

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

FORM S-8

**REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

EYENOVIA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

47-1178401
(I.R.S. Employer Identification No.)

295 Madison Avenue, Suite 2400
New York, NY
(Address of Principal Executive Offices)

10017
(Zip Code)

Eyenovia, Inc. Non-Qualified Stock Option Inducement Award
(Full title of the plan)

Michael Rowe
Chief Executive Officer
295 Madison Avenue, Suite 2400
New York, NY 10017
(833) 393-6684
(Name, address and telephone number, including area code, of agent for service)

Copy:

Megan N. Gates
Julie M. Plyler
Covington & Burling LLP
1 International Place, Suite 1020
Boston, MA 02110
(617) 603-8800

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 “
Non-accelerated filer x

Accelerated filer “
Smaller reporting company x
Emerging growth company “

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

Item 1. Plan Information.

A prospectus setting forth the information requested by this Item will be sent or given to recipients of non-qualified stock option inducement awards (the “Inducement Awards”) of Eyenovia, Inc. (the “Company”) pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the “Securities Act”). In accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”) and the instructions to Form S-8, such document is not being filed with the Commission as part of this Registration Statement on Form S-8 (the “Registration Statement”) or as a prospectus or prospectus supplement pursuant to Rule 424(b) under the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

A prospectus setting forth the information requested by this Item will be sent or given to recipients of Inducement Awards pursuant to Rule 428(b)(1) of the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such document is not being filed with the Commission as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424(b) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Company is subject to the informational and reporting requirements of Sections 13(a), 14 and 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and in accordance therewith files reports, proxy statements and other information with the Commission. The following documents, which are on file with the Commission, are incorporated in this Registration Statement by reference:

- (a) The Company’s Annual Report on [Form 10-K for the fiscal year ended December 31, 2023, filed with the Commission on March 18, 2024 \(File No. 001-38365\)](#), as amended by the Company’s [Amendment No. 1 to Annual Report on Form 10-K, filed with the Commission on April 26, 2024](#);
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the documents referred to in (a) above (other than the portions of those documents not deemed to be filed); and
- (c) The description of the Company’s Common Stock contained in [Exhibit 4.1 to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on March 31, 2023 \(File No. 001-38365\)](#).

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware (the “DGCL”) permits a corporation to indemnify any director or officer of a corporation against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if such person had no reason to believe their conduct was unlawful. In a derivative action (i.e., one brought by or on behalf of the corporation), however, indemnification may be made only for expenses, actually and reasonably incurred by any director or officer in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner that such person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the Delaware Court of Chancery or the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

The Company’s Third Amended and Restated Certificate of Incorporation, as amended (the “Charter”) and Second Amended and Restated Bylaws (the “Bylaws”) contain provisions that provide for the indemnification of directors and officers consistent with the applicable provisions of the DGCL. If a present or former director or officer successfully defends against any claim subject to indemnification by the Company, they shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred in connection therewith.

In accordance with Section 102(b)(7) of the DGCL, the Charter provides that no director of the Company shall be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL.

The Company has entered into agreements to indemnify its directors and executive officers. These agreements, among other things, provide that the Company will indemnify the director or executive officer to the fullest extent permitted by law for claims arising in his or her capacity as a director, officer, manager, employee, agent or representative of the Company. The indemnification agreements also establish the procedures that will apply in the event a director or executive officer makes a claim for indemnification.

The Company maintains a general liability insurance policy which covers certain liabilities of directors and officers of the Company arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit No. | Description |
|------------------------------|---|
| <u>4.1</u> | <u>Third Amended and Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed on January 29, 2018).</u> |
| <u>4.2</u> | <u>Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1.1 of the Registrant's Current Report on Form 8-K filed on June 14, 2018).</u> |
| <u>4.3</u> | <u>Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed on June 14, 2024).</u> |
| <u>4.4</u> | <u>Second Amended and Restated Bylaws of the Registrant (incorporated herein by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed on February 7, 2022).</u> |
| <u>4.5</u> | <u>Form of Eyenovia, Inc. Inducement Stock Option Award Agreement (incorporated herein by reference to Exhibit 10.7 of the Registrant's Quarterly Report on Form 10-Q filed on November 12, 2024).</u> |
| <u>5.1*</u> | <u>Opinion of Covington and Burling LLP.</u> |
| <u>23.1*</u> | <u>Consent of CBIZ, Inc.</u> |
| <u>23.2*</u> | <u>Consent of Covington and Burling LLP (included in Exhibit 5.1).</u> |
| <u>24.1*</u> | <u>Power of Attorney (included on the signature page of this Registration Statement).</u> |
| <u>107*</u> | <u>Filing Fees Exhibit.</u> |

* Filed herewith.

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 New York, State of New York, on November 12, 2024.

EYENOVIA, INC.

By: /s/ Michael M. Rowe
Michael M. Rowe
Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Michael M. Rowe and Andrew D. Jones as his or her true and lawful attorney-in-fact, with power of substitution and resubstitution to sign in his or her name, place and stead in any and all such capacities the Registration Statement and any and all amendments and supplements thereto (including post-effective amendments) and documents in connection therewith, and to file the same with the Commission, said attorney to have full power and authority to do and perform, in the name of and on behalf of each such officer and director, every act whatsoever which such attorney-in-fact may deem necessary or desirable to be done in connection therewith, as fully and to all intents and purposes as such officer or director might or could do in person.

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/ Michael M. Rowe</u> Michael M. Rowe | Chief Executive Officer (Principal Executive Officer) and Director | November 12, 2024 |
| <u>/s/ Andrew D. Jones</u> Andrew D. Jones | Chief Financial Officer (Principal Financial and Accounting Officer) | November 12, 2024 |
| <u>/s/ Michael Geltzeiler</u> Michael Geltzeiler | Director | November 12, 2024 |
| <u>/s/ Tsontcho Ianchulev</u> Tsontcho Ianchulev | Director | November 12, 2024 |
| <u>/s/ Rachel Jacobson</u> Rachel Jacobson | Director | November 12, 2024 |
| <u>/s/ Charles E. Mather IV</u> Charles E. Mather IV | Director | November 12, 2024 |
| <u>/s/ Ram Palanki</u> Ram Palanki | Director | November 12, 2024 |
| <u>/s/ Ellen R. Strahlman</u> Ellen R. Strahlman | Director | November 12, 2024 |

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One International Place
Suite 1020
Boston, MA 02110-2600
T +1 617 603 8800

November 12, 2024

Eyenovia, Inc.
295 Madison Avenue, Suite 2400
New York, NY 10017

Ladies and Gentlemen:

We have acted as counsel to Eyenovia, Inc., a Delaware corporation (the “*Company*”), in connection with the registration by the Company under the Securities Act of 1933, as amended (the “*Act*”), of 200,000 shares (the “*Shares*”) of the Company’s common stock, par value \$0.0001 per share (the “*Common Stock*”), issuable upon the exercise of non-qualified stock options granted to an employee of the Company as an inducement material to his acceptance of employment with the Company, pursuant to the Registration Statement on Form S-8 filed with the Securities and Exchange Commission on the date hereof (such registration statement is referred to herein as the “*Registration Statement*”). The Shares were issued under an Inducement Stock Option Award Agreement (the “*Award Agreement*”).

We have reviewed such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion. We have assumed that all signatures are genuine, that all documents submitted to us as originals are authentic and that all copies of documents submitted to us conform to the originals.

We have relied as to certain matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible.

Based upon the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued and paid for in accordance with the terms of the Award Agreement, the Shares will be validly issued, fully paid and non-assessable.

We are members of the bar of the Commonwealth of Massachusetts. We do not express any opinion herein on any laws other than the General Corporation Law of the State of Delaware and reported judicial decisions interpreting these laws.

We hereby consent to the filing of this opinion as Exhibit 5.1 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 Act.

Very truly yours,
/s/ Covington & Burling LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Eyenovia, Inc. on Form S-8 of our report dated March 18, 2024, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the financial statements of Eyenovia, Inc. as of December 31, 2023 and 2022 and for each of the two years in the period ended December 31, 2023, appearing in the Annual Report on Form 10-K of Eyenovia, Inc. for the year ended December 31, 2023.

/s/ CBIZ, Inc.

CBIZ, Inc.
New York, NY
November 12, 2024

CALCULATION OF FILING FEE TABLE

Form S-8
(Form Type)

Eyenovia, 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 | Proposed Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|-------------------------------|--|----------------------|-------------------------------|--|----------------------------------|-----------|----------------------------|
| Equity | Common Stock, \$0.0001 par value per share | Rule 457(h) | 200,000 ⁽¹⁾ (2) | \$0.55 | \$110,000 | .00015310 | \$16.85 |
| Total Offering Amounts | | | | | \$110,000 | | \$16.85 |
| Total Fee Offsets | | | | | | | \$— |
| Net Fee Due | | | | | | | \$16.85 |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement on Form S-8 (the “Registration Statement”) also covers such indeterminable number of additional shares of Eyenovia, Inc.’s (the “Registrant”) common stock, \$0.0001 par value per share, as may become issuable under the Inducement Award (as defined below) to prevent dilution in the event of a reorganization, reclassification, stock split, dividend or distribution, or any similar transaction.
- (2) Pursuant to the Registrant’s non-qualified stock option inducement award to Andrew D. Jones on August 30, 2024 (the “Inducement Award”).