ANTARES PHARMA INC
Form S-8
May 18, 2006

As filed with the Securities and Exchange Commission on May 18, 2006.

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

ANTARES PHARMA, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**41-1350192**
(State or Other Jurisdiction of Incorporation or Organization)	**(IRS Employer Identification No.)**

707 Eagleview Blvd., Suite 414

Exton, PA 19341

(610) 458-6200

(Address, including zip code, of Principal Executive Offices)

ANTARES PHARMA, INC.

2006 EQUITY INCENTIVE PLAN

(Full Title of the Plans)

Jack E. Stover

President and Chief Executive Officer

707 Eagleview Blvd., Suite 414

Exton, Pennsylvania 19341

(610) 458-6200

(Name, Address and Telephone Number,

Including Area Code, of Agent for Service)

Copy to:

Joanne R. Soslow, Esq.

Morgan, Lewis & Bockius LLP

1701 Market Street

Philadelphia, PA 19103

(215) 963-5000

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Number of shares to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee (3)
Common Stock, par value $0.01 per share	2,500,000	$ 1.395	$ 3,487,500	$ 373.17

(1) This registration statement covers shares of Common Stock of Antares Pharma, Inc. that may be offered or sold pursuant to the 2006 Equity Incentive Plan. In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers such additional number of shares as may be offered or issued to prevent dilution resulting from stock splits, stock dividends, recapitalizations or similar transactions.

(2) Estimated pursuant to Paragraphs (c) and (h) of Rule 457 under the Securities Act solely for the purpose of calculating the registration fee, based on the average of the high and low sales prices of shares of the Company s Common Stock on May 17, 2006, as reported on the American Stock Exchange.

(3) Calculated pursuant to Section 6(b) of the Securities Act as follows: proposed maximum offering price multiplied by $0.000107.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by Antares Pharma, Inc. (the Registrant) with the Securities and Exchange Commission (the Commission) are incorporated by reference into this Registration Statement:

(1) Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2006 filed with the SEC on May 15, 2006;

(2) Our Annual Report on Form 10-K for the year ended December 31, 2005 filed with the SEC on March 20, 2006, as amended on Form 10-K/A filed with the SEC on May 5, 2006;

(3) Our Current Reports on Form 8-K filed with the SEC on January 10, 2006, February 14, 2006, February 28, 2006, March 6, 2006, May 9, 2006 and May 18, 2006; and

(4) The description of our common stock contained in a registration statement filed on Form 8-A under the Securities Exchange Act of 1934 filed on September 22, 2004, including any amendments or reports filed for the purpose of updating that description.

All reports and other documents subsequently filed by the Registrant 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 have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference to this Registration Statement and to be a part hereof from the date of the filing of such reports and documents. Any statement contained herein or in a document all or a portion of which is incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for 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 such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Experts

The consolidated financial statements and Registrant s financial statement schedule incorporated in this Registration Statement by reference from the Registrant s Annual Report on Form 10-K have been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report, which is incorporated herein by reference, and have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

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 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Registrant s Certificate of Incorporation provides that a director of the Registrant shall not be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as currently in effect or as the same may hereafter be amended.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation and other persons serving at the request of the corporation in related capacities against expenses (including attorneys fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which the Court of Chancery or such other court shall deem proper.

The Registrant s by-laws provide that the Registrant will, to the maximum extent permitted under the laws of the State of Delaware, indemnify and advance expenses upon request to each director and officer of the Registrant against any and all judgments, penalties, fines and amounts reasonably paid in settlement that are incurred by such director or officer or on such director s or officer s behalf in connection with any threatened, pending or completed proceeding or any claim, issue or matter of which he or she is, or is threatened to be made, a party to or participant in by reason of his or her corporate status. Unless ordered by a court, the Registrant will not provide indemnification to such a director or officer unless a determination has been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such a determination will be made by (a) a majority vote of disinterested directors or an appointed committee of disinterested directors, (b) if there are no disinterested directors or if the disinterested directors direct, by independent legal counsel or (c) by the stockholders of the Registrant.

The Registrant has purchased directors and officers liability insurance which would indemnify its directors and officers against damages arising out of certain kinds of claims which might be made against them based on their negligent acts or omissions while acting in their capacity as such.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibit	Description
4.1	Certificate of Incorporation of the Registrant, incorporated herein by reference to Exhibit 4.1 of the Registrant s Registration Statement on Form S-3 (Registration No. 333-133218) filed with the Commission on April 12, 2006.
4.2	Bylaws of the Registrant, incorporated herein by reference to Exhibit 4.2 of the Registrant s Registration Statement on Form S-3 (Registration No. 333-133218) filed with the Commission on April 12, 2006.
4.3	Antares Pharma, Inc. 2006 Equity Incentive Plan, incorporated herein by reference to Exhibit 10.1 of the Registrant s Current Report on Form 8-K filed with the Commission on May 9, 2006.
5.1	Opinion of Morgan, Lewis & Bockius LLP.
23.1	Independent Auditors Consent.
23.2	Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5.1).
24	Power of Attorney (included as part of the signature page).

Item 9. Undertakings.

The undersigned Registrant hereby undertakes:

(a) 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 of 1933, as amended (the Securities Act);

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereto) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), that are incorporated by reference in this Registration Statement.

(b) That, for the purposes of determining any liability under the Securities Act, each 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 the time shall be deemed to be the initial bona fide offering thereof.

(c) 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.

(d) 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 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 this 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.

(e) 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 indemnification provisions described herein, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission 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 the Securities Act, 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 Exton, Commonwealth of Pennsylvania, on May 18, 2006.

ANTARES PHARMA, INC.

By: /s/ JACK E. STOVER
Jack E. Stover
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Jack E. Stover and Robert F. Apple, and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his 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 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 below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JACK E. STOVER **Jack E. Stover**	President, Chief Executive Officer and Director	May 18, 2006
/s/ ROBERT F. APPLE **Robert F. Apple**	Senior Vice President and Chief Financial Officer	May 18, 2006
/s/ JACQUES GONELLA **Dr. Jacques Gonella**	Chairman of the Board of Directors	May 18, 2006
/s/ THOMAS J. GARRITY **Thomas J. Garrity**	Director	May 18, 2006

/s/ ANTON GUETH **Anton Gueth**	Director	May 18, 2006
/s/ RAJESH SHROTRIYA **Dr. Rajesh Shrotriya**	Director	May 18, 2006
/s/ PAUL WOTTON **Dr. Paul Wotton**	Director	May 18, 2006

ANTARES PHARMA, INC.

INDEX TO EXHIBITS

Exhibit Number	Document
4.1	Certificate of Incorporation of the Registrant, incorporated herein by reference to Exhibit 4.1 of the Registrant s Registration Statement on Form S-3 (Registration No. 333-133218) filed with the Commission on April 12, 2006.
4.2	Bylaws of the Registrant, incorporated herein by reference to Exhibit 4.2 of the Registrant s Registration Statement on Form S-3 (Registration No. 333-133218) filed with the Commission on April 12, 2006.
4.3	Antares Pharma, Inc. 2006 Equity Incentive Plan, incorporated herein by reference to Exhibit 10.1 of the Registrant s Current Report on Form 8-K filed with the Commission on May 9, 2006.
5.1	Opinion of Morgan, Lewis & Bockius LLP.
23.1	Independent Auditors Consent.
23.2	Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5.1).
24	Power of Attorney (included as part of the signature page).