

AFFYMAX INC  
Form S-8  
January 24, 2013

As filed with the Securities and Exchange Commission on January 24, 2013

Registration No. 333-

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

Washington, D.C. 20549

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**FORM S-8**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

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**AFFYMAX, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State of Incorporation)

**77-0579396**  
(I.R.S. Employer Identification No.)

**Affymax, Inc.**  
**4001 Miranda Avenue**  
**Palo Alto, CA 94304**

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(650) 812-8700

(Address of principal executive offices)

**Amended and Restated 2006 Equity Incentive Plan**

**2006 Employee Stock Purchase Plan**

(Full title of the plans)

**John A. Orwin**

**Chief Executive Officer**

**4001 Miranda Avenue**

**Palo Alto, CA 94304**

**(650) 812-8700**

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

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**Copies to:**

**Glen Y. Sato, Esq.**

Cooley LLP

3175 Hanover Street

Palo Alto, CA 94304

(650) 843-5000

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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. (Check one):

Large Accelerated filer ☐

Accelerated filer ☒ x

Non-accelerated Filer ☐

Smaller reporting company ☐

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(Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	
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**PART II**

**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 1,400,000 and 175,000 shares of the Registrant's common stock to be issued pursuant to the Registrant's Amended and Restated 2006 Equity Incentive Plan and 2006 Employee Stock Purchase Plan, respectively.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The contents of the earlier registration statements relating to the 2006 Equity Incentive Plan and 2006 Employee Stock Purchase Plan, previously filed with the Securities and Exchange Commission on January 5, 2007 (File No. 333-139810), March 18, 2008 (File No. 333-149773), March 17, 2009 (File No. 333-158070), March 4, 2010 (File No. 333-165218) January 21, 2011 (File No. 333-171795) and February 3, 2012 (File No. 333-179378) are incorporated herein by reference and made a part hereof.

**ITEM 8. EXHIBITS**

**Exhibit  
Number**

4.1.1	Amended and Restated Certificate of Incorporation. (1)
4.1.2	Amended and Restated Bylaws. (2)
4.2	Specimen Common Stock Certificate. (3)
4.3	Amended and Restated Investor Rights Agreement, dated September 7, 2006, by and between the Registrant and certain of its stockholders. (4)
4.4	Form of Warrant to Purchase shares of Common Stock. (5)
4.5	Form of Warrant to Oxford Finance Corporation to Purchase shares of Common Stock. (6)
4.6	Form of Warrant to Silicon Valley Bank to Purchase shares of Common Stock. (7)
5.1	Opinion of Cooley LLP.
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Cooley LLP. Reference is made to Exhibit 5.1.
24.1	Power of Attorney (included on the signature page hereto).
99.1	Amended and Restated 2006 Equity Incentive Plan. (8)
99.2	2006 Employee Stock Purchase Plan. (9)
99.3	Form of Option Grant Notice and Form of Option Agreement under 2006 Equity Incentive Plan. (10)
99.4	Form of Offering Document under 2006 Employee Stock Purchase Plan. (11)

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(1) Incorporated by reference from Exhibit 3.3 to our registration statement on Form S-1/A (File No. 333-136125) filed with the Securities and Exchange Commission on November 30, 2006.

(2) Incorporated by reference from Exhibit 3.5 to our Form 8-K filed with the Securities and Exchange Commission on September 10, 2007.

(3) Incorporated by reference from Exhibit 4.2 to our registration statement on Form S-1/A (File No. 333-136125) filed with the Securities and Exchange Commission on November 30, 2006.

(4) Incorporated by reference from Exhibit 4.4 to our registration statement on Form S-1/A (File No. 333-136125) filed with the Securities and Exchange Commission on October 2, 2006.

(5) Incorporated by reference from Exhibit 4.5 to our Form 8-K filed with the Securities and Exchange Commission on February 19, 2009.

(6) Incorporated by reference from Exhibit 4.5 to our Form 10-Q filed with the Securities and Exchange Commission on May 9, 2012.

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- (7) Incorporated by reference from Exhibit 4.6 to our Form 10-Q filed with the Securities and Exchange Commission on May 9, 2012.
- (8) Incorporated by reference from Exhibit 10.5 to our Form 10-Q filed with the Securities and Exchange Commission on August 8, 2012.
- (9) Incorporated by reference from Exhibit 99.3 to our registration statement on Form S-8 (333-139810) filed with the Securities and Exchange Commission on January 5, 2007, and incorporated herein by reference.
- (10) Incorporated by reference from Exhibit 10.6 to our registration statement on Form S-1/A (File No. 333-136125) filed with the Securities and Exchange Commission on July 28, 2006.
- (11) Incorporated by reference from Exhibit 10.8 to our registration statement on Form S-1/A (File No. 333-136125) filed with the Securities and Exchange Commission on December 11, 2006.

# 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 the City of Palo Alto, State of California, on January 24, 2013.

## AFFYMAX, INC.

By: /s/ John A. Orwin  
John A. Orwin  
Chief Executive Officer

## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints **JOHN A. ORWIN** and **HERB CROSS**, and each of them, his or her true and lawful attorney-in-fact and agent, 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 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes or substitute, 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/ John A. Orwin John A. Orwin	Chief Executive Officer and Member of the Board of Directors ( <i>Principal Executive Officer</i> )	January 24, 2013
/s/ Herb Cross Herb Cross	Chief Financial Officer ( <i>Principal Financial Officer</i> )	January 24, 2013
/s/ Karin L. Walker Karin L. Walker	Vice President, Finance and Chief Accounting Officer ( <i>Principal Accounting Officer</i> )	January 24, 2013
/s/ Hollings C. Renton Hollings C. Renton	Member of the Board of Directors	January 24, 2013
/s/ John P. Walker John P. Walker	Member of the Board of Directors	January 24, 2013

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/s/ Kathleen La Porte  
Kathleen LaPorte

Member of the Board of Directors

January 24, 2013

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Signature	Title	Date
/s/ Keith R. Leonard Keith R. Leonard	Member of the Board of Directors	January 24, 2013
/s/ Ted W. Love Ted W. Love	Member of the Board of Directors	January 24, 2013
Daniel K. Spiegelman	Member of the Board of Directors	
/s/ Christi van Heek Christi van Heek	Member of the Board of Directors	January 24, 2013

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