

NUTRACEA  
Form POS AM  
May 07, 2007

As filed with the Securities and Exchange Commission on May 7, 2007

Registration No. 333-129839

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

**POST-EFFECTIVE AMENDMENT NO. 3  
on Form S-1 to Form SB-2**

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

**NUTRACEA**  
(Name of Small Business Issuer in Its Charter)

**California**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**2040**  
(Primary Standard Industrial  
Classification Code Number)

**87-0673375**  
(I.R.S. Employer Identification No.)

**5090 North 40<sup>th</sup> Street, Fourth Floor, Phoenix, AZ 85018**  
**(602) 522-3000**  
(Address and Telephone Number of Principal Executive Offices)

**Bradley D. Edson**  
**5090 North 40<sup>th</sup> Street, Fourth Floor, Phoenix, AZ 85018**  
**(602) 522-3000**  
(Name, Address and Telephone Number of Agent For Service)

Copy to:

**Christopher V. Chediak, Esq.**  
**Weintraub Genshlea Chediak Law Corporation**  
**400 Capitol Mall, 11<sup>th</sup> Floor, Sacramento, CA 95814**  
**(916) 558-6000**

Approximate Date of Commencement of Proposed Sale to the Public: from time to time after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. x

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act,

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check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o \_\_\_\_\_

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o \_\_\_\_\_

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o \_\_\_\_\_

If, as a result of stock splits, stock dividends or similar transactions, or by reason of changes in the conversion price of the preferred stock, the number of securities purported to be registered on this registration statement increases, the provisions of Rule 416 under the Securities Act of 1933 shall apply, and this registration statement shall be deemed to cover any such additional shares of common stock.

**The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**EXPLANATORY NOTE**

This Post-Effective Amendment No. 3 on Form S-1 to Registration Statement on Form SB-2 (File No. 333-129839) is being filed solely for the purpose of revising the undertakings contained in Item 17 and filing exhibits, and no changes or additions are being made hereby to the prospectus which forms a part of the Registration Statement. Accordingly, the prospectus has been omitted from this filing.

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**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 13: Other Expenses of Issuance and Distributions.**

The estimated expenses of this offering in connection with the issuance and distribution of the securities being registered, are as follows:

Registration Fee	\$ 3,000
Blue Sky Fees	2,500
Printing	2,000
Legal Fees and Expenses	40,000
Accounting Fees and Expenses	25,000
Miscellaneous	4,000
Total	\$ 76,500

**Item 14: Indemnification of Directors and Officers.**

The California General Corporation Law and our Restated Articles of Incorporation and Bylaws provide that we may indemnify our officers, directors, employees or agents or former officers, directors, employees or agents, against expenses actually and necessarily incurred by them, in connection with the defense of any legal proceeding or threatened legal proceeding, except as to matters in which such persons shall be determined to not have acted in good faith and in our best interest. This means that if indemnity is determined by the Board of Directors to be appropriate in any case we and not the individual might bear the cost of any suit that is filed by a shareholder against the individual officer, director or employee unless the court determines that the individual acted in bad faith. These provisions are sufficiently broad to permit the indemnification of such persons in certain circumstances against liabilities arising under the Securities Act.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors and officers, and to persons controlling our company pursuant to the foregoing provisions, we have been informed 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.

**Item 15: Recent Sales of Unregistered Securities.**

The following issuances of stock, warrants, and other equity securities were made without any public solicitation to a limited number of investors or related individuals or entities in separately negotiated transactions. Each investor represented to us that the securities were being acquired for investment purposes only and not with an intention to resell or distribute such securities. Each of the individuals or entities had access to information about our business and financial condition and was deemed capable of protecting their own interests. The stock, warrants and other securities were issued pursuant to the private placement exemption provided by Section 4(2) or Section 4(6) of the Securities Act of 1933. These are deemed to be "restricted securities" as defined in Rule 144 under the 1933 Act and the warrant certificates and the stock certificates bear a legend limiting the resale thereof.

(a) During 2004 we issued an aggregate of 168,626 shares of our common stock to three vendors in payment of \$57,944 in accounts payable for goods and services.

(b)

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During 2004 we issued an aggregate of 280,000 shares of our common stock to two consultants in settlement of \$477,816 of contractual payments.

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- (c) In January 2004, the Company sold an aggregate of 1,897,143 shares of its common stock to eight individuals for total proceeds to the Company of \$656,221.
- (d) In February 2004, the Company sold an aggregate of 616,452 shares of its common stock to four individuals for total proceeds to the Company of \$272,614.
- (e) In March 2004, the Company sold an aggregate of 1,539,262 shares of its common stock to five individuals for total proceeds to the Company of \$810,143.
- (f) On March 24, 2004, we issued 5,500,000 shares of common stock to our then Chief Executive Officer, Ms. Patricia McPeak, in exchange for services rendered.
- (g) In April 2004, the Company sold an aggregate of 1,347,299 shares of its common stock to four individuals for total proceeds to the Company of \$514,973.
- (h) In May 2004, the Company sold an aggregate of 125,000 shares of its common stock to two individuals for total proceeds to the Company of \$12,475.
- (i) In September 2004, the Company sold an aggregate of 25,000 shares of its common stock to one individual for total proceeds to the Company of \$4,500.
- (j) On September 8, 2004, the Company and Langley Park Investments PLC (“Langley”) signed a Stock Purchase Agreement under which the Company agreed to sell 7,000,000 shares of its common stock to Langley. The transaction will close at the time that Langley’s shares are trading on the London Stock Exchange for anticipated consideration to NutraCea (i) immediately following the closing of approximately \$1,190,000 in Langley stock, and (ii) additional consideration of that number of Langley shares which, as of the closing, will have a value of approximately \$1,190,000.
- (k) In December 2004, the Company sold an aggregate of 25,000 shares of its common stock to one individual for total proceeds to the Company of \$5,000. There were no underwriting discounts or commissions associated with this sale.
- (l) In December 2004, the Company issued warrants to purchase an aggregate of 2,400,000 shares of the Company’s common stock in connection with a Promissory Note and Warrant Purchase Agreement entered into with three investors for an aggregate purchase amount of \$2,400,000. A commission of \$242,846 as paid to Sandgrain Securities upon consummation of the financing and a finders fee of \$25,000 was paid.
- (m) During 2004, we issued 3,048,315 shares of our common stock to 15 consultants in lieu of contractual payments in the amount of \$2,192,013 pursuant to consulting contracts.
- (n) During 2004, we issued warrants to purchase 9,598,493 shares of our common stock valued at \$7,761,516 to 14 consultants pursuant to consulting agreements. The warrants are exercisable at prices between \$.01 and \$5.00 per share and expire at varying times between six months and five years from the date of issuance.
- (o) During the year ended December 31, 2005, we:
  - issued 70,000 shares of common stock to two officers and directors, valued at \$30,100;
  - issued a total of 30,000 shares of common stock to two consultants under the Patent Incentive Plan, valued at \$12,600;



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· issued 97,000 shares of common stock, valued at \$97,655, to Faraday, which was the last required payment to Faraday under the Settlement Agreement dated December 10, 2003; and

· issued 33,000 shares of common stock to three consultants, valued at \$21,800.

(p) During 2005, we issued options and warrants to purchase an aggregate of 700,000 shares of our common stock to seven consultants, valued at \$301,598.

(q) During 2005, we issued options to purchase an aggregate of 2,200,000 shares of our common stock to three employees, valued at \$130,000 and exercisable at between \$0.30 and \$0.46 per share. These options expire in ten years.

(r) During the quarter ended June 30, 2005, NutraCea issued 29,786 shares of its common stock valued at \$15,000 to a web design consultant in respect of unpaid fees.

(s) During the quarter ended June 30, 2005, NutraCea issued 1,222,222 shares of its common stock to repurchase technology and marketing rights valued at \$550,000.

(t) During the quarter ended June 30, 2005, NutraCea issued 359,183 shares of common stock to a consulting company for patent and license analysis. One half of the shares vested upon signing of the agreement while the balance will vest upon certain milestones being achieved. The vested shares are valued at \$110,000.

(u) During the quarter ended June 30, 2005, NutraCea issued options to purchase 360,000 shares of its common stock to a technology firm for assistance in developing an internet marketing system for NutraCea. The options have an exercise price of \$0.60 per share and became exercisable over 21 months. The option was valued at \$118,165 and expires in five years. The contract was terminated on August 31, 2005 with 105,000 option shares vested.

(v) On August 24, 2005, NutraCea entered into a Private Label Supply Agreement and Strategic Alliance (“Supply Agreement”). In connection with the Supply Agreement and in return for an agreement to purchase a minimum of \$500,000 in NutraCea products, NutraCea issued to ITV Global, Inc. an option to acquire up to 250,000 shares of the Company’s common stock.

(w) On October 4, 2005, NutraCea completed a private placement of its securities to certain investors for aggregate gross proceeds of approximately \$7,850,000. NutraCea issued an aggregate of 7,850 shares of Series B Convertible Preferred Stock at a price of \$1,000 per share, which may be converted to shares of NutraCea common stock at a conversion rate of 2,000 shares of commons stock for each Preferred Share. Additionally, NutraCea issued warrants to purchase an aggregate of 7,850,000 share of NutraCea common stock at an exercise price of \$0.70 per share. The placement agent for the transaction, Halpern Capital, Inc., was paid a commission consisting of \$549,500 and warrants to purchases up to an aggregate of 1,099,000 shares of NutraCea common stock at an exercise price of \$0.50 per share.

(x) In January and February 2006, we issued options to purchase and aggregate of 410,000 shares of our common stock to four consultants and one director, valued at \$168,394.

(y) In February 2006, we issued options to purchase an aggregate of 530,000 shares of our common stock to two employees valued at \$10,000.

(z) On May 12, 2006, NutraCea completed a private placement of its securities to certain investors for aggregate gross proceeds of approximately \$17,560,000. NutraCea issued an aggregate of 17,560 shares of Series C Convertible Preferred Stock at a price of \$1,000 per share, which may be converted to shares of NutraCea common stock at a



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conversion rate of approximately 1,176 shares of commons stock for each Preferred Share. Additionally, NutraCea issued warrants to purchase an aggregate of 10,329,412 share of NutraCea common stock at an exercise price of \$1.35 per share. The placement agent for the transaction, Halpern Capital, Inc., was paid a commission consisting of \$1.35 and warrants to purchases up to an aggregate of 500,000 shares of NutraCea common stock at an exercise price of \$1.35 per share.

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- (aa) In May 2006, NutraCea entered into a Supply Agreement and Asset Purchase Agreement (collectively, the "Agreements") with Natural Glo Investors, L.P. In connection with the Agreement, NutraCea issued to certain affiliates of Natural Glo Investors, L.P. 369,761 shares, some of which are subject to forfeiture.
- (bb) During the quarter ended June 30, 2006, NutraCea issued to a consultant a warrant to purchase 25,000 shares of common stock for consulting services. The warrant has a per share exercise price of \$1.35 and a term of three years.
- (cc) In May 2006, NutraCea issued options to purchase 25,000 shares to each of six non-employee directors (totaling 210,000 option shares). Each of these options expire in 10 years, has an exercise price of \$1.14 per share and vests over 12 months.
- (dd) During the quarter ended September 30, 2006, NutraCea issued 381,996 shares of common stock in connection with its acquisition of the equine feed supplement business.
- (ee) During the quarter ended September 30, 2006, NutraCea issued to a consultant a warrant to purchase 50,000 shares of common stock. The warrant vests over 12 months and has a per share exercise price of \$1.20 and a term of three years.
- (ff) During the quarter ended September 30, 2006, NutraCea issued to one employee an option to purchase 50,000 shares of common stock, which starts to vest 90 days after the date of employment over a two year period. The option expires 10 years from the date of grant and has a per share exercise price of \$1.20.
- (gg) During the quarter ended December 31, 2006, NutraCea issued to a consultant a warrant to purchase 25,000 shares of common stock. The warrant vests over 5 months and has a per share exercise price of \$2.30 and a term of three years.
- (hh) During the quarter ended December 31, 2006, NutraCea issued to three entities incentive and performance warrants to purchase 275,000 shares of common stock. The shares will vest at various intervals when certain benchmarks are achieved. The warrants expire three years from the date of grant and have a per share exercise price ranging from \$2.31 to \$2.38.
- (ii) During the quarter ended December 31, 2006, NutraCea issued to six employee options to purchase an aggregate 370,000 shares of common stock, which start to vest 90 days after their employment dates over a two year period. The options expire 10 years from the date of grant and have a per share exercise price ranging from \$1.39 to \$2.38.
- (jj) During the quarter ended December 31, 2006, NutraCea issued to a medical advisor to the board of directors an option to purchase 240,000 shares of common stock. The shares will vest monthly over a 12 month period and have a per share exercise price of \$1.63 and a term of three years.
- (kk) On February 16, 2006, We completed a private placement of its securities to certain investors for aggregate gross proceeds of approximately \$50,000,000. We issued an aggregate of 20,000,000 shares of common stock at a price of \$2.50 per share and warrants to purchase an aggregate of 10,000,000 shares of common stock at an exercise price of \$3.25 per share. The placement agent for the private placement also received a warrant to purchase 1,200,000 shares of common stock at an exercise price per share of \$3.25. Each of the warrants issued in the transaction has a term of five years.
- (ll) In March 2007, we issued 17,500 shares of our common stock to Ernie Bodai, a former member of our board of directors, as payment for past services on our board of directors.



(mm) During the first quarter of 2007, we issued to employees and consultants options and warrants to purchase a total of 935,000 shares of our common stock at per share exercise prices ranging from \$2.68 to \$3.39.

The following issuances of stock were made without any public solicitation upon exercise of options and warrants. Each holder of an option or warrant represented to us that the securities were being acquired for investment purposes only and not with an intention to resell or distribute such securities. Each of the individuals or entities had access to information about our business and financial condition and was deemed capable of protecting their own interests. As such, the stock was issued pursuant to the private placement exemption provided by Section 4(2) of the Securities Act of 1933. These are deemed to be "restricted securities" as defined in Rule 144 under the 1933 Act and the stock certificates bear a legend limiting the resale thereof.

- (a) During 2004, we issued an aggregate of 509,323 shares of our common stock upon exercise of outstanding options and warrants.
- (b) During 2005, we issued an aggregate of 531,000 shares of our common stock upon exercise of outstanding options and warrants.
- (c) From January 1, 2006 to March 3, 2006, we issued 42,576 shares of our common stock upon the cashless exercise of outstanding options and warrants.
- (d) From March 4, 2006 to May 23, 2006, we issued 1,214,051 shares of our common stock upon the cashless exercise of outstanding options and warrants.
- (e) From April 1, 2006 to June 30, 2006, we issued an aggregate of 655,610 shares of our common stock upon the cashless exercise of outstanding options and warrants.
- (f) From July 1, 2006 to September 30, 2006, we issued an aggregate of 300,000 shares of our common stock upon exercise of outstanding options and warrants for the aggregate exercise price of \$172,500.
- (g) From October 1, 2006 to December 31, 2006, we issued an aggregate of 5,335,064 shares of our common stock upon exercise of outstanding warrants for the aggregate exercise price of \$5,611,588.
- (h) During the first quarter of 2007, thirty seven individuals exercised options or warrants for a total purchase price of \$2,975,404 and received a total of 3,451,959 shares of common stock.

The following issuances of stock, warrants, and other equity securities were exchanged by us with our existing security holders exclusively in transactions in which no commission or other remuneration was paid or given directly or indirectly to any person. As such, the issuance of the following securities was exempt from registration under Section 3(a)(9) of the Securities Act of 1933, as amended.

- (a) During 2004, the Company issued 5,759 shares of common stock in payment of preferred dividends in the amount of \$5,986.
- (b) During 2004, we issued an aggregate of 540,000 shares of our common stock pursuant to the conversion provisions of 630,000 shares of our Series A Preferred Stock.
- (c) In February of to March 3, 2006, we issued a total of 1,200,000 shares of our common stock upon conversion our 600 shares of our Series B Convertible Preferred Stock. From March 4, 2006 to May 23, 2006, we issued a total of 2,250,000 shares of our common stock upon conversion our 1,125 shares of our Series B Convertible Preferred Stock.



- (d) From April 1, 2006 to June 30, 2006, we issued a total of 2,100,000 shares of our common stock upon conversion of 1,050 shares of our Series B Convertible Preferred Stock.
- (e) From July 1, 2006 to September 30, 2006, we issued a total of 4,550,000 shares of our common stock upon conversion of 2,275 shares of our Series B Convertible Preferred Stock.
- (f) From July 1, 2006 to September 30, 2006, we issued 8,053,513 shares of our common stock upon conversion of 6,854 shares of our Series C Convertible Preferred Stock.
- (g) From October 1, 2006 to December 31, 2006, we issued 5,360,000 shares of our common stock upon conversion of 2,680 shares of our Series B Convertible Stock.
- (h) From October 1, 2006 to December 31, 2006, we issued 6,162,341 shares of our common stock upon conversion of 5,238 shares of our Series C Convertible Preferred Stock.
- (i) During the first quarter of 2007, four stockholders converted 470 shares of Series B Convertible Preferred Stock into 940,000 shares of our common stock. The preferred shares converted at a conversion rate of 2,000 shares of common stock for each preferred share.
- (j) During the first quarter of 2007, seventeen stockholders converted 5,466 shares of Series C Convertible Preferred Stock into 6,430,580 shares of our common stock. The preferred shares converted at a conversion rate of 1,176.47 shares of common stock for each preferred share.

The following issuances of stock and assumption of options and warrants were made pursuant to an exemption provided by Section 3(a)(10) of the Securities Act of 1933 after a fairness hearing before the California Department of Corporations.

- (a) On October 4, 2005, NutraCea completed its merger with The RiceX Company. In connection with the merger, NutraCea issued 28,272,064 shares of its common stock to holders of RiceX common stock. In addition, NutraCea assumed each outstanding option and warrant to purchase RiceX common stock and converted those options and warrants into options and warrants to purchase an aggregate of 11,810,507 shares of NutraCea common stock.

**ITEM 16:**

**EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>
2.01(1)	Plan and Agreement of Exchange.
2.02(2)	Agreement and Plan of Merger and Reorganization, dated as of April 4, 2005, by and among the NutraCea, The RiceX Company and Red Acquisition Corporation.
3.01.1(3)	Restated and Amended Articles of Incorporation as filed with the Secretary of State of California on December 13, 2001.
3.01.2*	Certificate of Amendment of Articles of Incorporation as filed with the Secretary of State of California on August 4, 2003.
3.01.3(5)	Certificate of Amendment of Articles of Incorporation as filed with the Secretary of State of California on October 31, 2003.

3.01.4\* Certificate of Amendment of Articles of Incorporation as filed with the Secretary of State of California on September 29, 2005

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3.02(6) Certificate of Designation of the Rights, Preferences, and Privileges of the Series A Preferred Stock as filed with the Secretary of State of California on December 13, 2001.