

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **2013-01-28**  
SEC Accession No. [0001193125-13-026092](#)

([HTML Version](#) on [secdatabase.com](#))

### FILER

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**Alexza Pharmaceuticals Inc.**

CIK: **1344413** | IRS No.: **770567768** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **S-8** | Act: **33** | File No.: **333-186249** | Film No.: **13551815**  
SIC: **2834** Pharmaceutical preparations

**Mailing Address**

2091 STIERLIN COURT  
MOUNTAIN VIEW CA 94043

**Business Address**

2091 STIERLIN COURT  
MOUNTAIN VIEW CA 94043  
650.944.7000

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**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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**ALEXZA PHARMACEUTICALS, INC.**

(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**77-0567768**  
(I.R.S. Employer Identification No.)

**Alexza Pharmaceuticals, Inc.**  
**2091 Stierlin Court**  
**Mountain View, California 94043**  
**(650) 944-7000**  
(Address of principal executive offices)

**2005 Equity Incentive Plan**  
**2005 Non-Employee Directors' Stock Option Plan**  
**2005 Employee Stock Purchase Plan**  
(Full title of the plans)

**Thomas B. King**  
**President and Chief Executive Officer**  
**Alexza Pharmaceuticals, Inc.**  
**2091 Stierlin Court**  
**Mountain View, California 94043**  
**(650) 944-7000**

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

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*Copies to:*  
**James C. T. Linfield, Esq.**  
**Brent Fassett, Esq.**  
**Cooley LLP**  
**380 Interlocken Crescent, Suite 900**  
**Broomfield, Colorado 80021**  
**(720) 566-4000**

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.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

### CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.0001 per share	194,812 shares	\$4.505 <sup>(2)</sup>	\$877,628.06	\$119.71

- (1) Pursuant to Rule 416(a) of 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 that become issuable under the plans as set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant’s Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) promulgated under the Securities Act. The offering price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant’s Common Stock as reported on the NASDAQ Global Market on January 24, 2013, in accordance with Rule 457(c) of the Securities Act.

The chart below details the calculation of the registration fee:

Title of Securities to be Registered	Number of	Offering Price	Aggregate Offering Price
	Shares	Per Share	
Common Stock, par value \$0.0001 per share, reserved for future issuance under the 2005 Equity Incentive Plan	100,000	\$4.505	\$ 450,500.00
Common Stock, par value \$0.0001 per share, reserved for future issuance under the 2005 Employee Stock Purchase Plan	75,000	\$4.505	\$ 337,875.00
Common Stock, par value \$0.0001 per share, reserved for future issuance under the 2005 Non-Employee Directors’ Stock Option Plan	19,812	\$4.505	\$ 89,253.06
Total	<u>194,812</u>		<u>\$ 877,628.06</u>

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## EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional (i) 100,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2005 Equity Incentive Plan; (ii) 75,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2005 Employee Stock Purchase Plan; and (iii) 19,812 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2005 Non-Employee Directors' Stock Option Plan.

### INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION STATEMENT ON FORM S-8

Alexza Pharmaceuticals, Inc. is hereby registering an additional (i) 100,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2005 Equity Incentive Plan; (ii) 75,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2005 Employee Stock Purchase Plan; and (iii) 19,812 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2005 Non-Employee Directors' Stock Option Plan. The contents of the Registration Statement on Form S-8 (File No. 333-132593), as filed with the Securities and Exchange Commission (the "Commission") on March 20, 2006, is incorporated herein by reference.

All documents incorporated by reference, including those filings that contain the Registrant's financial statements, that were filed with the Commission prior to June 12, 2012 do not reflect the occurrence of the 10:1 reverse split of the Registrant's common stock that was effected on June 12, 2012.

### EXHIBITS

**Exhibit  
Number**

- 4.1<sup>(1)</sup> Specimen common stock certificate
- 4.2<sup>(2)</sup> Restated Certificate of Incorporation, as currently in effect
- 4.3<sup>(3)</sup> Certificate of Amendment to the Restated Certificate of Incorporation, as currently in effect
- 4.4<sup>(4)</sup> Certificate of Amendment to the Restated Certificate of Incorporation, as currently in effect
- 4.5<sup>(5)</sup> Amended and Restated Bylaws, as currently in effect
- 4.6<sup>(6)</sup> Amendment to the Amended and Restated Bylaws, as currently in effect
- 5.1\* Opinion of Cooley LLP
- 23.1\* Consent of Independent Registered Public Accounting Firm
- 23.2 Consent of Cooley LLP. Reference is made to Exhibit 5.1.
- 24.1 Power of Attorney. Reference is made to the signature page of this Form S-8.
- 99.1<sup>(7)</sup> 2005 Equity Incentive Plan, as amended
- 99.2<sup>(8)</sup> 2005 Non-Employee Directors' Stock Option Plan
- 99.3<sup>(9)</sup> Amendment to 2005 Non-Employee Directors' Stock Option Plan
- 99.4\* Amendment to 2005 Non-Employee Directors' Stock Option Plan
- 99.5<sup>(10)</sup> 2005 Employee Stock Purchase Plan, as amended

\* Filed herewith.

- (1) Filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-1, as amended (333-130644), originally filed with the Commission on December 22, 2005, and incorporated by reference herein.

- (2) Filed as Exhibit 3.1 to the Registrant' s Registration Statement on Form S-3 (333-182341), originally filed with the Commission on June 26, 2012, and incorporated by reference herein.
- (3) Filed as Exhibit 3.2 to the Registrant' s Registration Statement on Form S-3 (333-182341), originally filed with the Commission on June 26, 2012, and incorporated by reference herein.
- (4) Filed as Exhibit 3.3 to the Registrant' s Registration Statement on Form S-3 (333-182341), originally filed with the Commission on June 26, 2012, and incorporated by reference herein.

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- (5) Filed as Exhibit 3.7 to the Registrant' s Registration Statement on Form S-1, as amended (333-130644), originally filed with the Commission on December 22, 2005, and incorporated by reference herein.
  - (6) Filed as Exhibit 3.8 to the Registrant' s Annual Report on Form 10-K (File No. 000-51820), originally filed with the Commission on March 17, 2008, and incorporated by reference herein.
  - (7) Filed as Exhibit 10.1 to the Registrant' s Current Report on Form 8-K (File No. 000-51820), originally filed with the Commission on August 2, 2011, and incorporated by reference herein.
  - (8) Filed as Exhibit 10.6 to the Registrant' s Registration Statement on Form S-1, as amended (333-130644), originally filed with the Commission on December 22, 2005, and incorporated by reference herein.
  - (9) Filed as Exhibit 10.3 to the Registrant' s Quarterly Report on Form 10-Q (File No. 000-51820), originally filed with the Commission on November 9, 2010, and incorporated by reference herein.
  - (10) Filed as Exhibit 10.2 to the Registrant' s Current Report on Form 8-K (File No. 000-51820), originally filed with the Commission on August 2, 2011, and incorporated by reference herein.

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## 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 Mountain View, State of California, on January 28, 2013.

**ALEXZA PHARMACEUTICALS, INC.**

By: /s/ Thomas B. King

Thomas B. King

President and Chief Executive Officer

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## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints **THOMAS B. KING** and **MARK K. OKI**, and each or any one 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 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 their or his substitutes or substitute, may lawfully do 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.

Signature	Title	Date
<u>/s/ Thomas B. King</u> Thomas B. King	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	January 28, 2013
<u>/s/ Mark K. Oki</u> Mark K. Oki	Senior Vice President, Finance, Chief Financial Officer and Secretary <i>(Principal Financial Officer and Principal Accounting Officer)</i>	January 28, 2013
<u>/s/ Hal V. Barron</u> Hal V. Barron	Director	January 28, 2013
<u>/s/ J. Kevin Buchi</u> J. Kevin Buchi	Director	January 28, 2013
<u>/s/ Andrew L. Busser</u> Andrew L. Busser	Director	January 28, 2013
<u>/s/ Deepika R. Pakianathan</u> Deepika R. Pakianathan	Director	January 28, 2013
<u>/s/ J. Leighton Read</u> J. Leighton Read	Director	January 28, 2013
<u>/s/ Gordon Ringold</u> Gordon Ringold	Director	January 28, 2013
<u>/s/ Isaac Stein</u> Isaac Stein	Director	January 28, 2013
<u>/s/ Joseph L. Turner</u> Joseph L. Turner	Director	January 28, 2013



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5.1*	Opinion of Cooley LLP
23.1*	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Cooley LLP. Reference is made to Exhibit 5.1.
24.1	Power of Attorney. Reference is made to the signature page of this Form S-8.
99.1 <sup>(7)</sup>	2005 Equity Incentive Plan, as amended
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- (9) Filed as Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q (File No. 000-51820), originally filed with the Commission on November 9, 2010, and incorporated by reference herein.

(10) Filed as Exhibit 10.2 to the Registrant' s Current Report on Form 8-K (File No. 000-51820), originally filed with the Commission on August 2, 2011, and incorporated by reference herein.



Brent D. Fassett  
(720) 566-4025  
fassettbd@cooley.com

January 28, 2013

Alexza Pharmaceuticals, Inc.  
2091 Stierlin Court  
Mountain View, CA 94043

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by Alexza Pharmaceuticals, Inc. (the "**Company**") of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to one hundred ninety-four thousand eight hundred twelve (194,812) shares of the Company's Common Stock, \$0.0001 par value (the "**Shares**"), pursuant to its 2005 Equity Incentive Plan, 2005 Employee Stock Purchase Plan and 2005 Non-Employee Directors' Stock Option Plan (collectively, the "**Plans**").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and related Prospectus, (b) the Company's Certificate of Incorporation and Bylaws, each as currently in effect, and (c) the originals or copies certified to our satisfaction of 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 and 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 execution and delivery of all documents, where due execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently sought to verify such matters. Our opinion is expressed only with respect to the federal laws of the United States of America and the General Corporation Law of the State of Delaware.

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 Plans, the Registration Statement and related Prospectus, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

COOLEY LLP

By: /s/ Brent D. Fassett

Brent D. Fassett, Partner



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2005 Equity Incentive Plan, the 2005 Non-Employee Directors' Stock Option Plan and the 2005 Employee Stock Purchase Plan of Alexza Pharmaceuticals, Inc. of our reports dated March 12, 2012, with respect to the consolidated financial statements of Alexza Pharmaceuticals, Inc. and the effectiveness of internal control over financial reporting of Alexza Pharmaceuticals, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2011, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Redwood City, California

January 25, 2013

**AMENDMENT NO. 2 TO THE  
ALEXZA PHARMACEUTICALS, INC.  
2005 NON-EMPLOYEE DIRECTORS' STOCK OPTION PLAN**

Effective January 2, 2013, the Board of Directors of Alexza Pharmaceuticals, Inc. (the "**Company**") adopted an amendment to the Company's 2005 Non-Employee Directors' Stock Option Plan (the "**Plan**") so that Section 6(a) of the Plan was amended and restated to read in its entirety as follows:

**6. NON-DISCRETIONARY GRANTS.**

**(a) Initial Grants.** Without any further action of the Board, each person who on or after January 2, 2013 is elected or appointed for the first time to be a Non-Employee Director, upon the date of his or her initial election or appointment to be a Non-Employee Director, he or she shall automatically be granted an Initial Grant to purchase twenty thousand (20,000) shares of Common Stock on the terms and conditions set forth herein.