8 and Rule 428 under the Securities Act. The documents containing the information specified in Part I of Form S-8 will be sent or given to directors, officers, employees, and consultants as specified by Rule 428(b)(1) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Registrant hereby incorporates by reference herein the following documents previously filed with the Commission:

- (a) the Registrant's Annual Report on [Form 10-K](#) for the year ended December 31, 2020, filed with the Commission on March 17, 2021;
- (b) the Registrant's Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2021 and June 30, 2021, filed with the Commission on [May 7, 2021](#) and [August 11, 2021](#), respectively;
- (c) the Registrant's Current Reports on Form 8-K filed with the Commission on each of [January 26, 2021](#), [February 12, 2021](#), [February 16, 2021](#), [February 18, 2021](#), [March 18, 2021](#), [March 25, 2021](#), [May 7, 2021](#), [May 12, 2021](#), [June 29, 2021](#), and [June 30, 2021](#) (except for, in each case, any portion of the respective filings furnished, rather than filed, under the applicable Commission rules); and
- (d) the description of the Registrant's common stock included in its amended registration statement on [Form 8-A filed on November 8, 2016](#) under the Securities Exchange Act of 1934, as amended, and any amendment or report the Registrant may file with the SEC for the purpose of updating such description.

All documents subsequently filed by the Registrant 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 this Registration Statement that indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated herein by reference from the date of filing of such documents. Unless expressly incorporated into this registration statement, a report furnished but not filed on Form 8-K under the Exchange Act shall not be incorporated by reference into this registration statement. Any statement contained herein or 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 which also is incorporated or is deemed to be incorporated by reference herein modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this Registration Statement.

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 (“DGCL”) provides that a Delaware corporation may indemnify any persons who 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 was an officer, director, employee or agent of such corporation, or is or was serving at the request of such person 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 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 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 which such officer or director has actually and reasonably incurred. Article V of the Registrant’s restated certificate of incorporation provides for indemnification of its directors and officers, and Article X of its amended and restated bylaws provides for indemnification of its directors, officers, employees and other agents, to the maximum extent permitted by the DGCL. The Registrant has entered into indemnification agreements with its officers and directors. In addition, the Registrant maintains a policy providing directors’ and officers’ liability insurance.

Section 102 of the DGCL 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 breach of the director’s duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- for acts related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or
- for any transaction from which the director derived an improper personal benefit.

The Registrant’s restated certificate of incorporation and amended and restated bylaws include 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 the Registrant 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.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index, which is incorporated herein by reference.

Exhibit Number	Document
4.1	Certificate of Incorporation of Diffusion Pharmaceuticals Inc., as amended (incorporated by reference to Exhibit 3.1 to Diffusion Pharmaceuticals Inc.’s Form 10-K for the year ended December 31, 2019).
4.2	By-Laws of Diffusion Pharmaceuticals Inc., as amended (incorporated by reference to Exhibit 3.4 to Diffusion Pharmaceuticals Inc.’s Form 10-K for the year ended December 31, 2015).
4.3	Diffusion Pharmaceuticals Inc. 2015 Equity Incentive Plan (incorporated by reference to Appendix C to the Registrant’s Definitive Proxy Statement on Schedule 14A filed on June 10, 2016).
4.4	Amendment No. 1 to Diffusion Pharmaceuticals Inc. 2015 Equity Incentive Plan (incorporated by reference to Appendix B to the Registrant’s Definitive Proxy Statement on Schedule 14A filed on June 10, 2016).
4.5	Form of Stock Option Award Agreement (incorporated by reference to Exhibit 10.5 to the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2017).
4.6	Form of 2015 Non-Qualified Stock Option Award Agreement (incorporated by reference to Exhibit 10.8 to the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2016).
4.7	Form of 2015 Incentive Stock Option Award Agreement (incorporated by reference to Exhibit 10.5 to the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2016).
4.8	Form of Inducement Option Award Agreement.
5.1	Opinion of Dechert LLP (counsel to the Registrant) as to the legality of the securities being registered.
23.1	Consent of KPMG LLP.
23.2	Consent of Dechert LLP (included in its Opinion filed as Exhibit 5.1 hereto).
24.1	Powers of Attorney (included on signature page to this Registration Statement).

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 a prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent 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) above shall 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 Commission by the Registrant pursuant to Section 13 or 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.
- (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 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 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 on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Charlottesville, Commonwealth of Virginia, on this 12th day of August, 2021.

DIFFUSION PHARMACEUTICALS INC.

By: /s/ Robert J. Cobuzzi, Jr.
Robert J. Cobuzzi, Jr.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOWN TO ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert J. Cobuzzi, Jr., President and Chief Executive Officer of the Company, William K. Hornung, Chief Financial Officer of the Company, and William Elder, General Counsel and Corporate Secretary of the Company, or any of them, as his or her true and lawful attorneys-in-fact and agents, each of whom may act alone, with full powers of substitution and re-substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments to this Registration Statement, including post-effective amendments to this Registration Statement and registration statements filed pursuant to Rule 429 under the Securities Act, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the 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, and hereby ratifies and confirms all his or her said attorneys-in-fact and agents or any of them or his substitute or re-substitutes may lawfully do or cause to be done by virtue hereof.

This Power of Attorney may be executed in multiple counterparts, each of which shall be deemed an original, but which taken together shall constitute one instrument. Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Name and Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Robert J. Cobuzzi, Jr.</u> Robert J. Cobuzzi, Jr.	President, Chief Executive Officer and Director (Principal Executive Officer)	<u>August 12, 2021</u>
<u>/s/ William K. Hornung</u> William K. Hornung	Chief Financial Officer (Principal Financial and Accounting Officer)	<u>August 12, 2021</u>
<u>/s/ Jane H. Hollingsworth</u> Jane H. Hollingsworth	Chair of the Board of Directors	<u>August 12, 2021</u>
<u>/s/ Robert Adams</u> Robert Adams	Director	<u>August 12, 2021</u>
<u>/s/ Eric Francois</u> Eric Francois	Director	<u>August 12, 2021</u>
<u>/s/ Mark T. Giles</u> Mark T. Giles	Director	<u>August 12, 2021</u>
<u>/s/ Diana Lanchoney</u> Diana Lanchoney	Director	<u>August 12, 2021</u>
<u>/s/ Alan Levin</u> Alan Levin	Director	<u>August 12, 2021</u>

INDUCEMENT STOCK OPTION AGREEMENT

This INDUCEMENT STOCK OPTION AGREEMENT (this “**Agreement**”) is entered into and effective as of [•], 2021 (the “**Grant Date**”) by and between Diffusion Pharmaceuticals Inc., a Delaware corporation (the “**Company**”), and [•] (“**Optionee**”).

- A. The Company has adopted the Diffusion Pharmaceuticals Inc. 2015 Equity Incentive Plan (as such plan may be amended from time to time, the “**Plan**”) authorizing the Board of Directors (the “**Board**”) of the Company, or a committee as provided for in the Plan (the Board or such a committee to be referred to as the “**Committee**”), to grant stock options, among other incentive awards, to certain individuals, a copy of which is attached hereto as Exhibit A.
- B. As an inducement material to Optionee’s acceptance of employment with the Company in accordance with NASDAQ Listing Rule 5635(c)(4), the Company desires to grant a non-qualified stock option to purchase shares of common stock, par value \$0.001 per share, of the Company (the “**Common Stock**”) to Optionee outside of the Plan.
- C. Notwithstanding the foregoing, the Company and Optionee intend for this Agreement and the Option to be subject to all of the terms and conditions of the Plan as if the Option had been granted under the Plan.
- D. All of the capitalized terms used in this Agreement not otherwise defined in this Agreement have the same respective meanings as defined in the Plan.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the Company and Optionee agree as follows:

1. Grant of Option; Exercise Price. The Company hereby grants to Optionee, upon the terms and subject to the conditions set forth in this Agreement and the Plan, and effective as of the Grant Date, an option (the “**Option**”) to purchase all or any portion of [•] shares (the “**Option Shares**”) of the Company’s Common Stock, at an exercise price of \$[•] per share, which represents 100% of the Fair Market Value of a share of Common Stock on the Grant Date, as determined in accordance with the Plan (such exercise price, as adjusted from time to time pursuant to Section 5 of this Agreement and Section 4.3 of the Plan, the “**Exercise Price**”). The Option is intended to be an “incentive stock option,” as that term is used in Section 422 of the Internal Revenue Code of 1986, as amended (the “**Code**”).
 2. Vesting. The option will vest and become exercisable in 36 equal (or as nearly equal as possible) installments on the last calendar day of each month over a 36-month period beginning on [•].
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3. Exercise of Option.

3.1. Notice; Payment. Subject to the terms and conditions set forth in this Agreement, including vesting of the Option in Section 2 of this Agreement and termination of the Option in Section 4 of this Agreement, and the Plan, the Option may be exercised, in whole or in part, at any time and from time to time, by delivery to the Company of written notice of the exercise of the Option, in substantially the form as provided by the Company, stating the number of Option Shares being purchased (the "**Purchased Shares**"), and accompanied by payment in full of the total aggregate Exercise Price of the Purchased Shares. The Exercise Price shall be payable in full in any one of the following alternative forms:

- a) Full payment in cash, personal check or certified bank or cashier's check;
- b) Any broker assisted cashless exercise procedure which is acceptable to the Company;
- c) Cashless net exercise.

$$X = Y - [(A)(YB)]$$

Where: X = the number of shares of Common Stock to be issued to Optionee.

Y = the number of Purchased Shares.

A = the Exercise Price.

B = the Fair Market Value of one share of Common Stock on the date of exercise.

3.2. Issuance of Purchased Shares; No Fractional Shares. Following receipt of the exercise notice and the payment referred to above (or upon a cashless net exercise), Optionee shall receive the number of shares of Common Stock equal to a number (as determined below) of shares of Common Stock computed using the following formula: and the payment referred to above, the Company shall, as soon as reasonably practicable thereafter, cause certificates (or book-entry notations) representing the Purchased Shares (or such fewer number of Purchased Shares if a cashless net exercise is used) to be delivered to Optionee either at Optionee's address set forth in the records of the Company or at such other address as Optionee may designate in writing to the Company or issue and deposit the Purchased Shares for Optionee's benefit with any broker with which Optionee has an account relationship or the Company has engaged to provide such services under the Plan; provided, however, that the Company shall not be obligated to issue a fraction or fractions of a share otherwise issuable upon exercise of the Option, and may pay to Optionee, in cash or cash equivalent, the Fair Market Value of any such fraction or fractions of a share as of the date of exercise. If requested by the Company in connection with any exercise of the Option, Optionee shall also deliver this Agreement to the Company, which shall endorse hereon a notation of the exercise and, and if the Option is exercised in part, shall return this Agreement to Optionee. The date of exercise of an Option that is validly exercised shall be deemed to be the date on which there shall have been delivered to the Company the notice referred to in Section 3.1 of this Agreement and full payment of the Exercise Price of the Purchased Shares. Optionee shall not be deemed to be a holder of any Purchased Shares pursuant to exercise of the Option until the date of issuance of a stock certificate or book-entry notation to Optionee for such shares following payment in full for the Purchased Shares.

3.3. Tax Withholding. The Company is entitled to (a) withhold and deduct from future wages of Optionee (or from other amounts that may be due and owing to Optionee from the Company or a Subsidiary), or make other arrangements for the collection of, all amounts the Company reasonably determines are necessary to satisfy any and all federal, foreign, state and local withholding and employment related tax requirements attributable to the Option, including, without limitation, the grant, exercise or vesting of, the Option; (b) withhold cash paid or payable or shares of Common Stock from the shares issued or otherwise issuable to Optionee in connection with the Option; or (c) require Optionee promptly to remit the amount of such withholding to the Company before taking any action, including issuing any shares of Common Stock, with respect to the Option. Shares of Common Stock issued or otherwise issuable to Optionee in connection with the Option that gives rise to the tax withholding obligation that are withheld for purposes of satisfying Optionee's withholding or employment-related tax obligation will be valued at their Fair Market Value on the Tax Date.

3.4. Remaining Option Shares. Option Shares will no longer be outstanding under the Option (and will therefore not thereafter be exercisable) following the exercise of the Option to the extent of (a) shares used to pay the Exercise Price of an Option under the "cashless net exercise" method (b) shares actually delivered to Optionee as a result of such exercise and (c) any shares withheld for purposes of tax withholding.

4. Termination of Option.

4.1. Time of Termination. Except as provided in this Section 4 and Section 5 of this Agreement, the Option shall terminate, no longer be exercisable and expire at 5:00 p.m., Eastern Time, on [•] (the "**Time of Termination**").

4.2. Termination for Cause. In the event Optionee's employment (in the event that Optionee is an Employee) or other service (in the event that Optionee is a Consultant) with the Company and all Subsidiaries is terminated by the Company for Cause, the Option will immediately terminate without notice of any kind, and the Option will no longer be exercisable.

4.3. Termination Due to Death, Disability or Retirement . In the event Optionee's employment (in the event that Optionee is an Employee) or other service (in the event that Optionee is a Consultant) with the Company and all Subsidiaries is terminated by reason of Optionee's death, Disability or Retirement, the Option will remain exercisable, to the extent exercisable as of the date of such termination, for a period of one (1) year after such termination (but in no event after the Time of Termination).

4.4. Termination for Other Reasons. In the event Optionee's employment (in the event that Optionee is an Employee) or other service (in the event that Optionee is a Consultant) with the Company and all Subsidiaries is terminated for any other reason, the Option will, to the extent exercisable as of such termination, remain exercisable for a period of three (3) months after such termination (but in no event after the Time of Termination).

4.5. Effect of Actions Constituting Cause or Adverse Action. Notwithstanding anything in this Agreement to the contrary and in addition to the rights of the Committee under Sections 13.5 and 13.6 of the Plan, if Optionee is determined by the Committee, acting in its sole discretion, to have taken any action that would constitute Cause or an Adverse Action during or after the termination of employment or other service with the Company or a Subsidiary, irrespective of whether such action or the Committee's determination occurs before or after termination of Optionee's employment or other service with the Company or any Subsidiary and irrespective of whether or not Optionee was terminated as a result of such Cause or Adverse Action, (a) all rights of Optionee under the Option and this Agreement will terminate and be forfeited without notice of any kind, and (b) the Committee in its sole discretion will have the authority to rescind the exercise, vesting, settlement or issuance of, or payment in respect of, the Option that was exercised, vested, settled or issued, or as to which such payment was made, and to require Optionee to pay to the Company, within ten (10) days of receipt from the Company of notice of such rescission, any amount received or the amount of any gain realized as a result of such rescinded exercise, vesting, settlement, issuance or payment (including any dividends paid or other distributions made with respect to any shares of Common Stock subject to the Option). The Company may defer the exercise of the Option for a period of up to six (6) months after receipt of Optionee's written notice of exercise or the issuance of Purchased Shares upon the vesting of the Option for a period of up to six (6) months after the date of such vesting in order for the Committee to make any determination as to the existence of Cause or an Adverse Action. The Company will be entitled to withhold and deduct from future wages of Optionee (or from other amounts that may be due and owing to Optionee from the Company or a Subsidiary) or make other arrangements for the collection of all amounts necessary to satisfy such payment obligations. This Section 4.5 will not apply to the Option following a Change in Control.

4.6. Clawback/Forfeiture. The Option and Option Shares issued or issuable pursuant to the Option are subject to forfeiture or clawback by the Company to the extent required and allowed by law, including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the Sarbanes Oxley Act of 2002 and any implementing rules and regulations promulgated thereunder, and pursuant to any forfeiture, clawback or similar policy of the Company, as such laws, rules, regulations and policy may be in effect from time to time.

5. Adjustments. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, divestiture, or extraordinary dividend (including a spin-off), or any other similar change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation), will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) subject to, and the Exercise Price of, the Option in order to prevent dilution or enlargement of the rights of Optionee.

6. Change in Control. The Option shall become immediately vested and exercisable upon completion of a Change in Control and remain exercisable through the Time of Termination regardless of whether Optionee remains in the employment or service of the Company. Notwithstanding any of the foregoing, in connection with a Change in Control, the Committee, in its sole discretion, at any time after the grant of the Option, may take whatever action it deems appropriate pursuant to Section 15.3 of the Plan.
7. Rights as a Stockholder. Optionee will have no rights as a stockholder of the Company unless and until all conditions to the effective exercise of the Option (including, without limitation, the conditions set forth in Section 3 of this Agreement) have been satisfied and Optionee has become the holder of record of such shares. No adjustment will be made for dividends or distributions with respect to the Option as to which there is a record date preceding the date Optionee becomes the holder of record of such shares, except as may otherwise be provided in the Plan or determined by the Committee in its sole discretion.
8. Restrictions on Transfer. Except pursuant to testamentary will or the laws of descent and distribution or as otherwise expressly permitted by the Plan, no right or interest of Optionee in the Option prior to exercise may be assigned or transferred, or subjected to any lien, during the lifetime of Optionee, either voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise. Optionee, however, will be entitled to designate a beneficiary to receive the Option upon Optionee's death, and, in the event of Optionee's death, exercise of the Option (to the extent permitted pursuant to Sections 2 and 4 of this Agreement) may be made by Optionee's legal representatives, heirs and legatees.
9. Market Stand-off. Optionee, if so requested by the Company or any representative of the underwriters in connection with a firmly underwritten public offering of securities by the Company pursuant to a registration statement under the Securities Act following the date of this Agreement, shall not sell or otherwise transfer any Option Shares during the 180-day period following the effective date of such registration statement. The Company may impose stop-transfer instructions with respect to securities subject to the foregoing restriction until the end of such 180-day period. This Section 9 will not apply to the sale of any Option Shares to an underwriter pursuant to an underwriting agreement and shall only be applicable to Optionee if all then current executive officers and directors of the Company enter into similar agreements.
10. Employment or Service. Nothing in this Agreement or the Plan will interfere with or limit in any way the right of the Company or any Subsidiary to terminate the employment or service of Optionee at any time, nor confer upon Optionee any right to continue in the employment or other service with the Company or any Subsidiary.
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11. Option Subject to Plan. The Option and the Option Shares granted and issued pursuant to this Agreement have been granted and issued under, and are subject to the terms of, the Plan. The terms of the Plan are incorporated by reference in this Agreement in their entirety, and Optionee, by execution of this Agreement, acknowledges having received a copy of the Plan. The provisions of this Agreement will be interpreted as to be consistent with the Plan, and any ambiguities in this Agreement will be interpreted by reference to the Plan. In the event that any provision of this Agreement is inconsistent with the terms of the Plan, the terms of the Plan will prevail. All of the capitalized terms used in this Agreement not otherwise defined in this Agreement have the same respective meanings as defined in the Plan.

12. General Provisions.

12.1. Governing Law; Venue. This Agreement and all rights and obligations under this Agreement will be governed by and construed exclusively in accordance with the laws of the State of Delaware, notwithstanding the conflicts of laws principles of any jurisdictions. By acceptance of the Option, Optionee is deemed to submit to the exclusive jurisdiction and venue of the federal or state courts of the State of Illinois to resolve any and all issues that may arise out of or relate to the Option or this Agreement.

12.2. Entire Agreement. This Agreement and the Plan set forth the entire agreement and understanding of the parties to this Agreement with respect to the grant and exercise of the Option and the administration of the Plan and supersede all prior agreements, arrangements, plans, and understandings relating to the grant and exercise of the Option and the administration of the Plan.

12.3. Failure to Enforce Not a Waiver. The failure of the Company or Optionee to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of such provision or of any other provision hereof.

12.4. Notices. All notices, requests, demands and other communications (collectively, "**Notices**") given pursuant to this Agreement shall be in writing, and shall be delivered by personal service, courier, facsimile transmission, email transmission of a pdf format data file or by United States first class, registered or certified mail, postage prepaid, addressed to the party at the address set forth on the signature page of this Agreement. Any Notice, other than a Notice sent by registered or certified mail, shall be effective when received; a Notice sent by registered or certified mail, postage prepaid return receipt requested, shall be effective on the earlier of when received or the third day following deposit in the United States mails. Any party may from time to time change its address for further Notices hereunder by giving notice to the other party in the manner prescribed in this Section 12.4.

12.5. Successors and Assigns. Except to the extent specifically limited by the terms and provision of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and personal representatives.

12.6. Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by email delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original thereof.

12.7. Titles, Captions and Sections. Titles and captions contained in this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement for any other purpose. References to Sections in this Agreement refer to Sections of this Agreement unless otherwise stated.

12.8. Nature of the Grant. In accepting the Option and by execution of this Agreement, Optionee acknowledges that:

- a) The Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended, or terminated by the Company in its sole discretion at any time, unless otherwise provided in the Plan.
 - b) The grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future Option grants, or benefits in lieu of Option grants, even if Option grants have been granted repeatedly in the past.
 - c) All decisions with respect to future Option grants, if any, will be at the sole discretion of the Company.
 - d) Optionee is voluntarily participating in the Plan.
 - e) The Option grant is not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments and in no event shall be considered as compensation for, or relating in any way to, past services for the Company.
 - f) In the event that Optionee is not an employee of the Company, the Option will not be interpreted to form an employment contract or relationship with the Company.
 - g) The future value of the Common Stock is unknown and cannot be predicted with certainty and if the Option vests and Optionee exercises the Option in accordance with the terms of this Agreement and is issued Purchased Shares, the value of those shares may increase or decrease.
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- h) In consideration of the grant of the Option, no claim or entitlement to compensation or damages shall arise from termination of the Option or diminution in value of the Option or Purchased Shares acquired upon exercise of the Option resulting from termination of Optionee's employment or service by the Company (for any reason whatsoever and whether or not in breach of local labor laws) and Optionee irrevocably releases the Company and its Subsidiaries, and their respective directors, officers, employees and agents, from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then, by acceptance of the Option and execution of this Agreement, Optionee shall be deemed irrevocably to have waived his or her entitlement to pursue such claim.
- i) The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding Optionee's participation in the Plan, or Optionee's purchase or sale of the underlying Option Shares.
- j) Optionee is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan or the Option.

13. Inducement Stock Option Award. The Company and Optionee acknowledge and agree the grant of the Option is an inducement material to Optionee's acceptance of employment with the Company in accordance with NASDAQ Listing Rule 5635(c)(4).

14. 2015 Equity Incentive Plan. The Company and Optionee acknowledge and agree that (i) the Option is granted outside of the Plan, (ii) notwithstanding the foregoing, the Option is subject to all of the terms and conditions as set forth in the Plan as if it had been granted thereunder, and (iii) accordingly, the terms and conditions of the Plan (a copy of which is attached hereto as Exhibit A) are incorporated herein by reference in their entirety. If there is any conflict between the terms in this Agreement and the Plan, the terms of the Plan will control.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement effective as of the Grant Date.

OPTIONEE:

DIFFUSION PHARMACEUTICALS INC.

Name: [•]

By:

Title:

Address: 1317 Carlton Avenue, Suite 200

Charlottesville, VA 22902

By execution of this Agreement, Optionee acknowledges receipt of, and understands and agrees to, the terms and conditions of the Plan.

EXHIBIT A

Diffusion Pharmaceuticals Inc. 2015 Equity Incentive Plan

[Attached]



1095 Avenue of the Americas
New York, NY 10036-6797
+1 212 698 3500 Main
+1 212 698 3599 Fax
www.dechert.com

August 12, 2021

Diffusion Pharmaceuticals Inc.
1317 Carlton Avenue, Suite 200
Charlottesville, VA 22902

Re: REGISTRATION STATEMENT ON FORM S-8

Ladies and Gentlemen:

We have acted as counsel to Diffusion Pharmaceuticals Inc., a Delaware corporation (the "Company"), in connection with the filing with the Securities and Exchange Commission (the "Commission") of a registration statement on Form S-8 (the "Registration Statement") for the purpose of registering under the Securities Act of 1933, as amended (the "Securities Act"), 2,560,742 shares (the "Plan Shares") of its common stock, par value \$0.001 per share (the "Common Stock"), issuable under the Diffusion Pharmaceuticals Inc. 2015 Equity Incentive Plan, as amended (the "Plan"), and 270,000 shares of Common Stock (the "Inducement Shares", and together with the Plan Shares, the "Shares"), granted pursuant to certain inducement grant agreements (the "Inducement Grant Agreements") in accordance with Nasdaq Listing Rule 5635(c)(4).

This opinion (the "Opinion") is being furnished to the Company in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities 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 Shares.

In connection with this Opinion, we have examined originals or copies (in each case signed, certified or otherwise proven to our satisfaction to be genuine) of: (i) the Plan; (ii) the form of Inducement Grant Agreement; (iii) the Company's Certificate of Incorporation, as amended (the "Charter"); (iv) the Bylaws of the Company, as amended; and (v) resolutions approving the corporate action of the Company authorizing the issuance and sale of the Shares.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as original documents, and the conformity to original documents of all documents submitted to us as copies, the legal capacity of natural persons who are signatories to the documents examined by us and the legal power and authority of all persons signing on behalf of parties (other than the Company) to all documents.

In rendering the opinion expressed below, we have assumed that prior to the issuance of any of the Shares, there will exist under the Charter the requisite number of authorized but unissued shares of common stock. In addition, we have assumed (i) the resolutions authorizing the Company to issue the Shares in accordance with the terms and conditions of the Plan or the Inducement Grant Agreements, as the case may be, will remain in effect and unchanged at all times during which the Shares are issued by the Company, and (ii) the Registration Statement, and any amendments thereto, at the time of issuance of the Shares, will continue to be effective under the Securities Act.

Subject to the foregoing and the other matters set forth herein, it is our opinion that 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 holder and have been issued by the Company against payment therefor (not less than par value) in the circumstances contemplated by the Plan or the Inducement Grant Agreements, as the case may be, assuming in each case that the individual issuances, grants or awards under the Plan or the Inducement Grant Agreements, as the case may be are duly issued, granted or awarded and exercised in accordance with the requirements of law and the Plan (and the agreements and awards duly adopted thereunder and in accordance therewith) or the Inducement Grant Agreements, as the case may be, 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 non-assessable.

We are members of the Bar of the State of New York and the foregoing Opinion is limited to the General Corporation Law of the State of Delaware.

We hereby consent to the filing of this Opinion as an exhibit to the Registration Statement. In giving this consent, we do not 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 thereunder.

Very truly yours,

/s/ Dechert LLP

Dechert LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Diffusion Pharmaceuticals Inc.:

We consent to the use of our report dated March 16, 2021, with respect to the consolidated financial statements of Diffusion Pharmaceuticals Inc., incorporated herein by reference.

/s/ KPMG LLP

McLean, Virginia
August 11, 2021