

ACELRX PHARMACEUTICALS INC  
Form S-8  
February 24, 2011

As filed with the Securities and Exchange Commission on February 24, 2011

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**ACELRX PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

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

**41-2193603**  
(I.R.S. Employer  
Identification No.)

**AcelRx Pharmaceuticals, Inc.**

**575 Chesapeake Drive**

**Redwood City, CA 94063**

**(650) 216-3500**

(Address of principal executive offices)

**2006 Stock Plan**

**2011 Equity Incentive Plan**

**2011 Employee Stock Purchase Plan**

(Full titles of the plans)

**Richard A. King**

**President and Chief Executive Officer**

**AcelRx Pharmaceuticals, Inc.**

**575 Chesapeake Drive**

**Redwood City, CA 94063**

**(650) 216-3500**

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

*Copies to:*

**Mark B. Weeks**

**Chadwick L. Mills**

**Cooley LLP**

**3175 Hanover Street**

**Palo Alto, California 94304**

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(650) 843-5000

Facsimile: (650) 849-7400

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  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

| Title of Securities<br>to be Registered   | Amount<br>to be<br>Registered(1) | Proposed<br>Maximum<br>Offering Price<br>Per Share(2) | Proposed<br>Maximum<br>Aggregate<br>Offering Price(2) | Amount of<br>Registration Fee |
|---|----------------------------------|---|---|-------------------------------|
| Common Stock, par value \$0.001 per share | 4,133,797 shares                 | \$2.91 - \$3.81                                       | \$13,941,849.27                                       | \$1,618.65                    |

- Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of the Registrant's Common Stock that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.
- Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The offering price per share and the aggregate offering price are based (a) upon the weighted average exercise price for outstanding options granted under the Registrant's 2006 Stock Plan or (b) with respect to shares reserved for future grant under the Registrant's 2011 Equity Incentive Plan or issuance under the Registrant's 2011 Employee Stock Purchase Plan, upon the average of the high and low prices of the Registrant's Common Stock as reported on the NASDAQ Global Market on February 18, 2011). The chart below details the calculations of the registration fee:

| Securities   | Number of<br>Shares | Offering Price Per<br>Share(2) | Aggregate Offering<br>Price |
|--|---------------------|--------------------------------|-----------------------------|
| Shares issuable upon the exercise of outstanding options granted under the 2006 Stock Plan | 2,008,797           | \$ 2.91 (2)(a)                 | \$ 5,845,599.27             |
| Shares reserved for future issuance under the 2011 Equity Incentive Plan                   | 1,875,000           | \$ 3.81 (2)(b)                 | \$ 7,143,750.00             |
| Shares reserved for future issuance under the 2011 Employee Stock Purchase Plan            | 250,000             | \$ 3.81 (2)(b)                 | \$ 952,500.00               |
| Proposed Maximum Aggregate Offering Price  |                     |                                | \$ 13,941,849.27            |
| <b>Registration Fee</b>  |                     |                                | <b>\$ 1,618.65</b>          |



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**INCORPORATION OF DOCUMENTS BY REFERENCE**

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

(a) The Registrant's prospectus filed on February 11, 2011 pursuant to Rule 424(b) under the Securities Act, relating to the registration statement on Form S-1 originally filed on November 12, 2010 (File No. 333-170594), as amended, which contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed.

(b) The Registrant's Current Report on Form 8-K, filed with the Commission on February 18, 2011.

(c) The description of the Registrant's Common Stock which is contained in a registration statement on Form 8-A filed on February 1, 2011 (File No. 001-35068), under the Securities Exchange Act of 1934, as amended (the Exchange Act ), including any amendment or report filed for the purpose of updating such description.

(d) All documents, reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) 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 herein by reference shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes that statement. Any such statement so modified or superseded shall not constitute a part of this Registration Statement, except as so modified or superseded.

**DESCRIPTION OF SECURITIES**

Not applicable.

**INTERESTS OF NAMED EXPERTS AND COUNSEL**

Not applicable.

**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 145 of the Delaware General Corporation Law permits a corporation to include in its charter documents, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by the current law.

The Registrant's amended and restated certificate of incorporation provides for the indemnification of directors to the fullest extent permissible under Delaware law.

The Registrant's amended and restated bylaws provide for the indemnification of officers, directors and third parties acting on the Registrant's behalf if such persons act in good faith and in a manner reasonably believed to be in and not opposed to the Registrant's best interest, and, with respect to any criminal action or proceeding, such indemnified party had no reason to believe his or her conduct was unlawful.

The Registrant has entered into indemnification agreements with each of its directors and executive officers, in addition to the indemnification provisions provided for in its charter documents, and the Registrant intends to enter into indemnification agreements with any new directors and executive officers in the future.

The Registrant intends to purchase and maintain insurance on behalf of any person who is or was a director or officer against any loss arising from any claim asserted against him or her and incurred by him or her in that capacity, subject to certain exclusions and limits of the amount of coverage.

**EXEMPTION FROM REGISTRATION CLAIMED**

Not applicable.

3.

**EXHIBITS**

**Exhibit**

| <b>Number</b>       | <b>Description</b>   |
|---------------------|--|
| 4.1 <sup>(1)</sup>  | Amended and Restated Certificate of Incorporation of the Registrant.   |
| 4.2 <sup>(2)</sup>  | Amended and Restated Bylaws of the Registrant.   |
| 4.3 <sup>(3)</sup>  | Specimen Common Stock Certificate of the Registrant.   |
| 4.4 <sup>(4)</sup>  | Amended and Restated Investor s Rights Agreement, among the Registrant and certain of its security holders, dated as of November 23, 2009. |
| 4.5 <sup>(5)</sup>  | Warrant to Purchase Stock of the Registrant, issued to Wells Fargo Bank, N.A., dated March 15, 2007.                                       |
| 4.6 <sup>(6)</sup>  | Warrant to Purchase Preferred Stock of the Registrant, issued to Pinnacle Ventures II Equity Holdings, L.L.C., dated September 16, 2008.   |
| 5.1                 | Opinion of Cooley LLP.   |
| 23.1                | Consent of Independent Registered Public Accounting Firm.  |
| 23.2                | Consent of Cooley LLP (included in Exhibit 5.1).   |
| 24.1                | Power of Attorney. Reference is made to the signature page of this Form S-8.   |
| 99.1 <sup>(7)</sup> | 2006 Stock Plan, as amended.   |
| 99.2 <sup>(8)</sup> | Form of Notice of Stock Option and Stock Option Agreement under 2006 Stock Plan for executive officers.                                    |
| 99.3                | 2011 Equity Incentive Plan.  |
| 99.4                | Forms of Stock Option Grant Notice, Stock Option Exercise Notice and Stock Option Agreement under 2011 Equity Incentive Plan.              |
| 99.5                | Form of Restricted Stock Unit Award Agreement under 2011 Equity Incentive Plan.  |
| 99.6                | 2011 Employee Stock Purchase Plan.   |

- (1) Previously filed as Exhibit 3.1 to the Registrant s Current Report on Form 8-K, filed with the Commission on February 18, 2011, and incorporated by reference herein.
- (2) Previously filed as Exhibit 3.4 to the Registrant s Registration Statement on Form S-1 (File No. 333-170594), originally filed with the Commission on November 12, 2010, as amended, and incorporated by reference herein.
- (3) Previously filed as Exhibit 4.2 to the Registrant s Registration Statement on Form S-1 (File No. 333-170594), originally filed with the Commission on November 12, 2010, as amended, and incorporated by reference herein.
- (4) Previously filed as Exhibit 4.3 to the Registrant s Registration Statement on Form S-1 (File No. 333-170594), originally filed with the Commission on November 12, 2010, as amended, and incorporated by reference herein.
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- (7) Previously filed as Exhibit 10.2 to the Registrant s Registration Statement on Form S-1 (File No. 333-170594), originally filed with the Commission on November 12, 2010, as amended, and incorporated by reference herein.
- (8) Previously filed as Exhibit 10.3 to the Registrant s Registration Statement on Form S-1 (File No. 333-170594), originally filed with the Commission on November 12, 2010, as amended, and incorporated by reference herein.

**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 of 1933;

(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)(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 reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference herein.

(b) That, for the purpose of determining any liability under the Securities Act of 1933, 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 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 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 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, 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 Redwood City, State of California, on this 23<sup>rd</sup> day of February, 2011.

**ACELRX PHARMACEUTICALS, INC.**

By: /s/ Richard A. King  
Richard A. King  
*President and Chief Executive Officer*

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints **RICHARD A. KING** and **JAMES H. WELCH**, jointly and severally, as his true and lawful attorneys-in-fact and agent, 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 on 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 connection therewith, 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 any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, 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/ RICHARD A. KING                 | President, Chief Executive Officer and Director     | February 23, 2011 |
| RICHARD A. KING                     | <i>(Principal Executive Officer)</i>                |                   |
| /s/ JAMES H. WELCH                  | Chief Financial Officer                             | February 23, 2011 |
| JAMES H. WELCH                      | <i>(Principal Financial and Accounting Officer)</i> |                   |
| /s/ THOMAS A. SCHRECK               | Chairman of the Board of Directors and Co-Founder   | February 23, 2011 |
| THOMAS A. SCHRECK                   |   |                   |
| /s/ PAMELA P. PALMER, M.D., PH.D.   | Director  | February 23, 2011 |
| PAMELA P. PALMER, M.D., PH.D.       |   |                   |
| /s/ STEPHEN J. HOFFMAN, PH.D., M.D. | Director  | February 23, 2011 |
| STEPHEN J. HOFFMAN, PH.D., M.D.     |   |                   |
| GUY P. NOHRA                        | Director  |                   |
| /s/ HOWARD B. ROSEN                 | Director  | February 23, 2011 |

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HOWARD B. ROSEN

/s/ MARK WAN

Director

February 23, 2011

MARK WAN

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