

OSCIENT PHARMACEUTICALS CORP

Form 425

October 23, 2008

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

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to**

**Section 13 or 15(d) of**

**THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of Earliest Event Reported): October 21, 2008**

**OSCIENT PHARMACEUTICALS CORPORATION**

**(Exact name of registrant as specified in its charter)**

**Massachusetts**  
**(State or other jurisdiction)**

**0-10824**  
**(Commission File Number)**

**04-2297484**  
**(I.R.S. Employer**

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of incorporation)

**1000 Winter Street, Suite 2200**

Identification Number)

**Waltham, Massachusetts 02451**

(Address of principal executive offices, including zip code)

**(781) 398-2300**

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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**ITEM 3.01. NOTICE OF DELISTING OR FAILURE TO SATISFY A CONTINUED LISTING RULE OR STANDARD; TRANSFER OF LISTING.**

On October 22, 2008, Oscient Pharmaceuticals Corporation (the Company) received notification from the Listings Qualifications Department of The NASDAQ Stock Market LLC (NASDAQ) announcing that, given the current extraordinary market conditions, the NASDAQ had suspended the enforcement of the rules requiring a minimum market value of publicly held shares (MVPHS) and a minimum \$1 closing bid price, effective immediately. NASDAQ will not take any action to delist any security for these requirements during the suspension period, which will remain in effect through Friday, January 16, 2009. These rules will be reinstated on Monday, January 19, 2009.

On October 2, 2008, the Company received notice from the NASDAQ that its MVPHS had closed below the minimum \$15 million threshold set forth in Marketplace Rule 4450(b)(3) and that the Company had 90 calendar days, or until January 2, 2009, to regain compliance with the MVPHS requirement. The Company will now have until April 7, 2009 to regain compliance by evidencing a minimum \$15 million MVPHS for 10 consecutive business days. If the Company does not regain compliance with the minimum MVPHS requirement by April 7, 2009, the Company will receive written notification of delisting from NASDAQ and at that time will be entitled to request a hearing before a NASDAQ Listing Qualifications Panel to present its plan to regain compliance with the MVPHS requirement.

On October 21, 2008, the Company launched a proposed exchange offer with the holders of its 3.50% Convertible Senior Notes due 2011. The Company has filed a registration statement with the Securities and Exchange Commission relating to the proposed exchange offer. As stated in the registration statement, the Company believes the exchange offer is an important component of its plan to reduce the Company's overall debt level and to re-calibrate its capital structure in order to better execute the Company's business strategy. The Company also believes completion of the exchange offer may enable it to evidence compliance with NASDAQ's minimum MVPHS requirement; however, there can be no assurance that the Company will be able to do so.

**ITEM 5.02. DEPARTURE OF DIRECTORS OR PRINCIPAL OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF PRINCIPAL OFFICERS.**

(b)  
On October 21, 2008 Gary Patou, M.D., the Company of his resignation from the Company's Board of Directors, effective immediately. Dr. Patou's decision to resign as a director was not due to any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

**ITEM 8.01. OTHER EVENTS.**

On October 23, 2008, the Company issued a news release with respect to NASDAQ's suspension of the enforcement of the rules requiring a minimum MVPHS of \$15 million and a minimum \$1 closing bid price, as further described in Item 3.01 hereof, and incorporated by reference herein. A copy of the news release is furnished with this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference.

**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

(d) Exhibits

99.1 News Release issued by Oscient Pharmaceuticals Corporation on October 23, 2008.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

OSCIENT PHARMACEUTICALS CORPORATION

By: /s/ Philippe M. Maitre  
Name: Philippe M. Maitre  
Title: Executive Vice President & Chief Financial  
Officer

Date: October 23, 2008