

ANTIGENICS INC /DE/  
Form S-8  
June 19, 2009

As filed with the Securities and Exchange Commission on June 19, 2009

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form S-8**

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

**Antigenics Inc.**

*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**06-1562417**  
*(I.R.S. Employer  
Identification No.)*

**3 Forbes Road, Lexington, MA 02421**

*(Address of principal executive offices, including zip code)*

**2009 EMPLOYEE STOCK PURCHASE PLAN**

*(Full title of the plan)*

**Garo H. Armen, Ph.D**

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**Antigenics Inc.**

**3 Forbes Road**

**Lexington, MA 02421**

**781-674-4400**

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

Please send copies of all communications to:

**Paul M. Kinsella**

**Ropes & Gray LLP**

**One International Place**

**Boston, MA 02110**

**617-951-7000**

**617-951-7050 (facsimile)**

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. (Check one):

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

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CALCULATION OF REGISTRATION FEE

	<b>Amount</b>	<b>Proposed maximum offering price</b>	<b>Proposed maximum aggregate offering price (1)</b>	<b>Amount of registration fee</b>
<b>Title of securities to be registered</b>	<b>registered</b>	<b>per share (1)</b>		
Common Stock, \$0.01 par value per share	1,000,000 (2)	\$2.00	\$2,000,000	\$111.60

- (1) Pursuant to Rules 457(c) and 457(h)(1) under the Securities Act of 1933, the proposed maximum offering price per share and the proposed maximum aggregate offering price for the shares have been calculated solely for the purpose of computing the registration fee on the basis of the average high and low prices of the Common Stock as reported on the NASDAQ Capital Market on June 16, 2009.
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, this registration statement also covers such additional shares of Common Stock as may be issued to prevent dilution from stock splits, stock dividends and similar transactions. In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the 2009 Employee Stock Purchase Plan.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents previously filed with the Securities and Exchange Commission (the "SEC") are incorporated by reference herein and shall be deemed as part hereof:

- a) our Annual Report on Form 10-K for the year ended December 31, 2008 filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act") on March 16, 2009;
- b) our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 filed under the Exchange Act on May 11, 2009;
- c) the information identified as incorporated by reference under Item 14 of Part III of our Annual Report on Form 10-K for the year ended December 31, 2008 from our Definitive Proxy Statement on Schedule 14A for our 2009 annual meeting of stockholders, filed on April 27, 2009;
- d) our Current Reports on Form 8-K filed under the Exchange Act on January 21, 2009, February 4, 2009, March 12, 2009, March 30, 2009, April 17, 2009, April 22, 2009, April 29, 2009, April 30, 2009, May 4, 2009, May 11, 2009, May 27, 2009, June 4, 2009, June 5, 2009, June 9, 2009, June 11, 2009, and June 15, 2009;
- e) the description of our common stock contained in our registration statement on Form 8-A filed on January 24, 2000 (file no. 000-29089), including any amendment or report filed hereafter for purposes of updating such description.

All documents filed after the date of this registration statement pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereunder have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such reports and documents. Unless expressly incorporated into this registration statement, a report furnished but not filed on Form 8-K shall not be incorporated by reference into this registration statement. Any statement contained in a document 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 which 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.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interest of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

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Section 145 of the Delaware General Corporation Law permits, in general, a Delaware corporation to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation) by reason of the fact that he or she is or was a director or officer of the corporation, or served another business enterprise in any capacity at the request of the corporation, against liability incurred in connection with such proceeding, including the expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, in criminal actions or proceedings, additionally had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation's power

to indemnify applies to actions brought by or in the right of the corporation as well, but only to the extent of expenses (including attorney's fees) actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit, provided that no indemnification shall be provided in such actions in the event of any adjudication of negligence or misconduct in the performance of such person's duties to the corporation, unless a court believes that in light of all the circumstances indemnification should apply. Section 145 of the Delaware General Corporation Law also permits, in general, a Delaware corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or served another entity in any capacity at the request of the corporation, against liability incurred by such person in such capacity, whether or not the corporation would have the power to indemnify such person against such liability.

We have entered into indemnification agreements with each of our directors and certain executive officers and have obtained insurance covering our directors and officers against losses and insuring us against certain of our obligations to indemnify our directors and officers.

Our Third Amended and Restated By-Laws provide that we shall indemnify each of our directors and officers, to the maximum extent permitted from time to time by law, against all expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by reason of the fact that he or she is a director or officer. This right of indemnification conferred in our Third Amended and Restated By-Laws is not exclusive of any other right.

In addition, as permitted by Section 102 of the Delaware General Corporation Law, our Amended and Restated Certificate of Incorporation includes a provision that eliminates the personal liability of our directors for monetary damages for breach of their fiduciary duty as directors except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

These indemnification provisions may be sufficiently broad to permit indemnification of our directors and officers for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933, as amended (the Securities Act).

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

See Exhibit Index following the signature page of this registration statement.

**Item 9. 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 the 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; and

(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 SEC by the Registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(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 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.

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 SEC 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, 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 this 19th day of June, 2009.

Antigenics Inc.

By: /s/ Garo H. Armen, Ph.D.  
Garo H. Armen, Ph.D.

*Chief Executive Officer and*

*Chairman of the Board*

**POWER OF ATTORNEY**

We, the undersigned officers and directors of Antigenics Inc., hereby severally constitute and appoint Garo Armen and Shalini Sharp, and each of them singly, our true and lawful attorneys-in-fact, with full power to them in any and all capacities, to sign any and all amendments to this registration statement on Form S-8 (including any post-effective amendments thereto), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact may 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 below by the following persons in the capacities indicated on June 19, 2009:

<b>Signature</b>	<b>Title</b>
/s/ Garo H. Armen, Ph.D.	Chief Executive Officer and Chairman of the Board
Garo H. Armen, Ph.D.	of Directors (Principal Executive Officer)
/s/ Shalini Sharp	Vice President and Chief Financial Officer
Shalini Sharp	(Principal Financial Officer)
/s/ Christine M. Klaskin	Vice President, Finance
Christine M. Klaskin	(Principal Accounting Officer)
/s/ Tom Dechaene	Director
Tom Dechaene	
/s/ Brian Corvese	Director
Brian Corvese	
/s/ John Hatsopoulos	Director
John Hatsopoulos	
/s/ Wadih Jordan	Director



Wadiah Jordan

/s/ Hyam I. Levitsky, MD Director

Hyam I. Levitsky, MD

/s/ Timothy Rothwell Director

Timothy Rothwell

/s/ Timothy R. Wright Director

Timothy R. Wright

**EXHIBIT INDEX**

The following is a list of exhibits filed as part of this registration statement.

<b>Exhibit</b>	<b>Description</b>
4.1	Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K filed on June 10, 2002 and incorporated herein by reference.
4.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K filed on June 11, 2007 and incorporated herein by reference.
4.3	Third Amended and Restated By-laws of Antigenics Inc. Filed as Exhibit 3.2 to our amendment to Quarterly Report on Form 10-Q/A for the quarter ended September 30, 2008 and incorporated herein by reference.
4.4	Form of Common Stock Certificate. Filed as Exhibit 4.1 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
5.1	Opinion of Ropes & Gray LLP dated June 19, 2009. Filed herewith.
23.1	Consent of Ropes & Gray LLP (included in Opinion filed as Exhibit 5.1).
23.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm. Filed herewith.
24.4	Power of Attorney (included on signature page of this registration statement).
99.1	2009 Employee Stock Purchase Plan. Filed as Appendix B to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.