

SPECTRUM PHARMACEUTICALS INC  
Form S-8  
May 30, 2006

As filed with the Securities and Exchange Commission on May 30, 2006

Registration No. 333-\_\_\_\_\_

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

**SPECTRUM PHARMACEUTICALS, INC.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

93-079187  
(I.R.S. Employer  
Identification No.)

**SPECTRUM PHARMACEUTICALS, INC. 401(K) PLAN**

**AS AMENDED JANUARY 1, 2006**

(Full title of Plan)

157 Technology Drive

Irvine, California 92618

(949) 788-6700

(Address, Including Zip Code and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Rajesh C. Shrotriya, M.D.

Chief Executive Officer

157 Technology Drive

Irvine, California 92618

(949) 788-6700

(Name, Address, Including Zip Code and Telephone Number, Including Area Code, of Agent for Service)

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Copies to:

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Cary K. Hyden, Esq.

Regina M. Schlatter, Esq.

Latham & Watkins LLP

650 Town Center Drive, Twentieth Floor

Costa Mesa, California 92626

(714) 540-1235

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered(1)(2)</b>	<b>Amount Registered</b>	<b>Proposed Maximum Offering Price Per Share(3)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, \$0.001 par value per share	500,000	\$ 3.72	\$ 1,860,000.00	\$ 200.00

- (1) In the event of a stock split, stock dividend, or similar transaction involving the Company's Common Stock, the number of shares registered hereby shall automatically be increased to cover the additional shares in accordance with Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"). In addition, pursuant to Rule 416(c) under the Securities Act, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Spectrum Pharmaceuticals, Inc. 401(k) Plan (the "Plan").
- (2) Each share of our Common Stock being registered hereunder, if issued prior to the termination by the Company of its Rights Agreement dated December 13, 2000, as amended, will include one preferred stock purchase right. Prior to the occurrence of certain events the preferred stock purchase rights will not be exercisable or evidenced separately from the Common Stock.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act based on the average of the high and low reported sales price per share of our common stock on May 23, 2006 as reported on the Nasdaq National Market.

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**Proposed sale to take place from time to time after the effective date of the Registration Statement.**

**PART I**

The information called for in Part I of Form S-8 is not being prepared with or included in this Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the Commission).

**PART II**

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

The following documents filed with the Commission by the Company are incorporated as of their respective dates in this Registration Statement by reference:

- A. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, filed with the Commission on March 15, 2006 and the Amendment No. 1 to such Annual Report on Form 10-K/A filed with the Commission on May 1, 2006, pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the Exchange Act);
- B. Our quarterly report on Form 10-Q for the quarter ended March 31, 2006, filed on May 8, 2006;
- C. The Company's Current Reports on Form 8-K, filed with the Commission on January 5, 2006, January 23, 2006, February 28, 2006, March 20, 2006 and April 26, 2006;
- D. The description of our common stock contained in the Registration of Securities of Certain Successor Issuers filed pursuant to Section 12(g) of the Exchange Act on Form 8-B on June 27, 1997, including any amendment or reports filed for the purpose of updating such description; and
- E. The description of our Rights to Purchase Series B Junior Participating Preferred Stock contained in the Registration of Certain Classes of Securities filed pursuant to Section 12(g) of the Exchange Act on Form 8-A on December 26, 2000, including any amendments or reports that may be filed for the purpose of updating such description.

All documents filed by the Company or the Plan pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold are incorporated by reference in this Registration Statement and are a part hereof from the date of filing such documents. A Current Report on Form 8-K furnished to the Commission 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**

The Company's Common Stock, par value \$0.001 (the Common Stock), is registered pursuant to Section 12 of the Exchange Act, and, therefore, the description of securities is omitted in accordance with the rules and regulations of the Commission.

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

Not applicable.

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

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The bylaws of the Company provide for indemnification of the Company's directors and officers to the fullest extent permitted by law. Insofar as indemnification for liabilities under the Securities Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the Registrant's Certificate of Incorporation, bylaws and the Delaware General Corporation Law (the "DGCL"), the Registrant has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in such Act and is therefore unenforceable.

Section 102(b)(7) of the DGCL provides that a certificate of incorporation may include a provision which eliminates or limits the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, 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 which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, relating to prohibited dividends or distributions or the repurchase or redemption of stock or (iv) for any transaction from which the director derives an improper personal benefit. The Registrant's Certificate of Incorporation includes such a provision. As a result of this provision, the Registrant and its stockholders may be unable to obtain monetary damages from a director for breach of his or her duty of care.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

See Index to Exhibits on page 7.

The Plan is a 401(k) profit-sharing plan maintained by the Company. The Company has adopted the prototype non-standardized safe harbor profit sharing plan sponsored by Digital Retirement Solutions Inc. ( Digital ) for purposes of maintaining the 401K Plan. The Internal Revenue Service has issued a favorable opinion letter to Digital with respect to the compliance of the form of the nonstandardized prototype safe harbor profit-sharing plan under Section 401 of the Internal Revenue Code of 1996, as amended (the Code ). Under Section 8 of Internal Revenue Service Revenue Procedure 2004-6, the Company can rely on the opinion letter issued to Digital as the equivalent of a favorable determination letter. A copy of the opinion letter issued to Digital is attached as an exhibit in lieu of a favorable determination letter on the Plan. The Company has been assured by Digital that any future amendments to the form of the non-standardized prototype 401(k) profit-sharing plan will be submitted by Digital to the Internal Revenue Service in a timely manner, and all amendments required by the Internal Revenue Service in order to maintain the compliance of the form of the non-standardized prototype 401(k) profit-sharing plan with Section 401 of the Code will be made in a timely manner by Digital.

**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 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 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 a 20% 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) shall 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 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 of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) 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 of 1933 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 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 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 Irvine, State of California, on May 30, 2006.

SPECTRUM PHARMACEUTICALS, INC.

By: /s/ RAJESH C. SHROTRIYA, M.D.  
Rajesh C. Shrotriya, M.D.

**Chairman, Chief Executive Officer and President**

**POWER OF ATTORNEY**

Each person whose signature appears below hereby authorizes and appoints Rajesh Shrotriya and Shyam Kumaria, or either of them, as attorneys-in-fact and agents with full power of substitution and resubstitution, to sign on his behalf, individually and in the capacities stated below, and to file any and all amendments, including post-effective amendments, to this Registration Statement and other documents in connection therewith, with the Commission, granting to said attorneys-in-fact and agents full power and authority to perform any other act on behalf of the undersigned required to be done in the premises.

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.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ RAJESH C. SHROTRIYA, M.D. <b>Rajesh C. Shrotriya, M.D.</b>	Chairman of the Board, Chief Executive Officer President and Director (Principal Executive Officer)	May 30, 2006
/s/ SHYAM K. KUMARIA <b>Shyam K. Kumaria</b>	Vice President Finance (Principal Financial and Accounting Officer)	May 30, 2006
/s/ RICHARD FULMER, MBA <b>Richard Fulmer</b>	Director	May 30, 2006
/s/ STUART M. KRASSNER, Sc.D., Psy.D. <b>Stuart M. Krassner, Sc.D., Psy.D.</b>	Director	May 30, 2006
/s/ ANTHONY E. MAIDA, III, MA, MBA <b>Anthony E. Maida, III</b>	Director	May 30, 2006
/s/ DILIP J. MEHTA, M.D., Ph.D. <b>Dilip J. Mehta, M.D., Ph.D.</b>	Director	May 30, 2006
/s/ JULIUS A. VIDA, Ph.D. <b>Julius A. Vida, Ph.D.</b>	Director	May 30, 2006



**THE PLAN**

Pursuant to the requirements of the Securities Act of 1933, as amended, the persons who administer the Spectrum Pharmaceuticals, Inc. 401(k) Plan, as amended, have duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on the 30th day of May, 2006.

SPECTRUM PHARMACEUTICALS, INC. 401(K) PLAN

By: Spectrum Pharmaceuticals, Inc.

By: /s/ RAJESH C. SHROTRIYA, M.D.  
**Rajesh C. Shrotriya, M.D.**

**Chairman, Chief Executive Officer and President**

INDEX TO EXHIBITS

EXHIBIT

- 4.1 Form of Warrants issued by the Registrant to Brighton Capital, Ltd., dated between April 17, 2001 and May 18, 2001. (Filed as Exhibit 4.32 to Form 10-K, as filed with the Securities and Exchange Commission on April 2, 2002, and incorporated herein by reference.)
- 4.2 Rights Agreement, dated as of December 13, 2000, between the Registrant and U.S. Stock Transfer Corporation, as Rights Agent, which includes as Exhibit A thereto the form of Certificate of Designation for the Series B Junior Participating Preferred Stock, as Exhibit B thereto the Form of Rights Certificate and as Exhibit C thereto a Summary of Terms of Stockholder Rights Plan. (Filed as Exhibit 4.1 to Form 8-A12G, as filed with the Securities and Exchange Commission on December 26, 2000, and incorporated herein by reference.)
- 4.3 Warrant issued by the Registrant to Montrose Investments Ltd., dated as of May 18, 2001. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on May 21, 2001, and incorporated herein by reference.)
- 4.4 Warrant issued by the Registrant to Strong River Investments, Inc., dated as of May 18, 2001. (Filed as Exhibit 4.2 to Form 8-K, as filed with the Securities and Exchange Commission on May 21, 2001, and incorporated herein by reference.)
- 4.5 Form of Warrant issued by the Registrant to Gruntal & Co., L.L.C., dated as of August 10, 2001 (Filed as Exhibit 4.44 to Form 10-K, as filed with the Securities and Exchange Commission on April 2, 2002, and incorporated herein by reference.)
- 4.6 Form of Warrants issued by the Registrant to Cantor Fitzgerald & Co, dated as of December 6, 2001 and December 13, 2001. (Filed as Exhibit A to Schedule 1 to Exhibit 1.1 to Form 8-K, as filed with the Securities and Exchange Commission on October 24, 2001, and incorporated herein by reference.)
- 4.7 Warrant issued by the Registrant to Jefferies & Company, Inc., dated as of December 13, 2001. (Filed as Exhibit 4.46 to Form 10-K, as filed with the Securities and Exchange Commission on April 2, 2002, and incorporated herein by reference.)
- 4.8 Form of Warrant issued by the Registrant to certain purchasers, dated as of March 13, 2002. (Filed as Exhibit 4.47 to Form 10-K, as filed with the Securities and Exchange Commission on April 2, 2002, and incorporated herein by reference.)
- 4.9 Form of Warrant issued by the Registrant to certain purchasers, dated as of June 5, 2002. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on June 7, 2002, and incorporated herein by reference.)
- 4.10 Form of Warrant issued by the Registrant to certain purchasers, dated as of June 7, 2002. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on June 19, 2002, and incorporated herein by reference.)
- 4.11 Warrant Repurchase Agreement by and between the Registrant and BNC Bach International, Ltd., dated as of July 31, 2002. (Filed as Exhibit 10.3 to Form 10-Q for the quarterly period ended September 30, 2002, as filed with the Securities and Exchange Commission on November 13, 2002, and incorporated herein by reference.)
- 4.12\* Form of Warrant issued by the Registrant to five purchasers, dated as of November 21, 2002, to purchase up to an aggregate of 107,870 shares of our common stock. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on November 26, 2002, and incorporated herein by reference.)
- 4.13 Form of Warrant issued by the Registrant to certain purchasers, dated as of December 13, 2002, to purchase up to an aggregate of 65,550 shares of our common stock. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on December 13, 2002, and incorporated herein by reference.)
- 4.14 Form of Warrants issued by the Registrant to Cantor Fitzgerald & Co, dated as of December 6, 2001 and December 13, 2001. (Filed as Exhibit A to Schedule 1 to Exhibit 1.1 to Form 8-K, as filed with the Securities and Exchange Commission on October 24, 2001, and incorporated herein by reference.)
- 4.15 Form of Warrant issued by the Registrant to three purchasers, dated as of January 16, 2003, to purchase up to an aggregate of 55,555 shares of our common stock. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on January 17, 2003, and incorporated herein by reference.)

- 4.16 Form of Series D-1 Warrant. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on May 16, 2003, and incorporated herein by reference.)
- 4.17 Form of Series D-2 Warrant. (Filed as Exhibit 4.2 to Form 8-K, as filed with the Securities and Exchange Commission on May 16, 2003, and incorporated herein by reference.)
- 4.18 Series D-3 Warrant. (Filed as Exhibit 4.3 to Form 8-K, as filed with the Securities and Exchange Commission on May 16, 2003, and incorporated herein by reference.)
- 4.19 Amendment No. 1 to the Rights Agreement dated as of December 13, 2000 by and between the Registrant and U.S. Stock Transfer Corporation. (Filed as Exhibit 4.1 to Form 10-Q, as filed with the Securities and Exchange Commission on August 14, 2003, and incorporated herein by reference.)
- 4.20\* Registration Rights Agreement dated as of August 13, 2003, by and among the Registrant and the persons listed on Schedule 1 attached thereto. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on August 15, 2003, and incorporated herein by reference.)
- 4.21\* Form of Series 2003-1 Warrant (Filed as Exhibit 4.2 to Form 8-K, as filed with the Securities and Exchange Commission on August 15, 2003, and incorporated herein by reference.)
- 4.22 Form of Series E-1 Warrant (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on September 30, 2003, and incorporated herein by reference.)
- 4.23 Form of Series E-2 Warrant (Filed as Exhibit 4.2 to Form 8-K, as filed with the Securities and Exchange Commission on September 30, 2003, and incorporated herein by reference.)
- 4.24 Series E-3 Warrant (Filed as Exhibit 4.3 to Form 8-K, as filed with the Securities and Exchange Commission on September 30, 2003, and incorporated herein by reference.)
- 4.25 Registration Rights Agreement dated as of September 26, 2003, by and among the Registrant and the persons listed on Schedule 1 attached thereto. (Filed as Exhibit 4.4 to Form 8-K, as filed with the Securities and Exchange Commission on September 30, 2003, and incorporated herein by reference.)
- 4.26 Investor Rights Agreement, dated as of April 20, 2004, by and among the Registrant and the persons listed on Schedule 1 attached thereto. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on April 23, 2004, and incorporated herein by reference.)
- 4.27 Form of Warrant, dated as of April 21, 2004. (Filed as Exhibit 4.2 to Form 8-K, as filed with the Securities and Exchange Commission on April 23, 2004, and incorporated herein by reference.)
- 4.28 Amendment No. 2 to the Rights Agreement dated as of December 13, 2000 by and between the Registrant and U.S. Stock Transfer Corporation. (Filed as Exhibit 4.1 to Form 10-Q, as filed with the Securities and Exchange Commission on May 17, 2004, and incorporated herein by reference.)
- 4.29 Amendment No. 3 to the Rights Agreement dated as of December 13, 2000 by and between the Registrant and U.S. Stock Transfer Corporation. (Filed as Exhibit 4.2 to Form 10-Q, as filed with the Securities and Exchange Commission on May 17, 2004, and incorporated herein by reference.)
- 4.30 Warrant issued by the Registrant to a consultant, dated as of September 17, 2003. (Filed as Exhibit 4.3 to Form 10-Q, as filed with the Securities and Exchange Commission on May 17, 2004, and incorporated herein by reference.)
- 4.31 Warrant issued by the Registrant to a consultant, dated as of April 21, 2004. (Filed as Exhibit 4.4 to Form 10-Q, as filed with the Securities and Exchange Commission on May 17, 2004, and incorporated herein by reference.)
- 4.32 Form of Warrant, dated as of September 30, 2004. (Filed as Exhibit 4.1 to Form 10-Q, as filed with the Securities and Exchange Commission on November 15, 2004, and incorporated herein by reference.)

- 4.33 Amendment No. 1 dated as of November 2, 2005, to Warrant issued by the Registrant to a consultant, dated as of September 17, 2003. (Filed as Exhibit 4.2 to Form 10-Q, as filed with the Securities and Exchange Commission on November 4, 2005, and incorporated herein by reference.)
- 4.34 Warrant issued by the Registrant to a Consultant, dated as of September 20, 2005. (Filed as Exhibit 4.3 to Form 10-Q, as filed with the Securities and Exchange Commission on November 4, 2005, and incorporated herein by reference.)
- 4.35 Form of Warrant dated September 15, 2005. (Filed as Exhibit 4.35 to Form 10-K, as filed with the Securities and Exchange Commission on March 15, 2006, and incorporated herein by reference.)
- 4.36 Registration Rights Agreement dated as of April 20, 2006, by and among the Registrant and Targent, Inc. (Filed as Exhibit 4.2 to Form 10-Q, as filed with the Securities and Exchange Commission on May 8, 2006, and incorporated herein by reference.)
- 5.1+ Opinion of Latham & Watkins LLP.
- 5.2+ Internal Revenue Service opinion letter issued to Digital Retirement Solutions Inc. regarding prototype non-standardized safe harbor profit-sharing plans. See Item 8 on page 4.
- 23.1+ Consent of Latham & Watkins LLP (included in Exhibit 5.1).
- 23.2+ Consent of Kelly & Company
- 24.1+ Powers of Attorney (included on signature page to this Registration Statement)

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+ Filed herewith.

\* Indicates a management contract or compensatory plan or arrangement.