

MEDICIS PHARMACEUTICAL CORP

Form S-8

November 26, 2002

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As filed with the Securities and Exchange Commission on November 25, 2002

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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

MEDICIS PHARMACEUTICAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)
(I.R.S. Employer
Identification No.)

52 1574808

8125 North Hayden Road
Scottsdale, Arizona 85258-2463
(Address of Principal Executive Offices)

Medicis Pharmaceutical Corporation
2002 Stock Option Plan
(Full Title of Plan)

Jonah Shacknai
Chairman and Chief Executive Officer
Medicis Pharmaceutical Corporation
8125 North Hayden Road
Scottsdale, Arizona 85258-2463
(Name and Address of Agent for Service)
(602) 808 8800
(Telephone Number, Including Area Code of Agent for Service)

Copy to:
Joseph P. Richardson, Esq.
Bryan Cave LLP
Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004

CALCULATION OF REGISTRATION FEE

Title of Securities	Amount to be	Proposed Maximum Offering Price Per	Proposed Maximum Aggregate Offering	Amount of
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to be Registered	Registered (1)	Share (2)	Price (2)	Registration Fee
Common Stock, \$.014 par value and Preference Stock Purchase Rights (3)	3,000,000 shares	\$ 44.45	\$ 133,350,000	\$ 12,268.20

- (1) Plus such additional indeterminate number of shares as may be issuable pursuant to the adjustment provisions of the Plan.
 - (2) Estimated solely for the purpose of calculating the registration fee. Pursuant to Rule 457(c) and Rule 457(h) under the Securities Act of 1933, as amended, the proposed maximum offering price per share and the proposed maximum aggregate offering price have been determined on the basis of the average of the high and low prices of the Class A common stock on the New York Stock Exchange on November 20, 2002.
 - (3) The Preference Stock Purchase Rights initially trade with the Class A common stock and are not currently exercisable.
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PART I

Item 1. Plan Information.

The documents containing the information specified in Part I of this Registration Statement will be sent or given to eligible employees as specified by Rule 428 (b)(1) of the Securities Act of 1933, as amended (the Securities Act). Such documents are not required to be and are not filed with the Securities and Exchange Commission (the Commission) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of the Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registration Information and Employee Plan Annual Information.

Upon written or oral request, any of the documents incorporated by reference in Item 3 of Part II of this Registration Statement (which documents are incorporated by reference in this Section 10 (a) Prospectus), other documents required to be delivered to eligible employees pursuant to Rule 428 (b) or Program are available without charge by contacting:

Investor Relations
Medicis Pharmaceutical Corporation
8125 North Hayden Road
Scottsdale, Arizona 85258-2463
(602) 808-8800

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

This Registration Statement relates to 3,000,000 shares of Class A common stock, par value \$.014, of Medicis Pharmaceutical Corporation (Registrant or Company) being registered for use under the Registrant s 2002 Stock Option Plan (the Plan). Officers and Directors of the Company (as such capitalized terms are defined in the Plan) are not eligible to participate in the Plan, and the Plan is not an incentive stock option plan. Stockholders approval of the Plan is not required.

Item 3. Incorporation of Documents by Reference.

The following documents which have been filed by the Company with the Securities and Exchange Commission (the Commission) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference herein and shall be deemed to be a part hereof:

(a) The Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002, filed with the Commission on November 14, 2002;

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(b) The Annual Report on Form 10-K for the fiscal year ended June 30, 2002, filed with the Commission on September 30, 2002;

(c) The description of the Company's Class A common stock contained in the Company's Registration Statement on Form S-3 (Registration No. 333-97207), filed with the Commission on July 26, 2002, and any amendment thereto updating such description; and

(d) The description of the Company's Preference Stock Purchase Rights contained in the Company's Registration Statement on Form S-3 (Registration No. 333-97207), filed with the Commission on July 26, 2002, and any amendment thereto updating such description.

All other documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post effective amendment to this Registration Statement 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 in this Registration Statement and to be a part hereof from the date of filing of such documents (such documents, and the documents enumerated above, being hereinafter referred to collectively as the "Incorporated Documents").

Any statement contained in an Incorporated Document 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 Incorporated Document 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.

Article VI of the Company's Certificate of Incorporation and Article VII of the Company's Bylaws provide for the indemnification of its directors and officers under certain circumstances and are incorporated herein by reference.

Section 145 of the General Corporation Law of the State of Delaware empowers a Delaware corporation to indemnify any person who is, 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 such corporation) by reason of the fact that such person is or was an officer or director of such corporation, or is or

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was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement and reasonably incurred by such person in connection with such action, suit or proceeding, provided that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. A Delaware corporation may indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses which he actually and reasonably incurred in connection therewith. The indemnification provided is not deemed to be exclusive of any other rights to which an officer or director may be entitled under a corporation's by laws, by agreement, vote, or otherwise.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The Exhibits to this registration statement are listed in the Index to Exhibits on page II-7.

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;

(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 this 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

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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 this Registration Statement or any material change to such information in this Registration Statement;

Provided however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this Section do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and 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 of 1933, 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; and

(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 Exchange Act (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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies 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 Scottsdale, State of Arizona, on the 25th day of November, 2002.

Medicis Pharmaceutical Corporation

By: /s/Jonah Shacknai

Jonah Shacknai
Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the date indicated. Each person whose individual signature appears below hereby authorizes Jonah Shacknai and Mark A. Prygocki, Sr., or either one of them, to execute in the name of each such person and to file any amendment to this Registration Statement and appoints Jonah Shacknai and Mark A. Prygocki, Sr., or either one of them, as attorney in fact to sign on his behalf individually and in each capacity stated below and to file any amendments to this Registration Statement, including any and all post effective amendments.

Signature	Title	Date
<u>/s/Jonah Shacknai</u> Jonah Shacknai	Chairman of the Board of Directors and Chief Executive Officer	November 25, 2002
<u>/s/Mark A. Prygocki, Sr.</u> Mark A. Prygocki, Sr.	Chief Financial Officer, Secretary and Treasurer (Principal Financial Officer and Principal Accounting Officer)	November 25, 2002
<u>/s/Spencer Davidson</u> Spencer Davidson	Director	November 25, 2002
<u>/s/Peter S. Knight</u> Peter S. Knight	Director	November 25, 2002

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<u>/s/Michael A. Pietrangelo</u>	Director	November 25, 2002
Michael A. Pietrangelo		
<u>/s/Philip S. Schein, M.D.</u>	Director	November 25, 2002
Philip S. Schein, M.D.		
<u>/s/Lottie H. Shackelford</u>	Director	November 25, 2002
Lottie H. Shackelford		

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5	Opinion of Bryan Cave LLP 23.1 Consent of Ernst & Young LLP 23.2 Consent of Bryan Cave LLP (included in Exhibit 5) 24
24	Power of Attorney (included on signature pages of this Registration Statement)