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

FORM S-8
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

Tandem Diabetes Care, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)
12400 High Bluff Drive, San Diego, CA
(Address of principal executive offices)

001-36189
(Commission File Number)

20-4327508
(I.R.S. Employer Identification No.)
92130
(Zip Code)

Tandem Diabetes Care, Inc. 2023 Long-Term Incentive Plan
(Full title of the Plan)

Shannon M. Hansen
Tandem Diabetes Care, Inc.
Senior Vice President, General Counsel, Corporate Secretary & Chief Compliance & Privacy Officer
(858) 366-6900
(Name and telephone number, including area code, of the person to contact in connection with this report.)

Copies to:
Charles Bair, Esq.
Asa M. Henin, Esq.
Cooley LLP
10265 Science Center Drive
San Diego, California 92121
Tel: (858) 550-6000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended (the "Securities Act") and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC") and the instructions to Form S-8, such documents are not being filed with the SEC either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by Tandem Diabetes Care, Inc. (the “Registrant”) with the SEC are incorporated by reference into this Registration Statement:

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on February 22, 2023;
- (b) The information specifically incorporated by reference into the Registrant’s Annual Report on Form 10-K from the Registrant’s Definitive Proxy Statement on Schedule 14A filed with the SEC on April 12, 2023;
- (c) The Registrant’s Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2023 and June 30, 2023, filed with the SEC on May 3, 2023 and August 3, 2023, respectively;
- (d) The Registrant’s Current Reports on Form 8-K filed with the SEC on January 23, 2023, February 22, 2023 and May 26, 2023; and
- (e) The description of the Registrant’s Capital Stock included as Exhibit 4.1 to the Registrant’s Form 10-K filed with the SEC on February 24, 2020, including any amendments or reports filed for the purpose of updating such description.

All documents, reports, and definitive proxy or information statements filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents; provided, however, that documents, reports and definitive proxy or information statements, or portions thereof, that are furnished and not filed or are otherwise not incorporated into registration statements filed in accordance with the rules of the SEC, shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes that statement. Any such statement so modified or superseded shall not constitute a part of this Registration Statement, except as so modified or superseded.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Registrant was incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any persons who were, 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 is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation 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 were, 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 is or 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 (including attorneys' fees) actually and reasonably incurred.

Registrant's amended and restated certificate of incorporation and bylaws provide for the indemnification of its directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 102(b)(7) of the Delaware General Corporation Law 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:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

Registrant's amended and restated certificate of incorporation includes 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 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 Registrant.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

As permitted by the Delaware General Corporation Law, Registrant has entered, and intends to continue to enter, into separate indemnification agreements with each of its directors and certain of its officers, that require Registrant to indemnify such persons against any and all costs and expenses (including attorneys' fees, witness fees, or other professional fees) damages, judgments, fines, settlements and other amounts incurred by such persons (including expenses of a derivative action) in connection with any action, suit or proceeding (including derivative actions), whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director, an officer or an employee of Registrant or any of its affiliated enterprises, provided that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to Registrant's best interests and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

The Registrant has an insurance policy in place that covers its officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act, or otherwise.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

| Exhibit Number | Description | Incorporated by Reference | | | | Provided herewith |
|----------------|---|---------------------------|-----------|----------------------|----------------|-------------------|
| | | Form | File No. | Date of First Filing | Exhibit Number | |
| 4.1 | Amended and Restated Certificate of Incorporation of the Registrant (as amended and currently in effect). | 10-Q | 001-36189 | August 3, 2023 | 3.1 | |
| 4.2 | Amended and Restated Bylaws of the Registrant (as amended and currently in effect). | 10-Q | 001-36189 | August 3, 2023 | 3.2 | |
| 5.1 | Opinion of Cooley LLP. | | | | | X |
| 23.1 | Consent of Independent Registered Public Accounting Firm. | | | | | X |
| 23.2 | Consent of Cooley LLP. Reference is made to Exhibit 5.1. | | | | | X |
| 24.1 | Power of Attorney. Reference is made to the signature page hereto. | | | | | X |
| 99.1 | Tandem Diabetes Care, Inc. 2023 Long-Term Incentive Plan. | 10-Q | 001-36189 | August 3, 2023 | 10.1 | |
| 99.2 | Form of Restricted Stock Units Agreement under the 2023 Long-Term Incentive Plan. | 10-Q | 001-36189 | August 3, 2023 | 10.2 | |
| 107 | Filing Fee Table. | | | | | X |

ITEM 9. UNDERTAKINGS

- (a) The undersigned Registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of 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 a 20% change in the maximum aggregate offering price set forth in Exhibit 107 (Filing Fee Table) to 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) do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement; and

- (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 Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Annual Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Tandem Diabetes Care, Inc.

By: /s/ John F. Sheridan

John F. Sheridan

President, Chief Executive Officer and Director

(Principal Executive Officer)

Date: August 3, 2023

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints John F. Sheridan and Leigh A. Vosseller, and each of them individually, his and her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and her and in his and her name, place, and stead, in any and all capacities, to sign any and all amendments to this Annual Report, and to file the same, with all 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 in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|----------------|
| <u>/s/ JOHN F. SHERIDAN</u> John F. Sheridan | President, Chief Executive Officer and Director (Principal Executive Officer) | August 3, 2023 |
| <u>/s/ LEIGH A. VOSELLER</u> Leigh A. Vosseller | Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer) | August 3, 2023 |
| <u>/s/ REBECCA B. ROBERTSON</u> Rebecca B. Robertson | Chair of the Board | August 3, 2023 |
| <u>/s/ DICK P. ALLEN</u> Dick P. Allen | Director | August 3, 2023 |
| <u>/s/ KIM D. BLICKENSTAFF</u> Kim D. Blickenstaff | Director | August 3, 2023 |
| <u>/s/ MYOUNGIL CHA</u> Myoungil Cha | Director | August 3, 2023 |
| <u>/s/ PEYTON R. HOWELL</u> Peyton R. Howell | Director | August 3, 2023 |
| <u>/s/ JOAO PAULO FALCAO MALAGUEIRA</u> Joao Paulo Falcao Malagueira | Director | August 3, 2023 |
| <u>/s/ KATHLEEN MCGRODDY-GOETZ</u> Kathleen McGroddy-Goetz | Director | August 3, 2023 |
| <u>/s/ RAJWANT S. SODHI</u> Rajwant S. Sodhi | Director | August 3, 2023 |
| <u>/s/ CHRISTOPHER J. TWOMEY</u> Christopher J. Twomey | Director | August 3, 2023 |

Calculation of Filing Fee Table

Form S-8

(Form Type)

Tandem Diabetes Care, Inc.

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

| Security Type | Security Class Title | Fee Calculation Rule | Amount Registered ⁽¹⁾ | Proposed Maximum Offering Price Per Share | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|------------------------|--|----------------------|----------------------------------|---|----------------------------------|-----------|----------------------------|
| Equity | Common Stock, \$0.001 par value per share, 2023 Long-Term Incentive Plan | Other ⁽²⁾ | 39,168 | \$ 28.18 | \$ 1,103,754.24 | 0.0001102 | \$ 121.64 |
| Equity | Common Stock, \$0.001 par value per share, 2023 Long-Term Incentive Plan | Other ⁽³⁾ | 1,216,876 | \$ 26.29 | \$ 31,991,670.04 | 0.0001102 | \$ 3,525.49 |
| Equity | Common Stock, \$0.001 par value per share, 2023 Long-Term Incentive Plan | Other ⁽⁴⁾ | 110,074 | \$ 26.29 | \$ 2,893,845.46 | 0.0001102 | \$ 318.91 |
| Equity | Common Stock, \$0.001 par value per share, 2023 Long-Term Incentive Plan | Other ⁽⁵⁾ | 21,721 | \$ 27.21 | \$ 591,028.41 | 0.0001102 | \$ 65.14 |
| Equity | Common Stock, \$0.001 par value per share, 2023 Long-Term Incentive Plan | Other ⁽⁶⁾ | 25,505 | \$ 30.58 | \$ 779,942.90 | 0.0001102 | \$ 85.95 |
| Equity | Common Stock, \$0.001 par value per share, 2023 Long-Term Incentive Plan | Other ⁽⁷⁾ | 1,188,840 ⁽⁷⁾ | \$ 33.21 ⁽⁸⁾ | \$ 39,481,376.40 ⁽⁸⁾ | 0.0001102 | \$ 4,350.85 |
| Total Offering Amounts | | | | | \$ 76,841,617.45 | | \$ 8,467.98 |
| Total Fee Offsets | | | | | | | \$ — |
| Net Fee Due | | | | | | | \$ 8,467.98 |

(1) Pursuant to Rule 416(a) under 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 (the "Common Stock") that become issuable under the Tandem Diabetes Care, Inc.'s 2023 Long-Term Incentive Plan (the "Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction.

(2) Represents shares of Common Stock reserved for issuance pursuant to restricted stock unit awards granted on May 24, 2023.

(3) Represents shares of Common Stock reserved for issuance pursuant to restricted stock unit awards granted on May 25, 2023.

(4) Represents shares of Common Stock reserved for issuance pursuant to performance stock unit awards granted on May 25, 2023.

(5) Represents shares of Common Stock reserved for issuance pursuant to restricted stock unit awards granted on June 15, 2023.

(6) Represents shares of Common Stock reserved for issuance pursuant to restricted stock unit awards granted on July 17, 2023.

(7) Represents 1,188,840 new shares of Common Stock available for grant under the Plan.

(8) This estimate is made pursuant to Rule 457(h)(1) and Rule 457(c) of the Securities Act solely for purposes of calculating the registration fee. The proposed maximum offering price per share and maximum aggregate offering price are based upon the average of the high and low prices of the Common Stock on August 1, 2023, as reported on The Nasdaq Global Market.



Charles J. Bair
+1 858 550 6142
cbair@cooley.com

August 3, 2023
Tandem Diabetes Care, Inc.
12400 High Bluff Drive
San Diego, CA 92130

Re: Registration on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Tandem Diabetes Care, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**") covering the offering of up to 2,602,184 shares (the "**Shares**") of the Company's Common Stock, par value \$0.001 per share, issuable pursuant to the Company's 2023 Long-Term Incentive Plan (the "**Plan**").

In connection with this opinion, we have examined and relied upon the Registration Statement and related prospectus, the Plan, the Company's certificate of incorporation and bylaws, each as currently in effect, and such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents by all persons other than by the Company where authorization, execution and delivery are prerequisites to the effectiveness of such documents. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plan, the Registration Statement and related prospectus, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we undertake no obligation or responsibility to update or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.

Sincerely,

Cooley LLP

By: /s/ Charles J. Bair
Charles J. Bair

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2023 Long-Term Incentive Plan of Tandem Diabetes Care, Inc. of our reports dated February 22, 2023, with respect to the consolidated financial statements of Tandem Diabetes Care, Inc. and the effectiveness of internal control over financial reporting of Tandem Diabetes Care, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Diego, California
August 3, 2023