

NEKTAR THERAPEUTICS
Form S-8
August 10, 2006

As filed with the Securities and Exchange Commission on August 10, 2006

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

NEKTAR THERAPEUTICS

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

94-3134940
(I.R.S. Employer Identification No.)

150 Industrial Road

San Carlos, CA 94070

(Address of principal executive offices)

2000 Equity Incentive Plan

(Full title of the plans)

Robert B. Chess

Chief Executive Officer, President and Director

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Nektar Therapeutics

150 Industrial Road

San Carlos, CA 94070

(650) 631-3100

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

Copies to:

Mark P. Tanoury, Esq.

John M. Geschke, Esq.

Cooley Godward LLP

Five Palo Alto Square

3000 El Camino Real

Palo Alto, CA 94306

(650) 843-5000

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum | Proposed Maximum | Amount of Registration Fee |
|---|--------------------------------|-------------------------------------|-------------------------------------|-----------------------------------|
| | | Offering Price per Share (1) | Aggregate Offering Price (1) | |
| Common Stock (par value \$0.0001) | 7,000,000 shares | \$ <u>16.14</u> | \$ <u>112,980,000</u> | \$ 12,088.86 |

- (1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h). The price per share and aggregate offering price are based upon the average of the high and low prices of Registrant's Common Stock on August 8, 2006 as reported on the Nasdaq National Market (pursuant to Rule 457(c) under the Securities Act of 1933, as amended). This registration statement shall cover any additional shares of Common Stock which become issuable under the 2000 Equity Incentive Plan set forth herein by reason of any stock dividend, stock split, recapitalization or any other similar transaction without receipt of consideration which results in an increase in the number of shares of the Registrant's outstanding Common Stock.
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**INCORPORATION BY REFERENCE OF CONTENTS OF
REGISTRATION STATEMENT ON FORM S-8 NO. 333-117975
REGISTRATION STATEMENT ON FORM S-8 NO. 333-59735
REGISTRATION STATEMENT ON FORM S-8 NO. 333-07969
REGISTRATION STATEMENT ON FORM S-8 NO. 33-79630**

The contents of Registration Statement on Form S-8 No. 333-117975 filed with the Securities and Exchange Commission August 6, 2004 are incorporated by reference herein.

The contents of Registration Statement on Form S-8 No. 333-59735 filed with the Securities and Exchange Commission July 23, 1998 are incorporated by reference herein.

The contents of Registration Statement on Form S-8 No. 333-07969 filed with the Securities and Exchange Commission on July 11, 1996 are incorporated by reference herein.

The contents of Registration Statement on Form S-8 No. 33-79630 filed with the Securities and Exchange Commission on June 1, 1994 are incorporated by reference herein.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Under Section 145 of the Delaware General Corporation Law, we have broad powers to indemnify our directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act of 1933, as amended (the Securities Act).

Our certificate of incorporation, as amended, provides for the elimination of liability for monetary damages for breach of our directors' fiduciary duty of care to us and our stockholders. These provisions do not eliminate our directors' duty of care and, in appropriate circumstances, equitable remedies such as an injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to us, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for any transaction from which the director derived an improper personal benefit and for violating Section 174 of the Delaware General Corporation Law. The provision does not affect a director's responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws.

We have entered into agreements with our directors and executive officers that require us to indemnify such persons against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or officer of us or any of our affiliated enterprises, provided 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 us and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

EXHIBITS

| Exhibit Number | Description of Documents |
|-----------------------|---|
| 3.1(1) | Certificate of Incorporation of Inhale Therapeutic Systems (Delaware), Inc. |
| 3.2(1) | Bylaws of Nektar Therapeutics. |
| 3.3(3) | Certificate of Amendment of the Amended Certificate of Incorporation of Nektar Therapeutics. |
| 3.4(6) | Certificate of Designation of Series A Junior Participating Preferred Stock of Nektar Therapeutics. |
| 3.5(7) | Certificate of Designation of Series B Convertible Preferred Stock of Nektar Therapeutics. |
| 3.6(8) | Certificate of Ownership and Merger of Nektar Therapeutics. |
| 4.1 | Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6. |
| 4.2(2) | Indenture, dated February 8, 2000, by and between Nektar Therapeutics, as Issuer, and Chase Manhattan Bank and Trust Company, National Association, as Trustee. |
| 4.3(8) | Specimen Common Stock certificate. |
| 4.4(4) | Specimen warrants to purchase shares of Common Stock. |
| 4.5(5) | Indenture, dated October 17, 2000, by and between Nektar Therapeutics, as Issuer, and Chase Manhattan Bank and Trust Company, National Association, as Trustee. |
| 4.6(6) | Rights Agreement, dated as of June 1, 2001, by and between Nektar Therapeutics and Mellon Investor Services LLC., as Rights Agent. |
| 4.7(6) | Form of Right Certificate. |
| 4.8(9) | Resale Registration Rights Agreement, dated June 30, 2003, by and among Nektar Therapeutics, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Lehman Brothers Inc., Friedman, Billings, Ramsey & Co. Inc. and SG Cowen Securities Corporation |
| 4.9(10) | Resale Registration Rights Agreement, dated October 9, 2003, by and among Nektar Therapeutics and the entities named therein. |
| 4.10(11) | Common Stock Purchase Agreement dated as of August 15, 2005, by and between Nektar Therapeutics and Mainfield Enterprises, Inc. |
| 4.11(12) | Indenture, dated September 28, 2005, by and between Nektar Therapeutics, as Issuer, and J.P. Morgan Trust Company, and National Association, as Trustee. |
| 4.12(12) | Registration Right Agreement, dated as of September 28, 2005, among Nektar Therapeutics and entities named therein. |

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- 5.1(13) Opinion of Cooley Godward LLP.
 - 23.1(13) Consent of Ernst & Young LLP, independent auditors
 - 23.2 Consent of Cooley Godward LLP (included in Exhibit 5.1).
 - 24.1 Power of Attorney is contained on the signature pages.
 - 99.1(13) 2000 Equity Incentive Plan, as amended.
 - 99.2(13) Nektar Therapeutics Stock Option Agreement issued in accordance with Nektar Therapeutics 2000 Equity Incentive Plan, as amended.
 - 99.3(13) Nektar Therapeutics Stock Option Grant Notice issued in accordance with Nektar Therapeutics 2000 Equity Incentive Plan, as amended.
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- (1) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Quarterly Report on Form 10-Q for the quarter ended June 30, 1998.
- (2) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Annual Report on Form 10-K for the year ended December 31, 1999.
- (3) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Quarterly Report on Form 10-Q for the quarter ended June 30, 2000.
- (4) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Quarterly Report on Form 10-Q for the quarter ended September 30, 2000.
- (5) Incorporated by reference to Nektar Therapeutics Registration Statement on Form S-3 (No. 333-53678), filed on January 12, 2001.
- (6) Incorporated by reference to Nektar Therapeutics Current Report on Form 8-K, filed on June 4, 2001.
- (7) Incorporated by reference to Nektar Therapeutics Current Report on Form 8-K, filed on January 8, 2002.
- (8) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Current Report on Form 8-K, filed on January 23, 2003.
- (9) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Current Report on Form 8-K, filed on July 2, 2003.
- (10) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Current Report on Form 8-K, filed on November 3, 2003.
- (11) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Current Report on Form 8-K, filed on August 17, 2005.
- (12) Incorporated by reference to the indicated exhibit in Nektar Therapeutics Current Report on Form 8-K, filed on September 28, 2005.
- (13) Filed herewith

UNDERTAKINGS

(a) The undersigned registrant hereby undertakes:

(1) 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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

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

Provided, however, that:

Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference herein.

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

(3) 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.

(b) The undersigned registrant hereby undertakes 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 the 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.

(c) 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 foregoing provisions, 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 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 San Carlos, State of California, on August 10, 2006.

NEKTAR THERAPEUTICS

By: /s/ Louis Drapeau
Louis Drapeau
Senior Vice President, Finance and Chief
Financial Officer (Principal Accounting and
Financial Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert B. Chess and Louis Drapeau, 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 for 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 or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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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 |
|--|--|-----------------|
| /s/ Robert B. Chess Robert B. Chess | Interim Chief Executive Officer, President and Director (Principal Executive Officer) | August 10, 2006 |
| /s/ Louis Drapeau Louis Drapeau | Senior Vice President, Finance and Chief Financial Officer (Principal Accounting and Financial Officer) | August 10, 2006 |
| /s/ John S. Patton John S. Patton, Ph.D. | Founder, Chief Scientific Officer and Director | August 10, 2006 |
| /s/ Michael A. Brown Michael A. Brown | Director | August 10, 2006 |
| /s/ Christopher A. Kuebler Christopher A. Kuebler | Director | August 10, 2006 |
| /s/ Joseph J. Krivulka Joseph J. Krivulka | Director | August 10, 2006 |
| /s/ Irwin Lerner Irwin Lerner | Director | August 10, 2006 |
| /s/ Susan Wang Susan Wang | Director | August 10, 2006 |
| /s/ Roy A. Whitfield Roy A. Whitfield | Director | August 10, 2006 |

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