

SPECTRUM PHARMACEUTICALS INC

Form S-8

June 29, 2009

As filed with the Securities and Exchange Commission on June 29, 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**

SPECTRUM PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

93-0979187
(I.R.S. Employer
Identification Number)

**157 Technology Drive
Irvine, California 92618**

(Address of Principal Executive Offices; Zip Code)

**Spectrum Pharmaceuticals, Inc. 2009 Employee Stock Purchase Plan
Spectrum Pharmaceuticals, Inc. 2009 Incentive Award Plan**

(Full titles of the plans)

Rajesh C. Shrotriya, M.D.
**Chairman of the Board, Chief Executive
Officer and President**

**157 Technology Drive
Irvine, California 92618**

(Name and address of agent for service)

(949) 788-6700

(Telephone number, including area code, of agent for service)

Copies to:

Shivbir Grewal, Esq.

Michael Hedge, Esq.

**Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660**

(949) 725-4000

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.

Large accelerated
filer

Accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting
company)

Smaller reporting
company

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee (2) |
|---|------------------------------------|--|--|---------------------------------------|
| Common Stock, \$0.001 par value (3) | 5,000,000 shares | \$5.97 | \$29,850,000 | \$1,665.63 |
| Common Stock, \$0.001 par value (4) | 10,000,000 shares | \$5.97 | \$59,700,000 | \$3,331.26 |
| TOTAL | 15,000,000 shares | N/A | \$89,550,000 | \$4,996.89 |

(1) In the event of a stock split, stock dividend, or similar transaction involving the Registrant's common stock, in order to prevent dilution, the number of shares registered shall automatically be increased to cover the additional shares pursuant to the anti-dilution adjustment provisions of the Registrant's 2009 Employee Stock Purchase Plan and 2009 Incentive Award Plan, and in accordance with Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act). Includes associated

preferred stock
purchase rights
under the
Registrant's
Rights
Agreement dated
as of
December 13,
2000, as
amended. Prior to
the occurrence of
certain events,
the preferred
stock purchase
rights will not be
exercisable or
evidenced
separately from
the Registrant's
common stock.

- (2) In accordance with Rule 457(h), the aggregate offering price of the 15,000,000 shares of common stock registered hereby is estimated, solely for purposes of calculating the registration fee, on the basis of the price of securities of the same class, as determined in accordance with Rule 457(c), using the average of the high and the low prices reported by the NASDAQ Stock Market, LLC for the common stock on June 25, 2009, which was \$5.97 per share.

- (3) Represents shares available for issuance under the Spectrum Pharmaceuticals, Inc. 2009 Employee Stock Purchase Plan.

 - (4) Represents shares available for issuance under the Spectrum Pharmaceuticals, Inc. 2009 Incentive Award Plan.
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INTRODUCTION

This Registration Statement on Form S-8 is filed by Spectrum Pharmaceuticals, Inc. (the Registrant) relating to 5,000,000 shares of the Registrant's common stock, par value \$0.001 per share, issuable to eligible employees of the Registrant and its subsidiaries under the Spectrum Pharmaceuticals, Inc. 2009 Employee Stock Purchase Plan, and an additional 10,000,000 shares of the Registrant's common stock, par value \$0.001 per share, issuable to eligible employees, directors and consultants of the Registrant and its subsidiaries under the Spectrum Pharmaceuticals, Inc. 2009 Incentive Award Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Rule 428(b)(1) promulgated under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the SEC):

(a) the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2008 (filed with the SEC on March 31, 2009, File No. 000-28782);

(b) the Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2009 (filed with the SEC on May 7, 2009, File No. 000-28782);

(c) the Registrant's Current Reports on Form 8-K filed with the SEC on February 26, 2009, March 3, 2009, March 19, 2009, May 7, 2009, May 28, 2009, and June 18, 2009, as each may be amended; and

(d) the description of the Registrant's common stock contained in the Registration Statement on Form 8-B filed with the SEC on June 27, 1997, pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), including any subsequent amendments or reports that may be filed for the purpose of amending such description.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 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 shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. 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 subsequently filed document which also 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. No information furnished and not filed with the SEC shall be deemed incorporated by reference into this Registration Statement.

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 145(a) of the General Corporation Law of the State of Delaware (the "DGCL") provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of a corporation, or is or was serving at the request of a corporation as a director, officer, employee or agent of another corporation or enterprise, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if he 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, with respect to any criminal action or proceeding, had no cause to believe his conduct was unlawful.

Section 145(b) of the DGCL provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of 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 the court in which such action or suit was brought shall determine that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to be indemnified for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) and (b) or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and that the corporation may purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against such officer or director and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liabilities under Section 145.

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.

The bylaws of the Registrant provide for indemnification of the Registrant's directors and officers to the fullest extent permitted by law. Insofar as indemnification for liabilities under the Securities Act of 1933, as amended (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 DGCL, the Registrant has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

We have entered into indemnity agreements with each of our directors and officers. These indemnity agreements require that the Registrant indemnify each director and officer for amounts that he is or becomes

obligated to pay because of any claim or claims made against him by reason of the fact that he is or was a director or officer of the Registrant, by reason of any action (or failure to act) taken by him or any action (or failure to act) on his part while acting as a director or officer of the Registrant, or by reason of the fact that he is or was serving at the request of the Registrant as a director, officer, employee or agent of another corporation or enterprise. Under the DGCL, absent such an indemnity agreement, indemnification of a director or officer is discretionary rather than mandatory (except in the case of a proceeding in which a director or officer is successful on the merits). The indemnity agreements require the Registrant to advance the expenses incurred by a director or officer, upon receipt of his request. Absent the indemnity agreements, indemnification that might be made available to directors and officers could be changed by amendments to the Registrant's certificate of incorporation and bylaws.

We have a policy of liability insurance that insures the directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

| Exhibit Number | Exhibit |
|---------------------------|--|
| 4.1 | Amended Certificate of Incorporation, as filed. (Filed as Exhibit 3.1 to Form 10-Q, as filed with the Securities and Exchange Commission on August 8, 2006, and incorporated herein by reference.) |
| 4.2 | Form of Amended and Restated Bylaws of the Registrant. (Filed as Exhibit 3.1 to Form 10-Q, as filed with the Securities and Exchange Commission on August 16, 2004, and incorporated herein by reference.) |
| 4.3 | Rights Agreement, dated as of December 13, 2000, between the Registrant and ComputerShare Trust Company, N.A. (formerly 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.) |
| 4.4 | Amendment No. 1 to the Rights Agreement dated as of December 13, 2000 by and between the Registrant and ComputerShare Trust Company, N.A. (formerly 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.) |
| 4.5 | Amendment No. 2 to the Rights Agreement dated as of December 13, 2000 by and between the Registrant and ComputerShare Trust Company, N.A. (formerly 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.) |
| 4.6 | Amendment No. 3 to the Rights Agreement dated as of December 13, 2000 by and between the Registrant and ComputerShare Trust Company, N.A. (formerly 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.) |
| 4.7 | Fourth Amendment to Rights Agreement dated July 7, 2006. (Filed as Exhibit 4.1 to Form 8-K, as filed with the Securities and Exchange Commission on July 12, 2006, and incorporated herein by reference.) |

| Exhibit Number | Exhibit |
|---------------------------|--|
| 4.8 | Amendment No. 5 to the Rights Agreement dated as of December 13, 2000 by and between the Registrant and ComputerShare Trust Company, N.A. (formerly U.S. Stock Transfer Corporation). (Filed as Exhibit 4.2 to Form 10-Q, as filed with the Securities and Exchange Commission on November 3, 2006, and incorporated herein by reference.) |
| 5.1 + | Opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation. |
| 23.1 + | Consent of Kelly and Company. |
| 23.2 + | Consent of Stradling Yocca Carlson & Rauth, a Professional Corporation (contained in Exhibit 5.1). |
| 24.1 + | Power of Attorney (contained on page II-2 of this registration statement). |
| 99.1 + | Spectrum Pharmaceuticals, Inc. 2009 Employee Stock Purchase Plan. |
| 99.2 + | Spectrum Pharmaceuticals, Inc. 2009 Incentive Award Plan. |

+ Filed herewith.

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 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% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective 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) shall not apply if the information required to be included in a post-effective amendment by these paragraphs is contained in periodic reports filed 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 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.

(h) 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, 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 this 29th day of June, 2009.

SPECTRUM PHARMACEUTICALS, INC.

By: /s/ Rajesh C. Shrotriya, M.D.
 Rajesh C. Shrotriya, M.D.
*Chairman of the Board, Chief Executive
 Officer and President*

POWER OF ATTORNEY

The undersigned directors and officers of Spectrum Pharmaceuticals, Inc. hereby constitute and appoint Rajesh C. Shrotriya, M.D. and Shyam Kumaria and each of them, as his true and lawful attorneys-in-fact and agents, with full power to act without the other and 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 new registration statements relating to this Form S-8, 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 and about the premises, 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 either of them, or their or his substitute or substitutes, may lawfully 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 by the following persons in the capacities and on the date indicated.

| Signature | Title | Date |
|--|--|------------------|
| /s/ Rajesh C. Shrotriya, M.D. Rajesh C. Shrotriya, M.D. | Chairman of the Board, Chief Executive Officer, and President (Principal Executive Officer) | June 29, 2009 |
| /s/ Shyam K. Kumaria Shyam K. Kumaria | Vice President Finance (Principal Financial and Accounting Officer) | June 29, 2009 |
| /s/ Mitchell P. Cybulski Mitchell P. Cybulski | Director | June 29, 2009 |
| /s/ Richard D. Fulmer Richard D. Fulmer | Director | June 29, 2009 |
| /s/ Stuart M. Krassner, Sc.D., Psy.D. Stuart M. Krassner, Sc.D., Psy.D. | Director | June 29, 2009 |

Stuart M. Krassner, Sc.D., Psy.D.

/s/ Anthony E. Maida, III

Director

June 29,
2009

Anthony E. Maida, III

/s/ Julius A. Vida, Ph.D.

Director

June 29,
2009

Julius A. Vida, Ph.D.

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