

RIGEL PHARMACEUTICALS INC

Form S-8

June 26, 2003

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As filed with the Securities and Exchange Commission on June 26, 2003

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

RIGEL PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

8731
(Primary Standard Industrial
Classification Code Number)

94-3248524
(I.R.S. Employer Identification No.)

1180 Veterans Boulevard
South San Francisco, California 94080
(650) 624-1100

(Address of principal executive offices)

2000 Equity Incentive Plan
2000 Employee Stock Purchase Plan
2000 Non-Employee Directors' Stock Option Plan

(Full title of the plans)

James M. Gower
Chairman of the Board and Chief Executive Officer
Rigel Pharmaceuticals, Inc.
1180 Veterans Boulevard
South San Francisco, California 94080
(650) 624-1100

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

Copy to:

Suzanne Sawochka Hooper, Esq.
Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
(650) 843-5000

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CALCULATION OF REGISTRATION FEE

Title 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
Common Stock (par value \$.001)	2,122,223 shares	\$9.00-\$32.61	\$21,197,732	\$1,715

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall cover any additional shares of common stock which become issuable under any of the plans covered hereby 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 Registrant's outstanding common stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act. The offering price per share and aggregate offering price for the outstanding stock options are based upon the weighted average exercise price of such options. The offering price per share and aggregate offering price for the unissued stock options and common stock are based upon the average of the high and low prices of Registrant's common stock as reported on the Nasdaq National Market System on June 24, 2003.

The chart below illustrates the calculation of the registration fee:

Securities	Number of Shares	Offering Price Per Share	Aggregate Offering Price
Shares issuable pursuant to outstanding stock options under the 2000 Equity Incentive Plan	88,849	\$ 32.61	\$ 2,897,366
Shares issuable pursuant to unissued stock options under the 2000 Equity Incentive Plan	1,900,040	\$ 9.00	\$ 17,100,360
Shares issuable pursuant to the 2000 Employee Stock Purchase Plan	66,667	\$ 9.00	\$ 600,003
Shares issuable pursuant to unissued stock options under the 2000 Non-Employee Directors' Stock Option Plan	66,667	\$ 9.00	\$ 600,003
Proposed Maximum Offering Price			\$ 21,197,732
Registration Fee			\$ 1,715

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

PART II

Item 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by Rigel Pharmaceuticals, Inc. ("Rigel" or the "Company") with the Securities and Exchange Commission are incorporated by reference into this Registration Statement:

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- (a) The Company's Annual Report on Form 10-K, as amended, filed pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for the fiscal year ended December 31, 2002;
- (b) The Company's Quarterly Report on Form 10-Q, filed pursuant to Section 13 of the Exchange Act, for the quarter ended March 31, 2003;
- (c) The Company's Current Report on Form 8-K, filed pursuant to Section 13 of the Exchange Act, on May 2, 2003;
- (d) The Company's Current Report on Form 8-K, filed pursuant to Section 13 of the Exchange Act, on June 24, 2003; and
- (e) The description of the Company's Common Stock which is contained in the Registration Statement on Form 8-A, filed on October 3, 2000, pursuant to Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Company 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 have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and 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.

Item 4. DESCRIPTION OF SECURITIES

Not applicable.

Item 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

The validity of the common stock offered under this prospectus will be passed upon for the Company by Cooley Godward LLP, Palo Alto, California.

Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

As permitted by Delaware law, Rigel's amended and restated certificate of incorporation provides that no director our will be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability:

for any breach of duty of loyalty to us or to our stockholders;

for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

for unlawful payment of dividends or unlawful stock repurchases or redemptions under Section 174 of the Delaware General Corporation Law; or

for any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation further provides that we must indemnify our directors and executive officers and may indemnify our other officers and employees and agents to the fullest extent permitted by Delaware law. We believe that indemnification under our amended and restated certificate of incorporation covers negligence and gross negligence on the part of indemnified parties.

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We have entered into indemnification agreements with each of our directors and certain officers. These agreements, among other things, require us to indemnify each director and officer for certain expenses including attorneys' fees, judgments, fines and settlement amounts incurred by any such person in any action or proceeding, including any action by or in the right of Rigel, arising out to the person's services as our director or officer, any subsidiary of ours or any other company or enterprise to which the person provides services at our request.

Item 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

Item 8. EXHIBITS

Exhibit Number	
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| 4.1(1) | Amended and Restated Certificate of Incorporation of the Company. |
| 4.2(2) | Amended and Restated Bylaws of the Company. |
| 4.3(1) | Specimen Common Stock Certificate. |
| 5.1 | Opinion of Cooley Godward LLP. |
| 15.1 | Letter regarding unaudited interim financial information. |
| 23.1 | Consent of Ernst & Young LLP, Independent Auditors. |
| 23.2 | Consent of Cooley Godward LLP. Reference is made to Exhibit 5.1. |
| 24.1 | Power of Attorney is contained on the signature pages to this Registration Statement. |
| 99.1 | 2000 Equity Incentive Plan, as amended and restated. |
| 99.3 | 2000 Employee Stock Purchase Plan, as amended and restated. |
| 99.4 | 2000 Non-Employee Directors' Stock Option Plan, as amended and restated. |
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- (1) Documents incorporated by reference to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 24, 2003.
- (2) Documents incorporated by reference to the Company's Registration Statement on Form S-1, as amended (No. 333-45864), originally filed with the Securities and Exchange Commission on September 15, 2000.

Item 9. UNDERTAKINGS

1. The undersigned registrant hereby undertakes:
- (a) 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

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

(b) 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) 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.

2. 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 (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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. 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, 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 South San Francisco, State of California, on June 26, 2003.

RIGEL PHARMACEUTICALS, INC.

By: /s/ **James M. Gower**

James M. Gower
Chairman of the Board and
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints James M. Gower and James H. Welch, and each of them, as true and lawful attorneys-in-fact and agents, with full powers of substitution and resubstitution, for them and in their 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 (the "SEC"), and generally to do all such things in their names and behalf in their capacities as officers and directors to enable Rigel to comply with the provisions of the Securities Act and all requirements of the SEC, granting unto said

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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, 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.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ James M. Gower</u> James M. Gower	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	June 26, 2003
<u>/s/ James H. Welch</u> James H. Welch	Vice President, Chief Financial Officer and Secretary (Principal Financial and Accounting Officer)	June 26, 2003
<u>/s/ Donald G. Payan</u> Donald G. Payan	Executive Vice President, Chief Scientific Officer and Director	June 26, 2003
<u>/s/ Jean Deleage</u> Jean Deleage	Director	June 26, 2003
<u>/s/ Alan D. Frazier</u> Alan D. Frazier	Director	June 26, 2003
<u>/s/ Dennis J. Henner</u> Dennis J. Henner	Director	June 26, 2003
<u>/s/ Walter H. Moos</u> Walter H. Moos	Director	June 26, 2003
<u>/s/ Stephen A. Sherwin</u> Stephen A. Sherwin	Director	June 26, 2003
<u>/s/ Nicholas J. Simon, III</u> Nicholas J. Simon, III	Director	June 26, 2003

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 - 15.1 Letter regarding unaudited interim financial information.
 - 23.1 Consent of Ernst & Young LLP, Independent Auditors.
 - 23.2 Consent of Cooley Godward LLP. Reference is made to Exhibit 5.1.
 - 24.1 Power of Attorney is contained on the signature pages to this Registration Statement.
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