

ARDELYX, INC.
Form S-8
November 10, 2016

As filed with the Securities and Exchange Commission on November 9, 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

Ardelyx, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

26-1303944
(I.R.S. Employer
Identification Number)
34175 Ardenwood Blvd., Suite 200

Edgar Filing: ARDELYX, INC. - Form S-8

Fremont, CA 94555

(510) 745-1700

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Ardelyx, Inc. 2016 Employment Commencement Incentive Plan

(Full Title of the Plan)

Michael Raab

President and Chief Executive Officer

Ardelyx, Inc.

34175 Ardenwood Blvd., Suite 200

Fremont, CA 94555

(510) 745-1700

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

Copies to:

**Mark V. Roeder, Esq.
Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Telephone: (650) 328-4600
Facsimile: (650) 463-2600**

**Elizabeth Grammer, Esq.
Senior Vice President, General Counsel
Ardelyx, Inc.
34175 Ardenwood Blvd., Suite 200
Fremont, CA 94555
Telephone: (510) 745-1700**

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.

Large accelerated filer Accelerated filer
 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(1) | Proposed Maximum Offering Price Per Share(2) | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee |
|---|-----------------------------------|---|---|-----------------------------------|
| Common Stock, par value \$0.0001 per share | 1,000,000 shares | \$11.65 | \$11,650,000 | \$1,350.24 |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement (this Registration Statement) shall also cover any additional shares of common stock, par value \$0.0001 per share, of Ardelyx, Inc. (Common Stock) which become issuable under the Ardelyx, Inc. 2016 Employment Commencement Incentive Plan (the Inducement Plan) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of shares of the Registrant's outstanding Common Stock.
- (2) The proposed maximum offering price per share has been estimated in accordance with Rules 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee. The computation is based upon the average of the high and low prices of the Registrant's Common Stock as reported on the NASDAQ Stock Market on November 3, 2016.

This Registration Statement will become effective upon filing in accordance with Rule 462 under the Securities Act.

Proposed sales to take place as soon after the effective date of the Registration Statement as awards under the above named plan are granted, exercised and/or distributed.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The Registrant will send or give the documents containing the information specified in Part I of Form S-8 to Inducement Plan participants as specified by Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the SEC) under the Securities Act. The Registrant is not required to file these documents with the SEC either as a part of the Registration Statement or as prospectuses or prospectus supplements under Rule 424 of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

In this Registration Statement, Ardelyx, 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 to those documents. The information incorporated by reference herein 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, 2015, as filed with the SEC on March 4, 2016 (File No. 001-36485);
 - (b) The information specifically incorporated by reference into our Annual Report on Form 10-K for the fiscal year ended December 31, 2015 from our Definitive Proxy Statement on Schedule 14A, filed with the SEC on April 22, 2016 (File No. 001-36485);
 - (c) Our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2016, June 30, 2016 and September 30, 2016, filed with the SEC on May 9, 2016, August 8, 2016 and November 7, 2016, respectively (File No. 001-36485);
 - (d) Our Current Reports on Form 8-K, as filed with the SEC on January 6, 2016 (at 4:46 PM Eastern time), January 13, 2016, April 22, 2016, June 3, 2016, June 7, 2016, June 22, 2016 and July 20, 2016 (File No. 001-36485); and
 - (e) The description of our Common Stock contained in our registration statement on Form 8-A (File No. 001-36485), filed with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), on June 9, 2014, including any amendments or reports filed for the purpose of updating such description.
- All documents that we file pursuant to Sections 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 to the Registration Statement which

indicates that all securities offered hereby have been sold or which deregisters all of such securities 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 any current or future items of Form 8-K (including current Items 2.02 and 7.01, and exhibits furnished on such form that relate to such items), in each case, 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.

II-1

Under no circumstances will any information furnished under Items 2.02 or 7.01 of Form 8-K, and exhibits furnished on such form that relate to such items, be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

As permitted by Section 102 of the Delaware General Corporation Law, we have adopted provisions in our amended and restated certificate of incorporation and bylaws that limit or eliminate the personal liability of our directors for a breach of their fiduciary duties of care as directors. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

any breach of the director's duty of loyalty to us or our stockholders;

any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;

any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or

any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. Our amended and restated certificate of incorporation also authorizes us to indemnify our officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws provide that:

we may indemnify our directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions;

we may advance expenses to our directors, officers and employees in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and

the rights provided in our amended and restated bylaws are not exclusive.

Our amended and restated certificate of incorporation and our amended and restated bylaws provide for the indemnification provisions described above and elsewhere herein. We have also entered into separate indemnification agreements with our directors and officers which may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our officers and directors against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. In addition, we have purchased a policy of directors and officers liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment in some circumstances. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of our officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made under this Item 8 to the Exhibit Index included in this Registration Statement.

Item 9. Undertakings.

(a) The 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 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 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 periodic 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.

(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 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 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 Fremont, California, on November 9, 2016.

ARDELYX, INC.

By: /s/ Michael Raab

Name: Michael Raab

Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below hereby constitutes and appoints Michael Raab and Mark Kaufmann, and each of them, as attorneys-in-fact, each with full power of substitution and full power to act without the other, for him or her and in his or her 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 the same, with all exhibits thereto and all 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, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents or any of them, 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.

| Signature | Title | Date |
|---------------------------|---|---------------------|
| /s/ Michael Raab | President, Chief Executive Officer and Director | November 9, 2016 |
| Michael Raab | <i>(principal executive officer)</i> | |
| /s/ Mark Kaufmann | Chief Financial Officer | November 9, 2016 |
| Mark Kaufmann | <i>(principal accounting and financial officer)</i> | |
| /s/ David Mott | Chairman of the Board of Directors | November 9, 2016 |
| David Mott | | |
| /s/ Robert Bazemore | Director | November 9, 2016 |
| Robert Bazemore | | |
| /s/ William Bertrand, Jr. | Director | |

| | | |
|------------------------------|----------|---------------------|
| William Bertrand, Jr. | | November 9, 2016 |
| /s/ Annalisa Jenkins | Director | November 9, 2016 |
| Annalisa Jenkins, MBBS, MRCP | | |
| /s/ Gordon Ringold | Director | November 9, 2016 |
| Gordon Ringold, Ph.D. | | |
| /s/ Richard Rodgers | Director | November 9, 2016 |
| Richard Rodgers | | |

EXHIBIT INDEX

| Exhibit Number | Exhibit Description | Incorporated by Reference | | | Filed Herewith |
|-------------------|---|---------------------------|---------------|-------------------|-------------------|
| | | Form | Date | Exhibit Number | |
| 4.1 | Amended and Restated Certificate of Incorporation. | 8-K | June 24, 2014 | 3.1 | |
| 4.2 | Amended and Restated Bylaws. | 8-K | June 24, 2014 | 3.2 | |
| 4.3 | Form of Common Stock Certificate. | S-1/A | June 18, 2014 | 4.2 | |
| 5.1 | Opinion of Latham & Watkins LLP. | | | | X |
| 23.1 | Consent of Independent Registered Public Accounting Firm. | | | | X |
| 23.2 | Consent of Latham & Watkins LLP (included in Exhibit 5.1). | | | | X |
| 24.1 | Power of Attorney (included on signature page hereto). | | | | X |
| 99.1(#) | Ardelyx, Inc. 2016 Employment Commencement Incentive Plan. | | | | X |
| 99.2(#) | Form of Stock Option Grant Notice and Stock Option Agreement under the 2016 Employment Commencement Incentive Plan. | | | | X |
| 99.3(#) | Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the 2016 Employment Commencement Incentive Plan. | | | | X |
| 99.4(#) | Form of Restricted Stock Award Grant Notice and Restricted Stock Award Agreement under the 2016 Employment Commencement Incentive Plan. | | | | X |

Indicates management contract or compensatory plan.