

EAGLE PHARMACEUTICALS, INC.

Form 10-K/A

November 30, 2016

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K/A**

Amendment No. 2

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2015

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number 001-36306

## Eagle Pharmaceuticals, Inc.

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**2834**  
(Primary Standard Industrial  
Classification Code Number)

**20-8179278**  
(I.R.S. Employer  
Identification Number)

**50 Tice Boulevard, Suite 315**

**Woodcliff Lake, NJ 07677**

**(201) 326-5300**

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a

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smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of voting common stock held by non-affiliates of the registrant was approximately \$739,767,440 computed by reference to the last reported sale price of \$80.86 per share as reported by The NASDAQ Global Market, as of the last business day of the registrant's most recently completed second fiscal quarter, June 30, 2015. This calculation does not reflect a determination that certain persons are affiliates of the registrant for any other purpose.

The number of shares outstanding of the registrant's common stock, \$0.001 par value per share, as of April 15, 2016 was 15,636,387 shares.

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**EXPLANATORY NOTE**

Eagle Pharmaceuticals, Inc. (the Company, we, our, and us ) is filing this Amendment No. 2 to Annual Report on Form 10-K/A (this Amendment No. 2 ) to amend its Annual Report on Form 10-K for the fiscal year ended December 31, 2015, as originally filed with the U.S. Securities and Exchange Commission (the SEC ) on February 29, 2016 (the Original Form 10-K ), and amended by Amendment No. 1 on Form 10-K/A ( Amendment No. 1 ), filed with the SEC on April 29, 2016, solely to refile Exhibit 10.23 and Exhibit 10.24 to the Original Form 10-K in response to comments received from the SEC regarding a confidential treatment request submitted to the SEC with respect to certain portions of Exhibit 10.23 and Exhibit 10.24 of Item 15 of Part IV of the Original Form 10-K, which is hereby amended to include revised redacted versions of Exhibit 10.23 and Exhibit 10.24.

Except as described above, no other changes have been made to the Original Form 10-K. This Amendment No. 2 speaks as of the filing date of the Original Form 10-K and does not reflect events occurring after the filing date of the Original Form 10-K or modify or update any of the other information contained in the Original Form 10-K in any way other than as required to reflect the amendment discussed above. Accordingly, this Amendment No. 2 should be read in conjunction with the Original Form 10-K, as amended by Amendment No. 1, and the Company's filings made with the SEC subsequent to the filing of the Original Form 10-K, including any amendments to such filings. As required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, (the Exchange Act ), new certifications by the registrant's principal executive officer and principal financial officer are filed as exhibits to this Amendment No. 2.

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**EAGLE PHARMACEUTICALS, INC.**

**ANNUAL REPORT ON FORM 10-K**

**For the fiscal year ended December 31, 2015**

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**Part IV**

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| <u>Item 15.</u> | <u>Exhibits and Financial Statement Schedules</u> | 3 |
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**Part IV**

**Item 15. Exhibits and Financial Statement Schedules.**

The following documents are filed as part of this Amendment No. 2 to the Annual Report on Form 10-K/A or as part of our Annual Report on Form 10-K filed with the SEC on February 29, 2016.

**(a) Documents filed as part of this report.**

The following documents are filed as part of this report:

**1. Exhibits**

The exhibits listed in the accompanying index to exhibits are filed as part of, or incorporated by reference into, this report.

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**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 2 to the registrant's Annual Report on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized, in Woodcliff Lake, Bergen County, State of New Jersey, on this 30th day of November 2016.

**EAGLE PHARMACEUTICALS, INC.**

By: */s/ Scott Tarriff*  
Scott Tarriff  
President and Chief Executive Officer

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**EXHIBIT INDEX**

**Exhibit  
Number**

- 3.2 Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 28, 2014)
- 3.4 Amended and Restated Bylaws (incorporated by reference to Exhibit 3.4 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 28, 2014)
- 4.1 Form of Common Stock Certificate of the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 28, 2014)
- 4.2 Third Amended and Restated Investor Rights Agreement, dated April 11, 2013, by and among the Registrant and certain of its stockholders (incorporated by reference to Exhibit 4.2 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.1 Form of Indemnification Agreement by and between the Registrant and its directors and officers (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.2 Eagle Pharmaceuticals, Inc. 2007 Incentive Compensation Plan and Form of Stock Option Agreement thereunder (incorporated by reference to Exhibit 10.2 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013), as amended December 15, 2015 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed December 21, 2015)
- 10.3 Eagle Pharmaceuticals, Inc. 2014 Equity Incentive Plan, as amended and restated, and Form of Stock Option Agreement, Notice of Exercise and Stock Option Grant Notice thereunder (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed August 10, 2015), as amended with an additional form of Stock Option Agreement (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed December 21, 2015)
- 10.4 Eagle Pharmaceuticals, Inc. 2014 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.4 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 22, 2014)
- 10.5 Eagle Pharmaceuticals, Inc. Non-Employee Director Compensation Policy (incorporated by reference to Exhibit 10.5 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 22, 2014)
- 10.6 Employment Agreement by and between the Registrant and Scott Tarriff dated March 8, 2007, as amended (incorporated by reference to Exhibit 10.6 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 28, 2014)
- 10.7 Offer Letter by and between the Registrant and Paul Bruinenberg dated September 7, 2011 (incorporated by reference to Exhibit 10.7 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.8 Offer Letter by and between the Registrant and Steven Krill dated September 7, 2011 (incorporated by reference to Exhibit 10.8 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.9 Offer Letter by and between the Registrant and David Riggs dated November 7, 2013 (incorporated by reference to Exhibit 10.9 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.10 Lease Agreement between the Registrant and Mack-Cali Chestnut Ridge L.L.C. dated May 28, 2013, as amended on July 1, 2013 (incorporated by reference to Exhibit 10.10 to the Registrant's Registration Statement on Form S-1, SEC



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File No. 333-192984, filed December 20, 2013), and as amended on March 16, 2015 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed March 20, 2015)

- 10.11 (a)\* Development and License Agreement, by and between the Registrant and SciDose, LLC, dated September 24, 2007, as amended March 18, 2008, May 22, 2009 and July 16, 2013 (incorporated by reference to Exhibit 10.11(a) to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.11 (b)\* Development and License Agreement, by and between the Registrant and SciDose, LLC, dated June 12, 2007, as amended March 18, 2008, March 25, 2008, December 3, 2008, May 22, 2009 and July 16, 2013 (incorporated by reference to Exhibit 10.11(b) to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013), and as amended on August 5, 2015 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed August 10, 2015)
- 10.12 \* License and Sublicense Agreement, by and between the Registrant and Lyotropic Therapeutics, Inc., dated October 16, 2008 (incorporated by reference to Exhibit 10.12 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.13 \* License and Development Agreement, by and between the Registrant and The Medicines Company, effective as of

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- September 24, 2009, as amended January 2010 and September 1, 2012 (incorporated by reference to Exhibit 10.13 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.14 \* Supply Agreement, by and between the Registrant and The Medicines Company, dated September 24, 2009 (incorporated by reference to Exhibit 10.14 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.15 \* Agreement for the Supply of Argatroban and Topotecan, by and between the Registrant and Cipla Limited, dated December 14, 2012, as amended August 30, 2013 (incorporated by reference to Exhibit 10.15 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.16 \* Supply and Distribution Agreement, by and between the Registrant and Sandoz AG, dated January 28, 2013 (incorporated by reference to Exhibit 10.16 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.17 \* Development and License Agreement, by and between the Registrant and Robert One, LLC (bendamustine), dated March 18, 2008, as amended November 11, 2009 and July 16, 2013 (incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013)
- 10.18 \* Development and License Agreement, by and between the Registrant and Robert One, LLC (pemetrexed), dated February 13, 2009, as amended May 22, 2009, December 23, 2010 and July 16, 2013 (incorporated by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form S-1, SEC File No. 333-192984, filed December 20, 2013), and as amended on August 5, 2015 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed August 10, 2015)
- 10.19 \* Exclusive License Agreement, by and between the Registrant and Cephalon, Inc., dated February 13, 2015 (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q/A, SEC File No. 001-36306, filed February 12, 2016)
- 10.20 \* Settlement and License Agreement, by and between the Registrant and Cephalon, Inc., dated February 13, 2015 (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q, SEC File No. 001-36306, filed May 15, 2015)
- 10.21 Eagle Pharmaceuticals, Inc. Officer Severance Benefit Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed August 10, 2015)
- 10.22 Form of Letter Agreement (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, SEC File No. 001-36306, filed December 21, 2015)
- 10.23 \*(1) License Agreement, by and between the Registrant and Teikoku Pharma USA, Inc., dated October 13, 2015
- 10.24 \*(1) Co-Promotion Agreement, by and between the Registrant and Spectrum Pharmaceuticals, Inc., dated November 4, 2015
- 23.1 Consent of BDO USA, LLP, an Independent Registered Public Accounting Firm
- 24.1 Power of Attorney (incorporated by reference to this signature page of this Annual Report on Form 10-K)
- 31.1 Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 31.2 Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 31.3 (1) Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 31.4 (1) Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.

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| 32.1    | Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.2    | Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 101.INS | XBRL Instance Document  |
| 101.SCH | XBRL Taxonomy Extension Schema Document   |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase Document   |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase Document  |
| 101.LAB | XBRL Taxonomy Extension Labels Linkbase Document  |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase Document  |

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Management contract or compensatory plan or arrangement.

\*Confidential treatment requested as to certain portions, which portions are omitted and filed separately with the Securities and Exchange Commission.

(1) Filed herewith.