

INSMED Inc  
Form S-8  
May 28, 2015

As filed with the Securities and Exchange Commission on May 28, 2015

Registration No. 333-

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

## INSMED INCORPORATED

(Exact name of registrant as specified in its charter)

**Virginia**

(State or other jurisdiction of incorporation or  
organization)

**54-1972729**

(I.R.S. Employer Identification No.)

**10 Finderne Avenue, Building 10  
Bridgewater, New Jersey 08807**

(Address of Principal Executive Offices)

**Insmed Incorporated 2015 Incentive Plan**

**Insmed Incorporated Non-Qualified Stock Option Inducement Awards**

(Full title of the plans)

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Andrew T. Drechsler

Insmed Incorporated  
Chief Financial Officer

10 Finderne Avenue, Building 10

Bridgewater, New Jersey 08807

(908) 977-9900

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

Copies of all communications, including all communications sent to the agent for service, should be sent to:

Andrew P. Gilbert, Esq.

DLA Piper LLP (US)

51 John F. Kennedy Parkway

Short Hills, New Jersey 07078

(973) 520-2553

Christine Pellizzari, Esq.

General Counsel and Corporate Secretary

10 Finderne Avenue, Building 10

Bridgewater, New Jersey 08807

(908) 977-9900

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 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  Smaller reporting company   
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.01 per share (2)	5,000,000	\$ 22.32(3)\$	111,600,000(3)\$	12,968
Common Stock, par value \$0.01 per share (4)	227,000	\$ 18.14(5)\$	4,117,780(5)\$	478

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers such indeterminable number of additional shares of the Registrant's Common Stock as may become issuable to prevent dilution in the event of stock splits, stock dividends, or similar transactions.
- (2) Insmed Incorporated 2015 Incentive Plan.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act, based upon the average of the high and low prices of the Registrant's Common Stock on the NASDAQ Global Select Market on May 26, 2015.

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- (4) Insmmed Incorporated Non-Qualified Stock Option Inducement Awards granted to new employees since January 1, 2015.
  - (5) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act, based upon the weighted average exercise price at which the stock options may be exercised.
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**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is filed by Insmmed Incorporated (the Registrant), relating to up to 5,000,000 shares of its common stock, par value \$0.01 per share (Common Stock), issuable to eligible employees, non-employee directors and other non-employee advisors or service providers of the Registrant and its affiliates under the Insmmed Incorporated 2015 Incentive Plan.

This Registration Statement also relates to 227,000 shares of Common Stock issuable pursuant to stock option awards granted to new employees since January 1, 2015. These stock options are inducement awards in connection with the recipients' commencement of employment with the Registrant.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

Not filed as part of this Registration Statement pursuant to the Note to Part I of Form S-8.

**Item 2. Registrant Information and Employee Plan Annual Information.**

Not filed as part of this Registration Statement pursuant to the Note to Part I of Form S-8.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

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The following documents, which have previously been filed by the Registrant with the Securities and Exchange Commission (the Commission), are incorporated by reference herein and shall be deemed to be a part hereof:

- (1) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2014, filed on February 27, 2015 (including the amendment filed March 30, 2015, and portions of the Registrant's Proxy Statement on Schedule 14A, filed on April 15, 2015, both incorporated by reference therein);
- (2) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, filed with the Commission on May 7, 2015;
- (3) The Registrant's Current Reports on Form 8-K filed with the Commission on January 5, 2015, March 31, 2015, April 6, 2015, and May 21, 2015; and
- (4) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A, filed with the Commission on June 1, 2000, including any amendments or reports filed for the purpose of updating such description.

In addition, all reports and other documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment hereto, which indicates that all securities offered hereunder have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents, provided, however, that the Registrant is not incorporating by reference any information furnished (but not filed) under Item 2.02 or Item 7.01 of any Current Report on Form 8-K.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a 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 Virginia Stock Corporation Act (the "VSCA") permits, and the Registrant's Articles of Incorporation require, indemnification of the Registrant's directors and officers in a variety of circumstances, which may include indemnification for liabilities under the Securities Act. Under Sections 13.1-697 and 13.1-702 of the VSCA, a Virginia corporation is generally authorized to indemnify its directors and officers in civil or criminal actions if they acted in good faith and believed their conduct to be in the best interests of the corporation and, in the case of criminal actions, had no reasonable cause to believe that the conduct was unlawful. The Registrant's Articles of Incorporation require indemnification of directors and officers with respect to certain liabilities, expenses and other amounts imposed upon them because of having been a director or officer, except in the case of willful misconduct or a knowing violation of criminal law.

Section 13.1-692.1 of the VSCA presently permits, if authorized in a Virginia corporation's articles of incorporation or shareholder-approved bylaws, the elimination of liability of directors and officers in any proceeding brought by or in the right of a corporation or brought by or on behalf of shareholders of a corporation, except for liability resulting from such person's having engaged in willful misconduct or a knowing violation of the criminal law or any federal or state securities law, including, without limitation, any unlawful insider trading or manipulation of the market for any security. As permitted by the VSCA, the Registrant's Articles of Incorporation provide that no director or officer of the Registrant shall be liable to the Registrant or the Registrant's shareholders for monetary damages with respect to any transaction, occurrence or course of conduct, except for liability resulting from such person's having engaged in willful misconduct or a knowing violation of the criminal law or any federal or state securities law. Sections 13.1-692.1 and 13.1-696 to -704 of the VSCA are hereby incorporated by reference herein.

In addition, certain directors and officers have been granted contractual indemnification rights, pursuant to which they will be entitled to indemnification from the Registrant under certain circumstances. The Registrant also carries insurance on behalf of directors, officers, employees or agents that may cover liabilities under the Securities Act.

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The employment agreements entered into between the Registrant and the Registrant's executives also provide for indemnification to the fullest extent permitted by law (subject to any limitations imposed by law) from and against any and all claims, damages, expenses, judgments, penalties, fines, settlements, and all other liabilities incurred or paid by the executive in connection with the investigation, defense, prosecution, settlement or appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and to which the executive was or is a party or is threatened to be made a party by reason of the fact that the executive is or was an officer, employee or agent of the Registrant, or by reason of anything done or not done by the executive in any such capacity or capacities, provided that the executive acted in good faith, in a manner that was not grossly negligent or constituted willful misconduct and in a manner he reasonably believed to be in or not opposed to the best interests of the Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Unless otherwise indicated below as being incorporated by reference to another filing of the Registrant with the Commission, each of the following exhibits is filed herewith:

<b>Exhibit No.</b>	<b>Exhibit Description</b>
4.1	Articles of Incorporation of Insmmed Incorporated, as amended through June 14, 2012 (previously filed as Exhibit 3.1 to the Registrant's Annual Report on Form 10-K filed on March 18, 2013 and incorporated herein by reference).
4.2	Amended and Restated Bylaws of Insmmed Incorporated (previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on March 9, 2012 and incorporated herein by reference).
4.3	Specimen stock certificate representing common stock, \$0.01 par value per share, of the Registrant (previously filed as Exhibit 4.2 to the Registrant's Registration Statement on Form S-4/A (Registration No. 333-30098) filed on March 24, 2000 and incorporated herein by reference).
5.1*	Legal Opinion of DLA Piper LLP (US).
23.1	Consent of DLA Piper LLP (US) (included in Exhibit 5.1).
23.2*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included on signature page hereto).
99.1*	Insmmed Incorporated 2015 Incentive Plan.
99.2*	Form of Insmmed Incorporated Non-Qualified Stock Option Inducement Award Agreement.

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\* Filed herewith.

**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;



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(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 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; and

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

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement;

(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 the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, 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 Bridgewater, State of New Jersey, on this 28th day of May, 2015.

**INSMED INCORPORATED**

By: */s/ Andrew T. Drechsler*  
Andrew T. Drechsler  
Chief Financial Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints William H. Lewis and Andrew T. Drechsler, and each of them, his or her true and lawful attorney-in-fact and agent, each with full power of substitution and resubstitution, 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 any registration statement relating to the offering covered by this Registration Statement and filed pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully so or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ William H. Lewis William H. Lewis	President and Chief Executive Officer ( <i>Principal Executive Officer</i> ); Director	May 28, 2015
/s/ Andrew T. Drechsler Andrew T. Drechsler	Chief Financial Officer ( <i>Principal Financial Officer and Principal Accounting Officer</i> )	May 28, 2015
/s/ Donald J. Hayden, Jr. Donald J. Hayden, Jr.	Chairman of the Board of Directors	May 28, 2015
/s/ Alfred F. Altomari Alfred F. Altomari	Director	May 28, 2015
/s/ David R. Brennan David R. Brennan	Director	May 28, 2015
/s/ Steinar J. Engelsen, M.D. Steinar J. Engelsen, M.D.	Director	May 28, 2015
/s/ David W.J. McGirr David W.J. McGirr	Director	May 28, 2015
/s/ Myrtle Potter Myrtle Potter	Director	May 28, 2015
/s/ Melvin Sharoky, M.D. Melvin Sharoky, M.D.	Director	May 28, 2015

**EXHIBIT INDEX**

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