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ANTARES PHARMA INC
Form 10-K/A
October 09, 2002

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

FORM 10-K/A

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15 (D) OF
THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2001

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF
THE SECURITIES EXCHANGE ACT OF 1934
For transition period from _____ to _____

Commission file number 0-20945

ANTARES PHARMA, INC.

(Exact name of registrant as specified in its charter)

Minnesota

41-1350192

State or other jurisdiction of
incorporation or organization

(I.R.S. Employer Identification Number)

707 Eagle View Blvd, Suite 414, Exton, PA 19341

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (610) 458-6200

SECURITIES REGISTERED PURSUANT TO SECTION 12 (b) OF THE ACT: None

SECURITIES REGISTERED PURSUANT TO SECTION 12 (g) OF THE ACT:
Common Stock, \$.01 Par Value

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

YES X NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Aggregate market value of the voting stock held by nonaffiliates of the registrant as of March 31, 2002, was approximately \$12,981,501 (based upon the last reported sale price of \$3.90 per share on March 28, 2002, on the Nasdaq Small Cap Market).

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There were 9,161,188 shares of common stock outstanding as of March 31, 2002.

EXPLANATORY NOTE

This Annual Report on Form 10-K/A for the fiscal year ended December 31, 2001 is being filed solely to amend certain information contained in Item I of Part I, and to correct certain exhibits to the Company's Form 10-K/A filed with the Securities and Exchange Commission on September 19, 2002.

PART I

The second paragraph under the table on page 8 of the Company's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2001, filed with the Securities and Exchange Commission on September 19, 2002, is hereby amended to read as follows:

"In June 2000, the Company granted an exclusive license to BioSante to allow BioSante to develop and commercialize four of the Company's gel technology products for use in hormone replacement therapy in the United States, Canada and other countries. BioSante paid the Company \$1 million upon execution of the agreement and is also required to pay the Company royalty payments once commercial sales of the products have begun. The royalty payments are based on a percentage of sales of the products and must be paid for a period of 10 years following the first commercial sale of the products, or when the last patent for the products expires, whichever is later. The agreement also provides for milestone payments to the Company upon the occurrence of certain events related to regulatory filings and approvals."

PART IV

The Exhibit List in the Company's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2001, filed with the Securities and Exchange Commission on September 19, 2002, is hereby amended to read as follows:

"(c) Exhibits

The following is filed as an exhibit to Part I of this Form 10-K/A:

| Exhibit No. | Description |
|-------------|--|
| ----- | ----- |
| 3.1 | Second Amended and Restated Articles of Incorporation as amended to date (a) |
| 3.2 | Articles of Amendment Restating Articles of Incorporation (g) |
| 3.3 | Second Amended and Restated Bylaws (a) |
| 3.4 | Certificate of Designations for Series A Convertible Preferred Stock (d) |
| 3.5 | Certificate of Designations for Series B Convertible Preferred Stock (i) |
| 3.6 | Certificate of Designations for Series C Convertible Preferred Stock (g) |
| 4.1 | Form of Certificate for Common Stock (a) |

- 4.2 Stock Warrant, dated January 25, 1996, issued to Becton Dickinson and Company (a)
- 4.3 Stock Option, dated January 25, 1996, issued to Becton Dickinson and Company (a)
- 4.6 Preferred Stock, Option and Warrant Purchase Agreement, dated January 25, 1996, with Becton Dickinson and Company (filed herewith as Exhibit 10.7) (a)
- 4.7 Warrant issued to Elan International Services, Ltd. on November 10, 1998 (d)
- 4.8 Warrant issued to Grayson & Associates, Inc. on September 23, 1999 (e)
- 4.9 Warrant issued to Plexus Ventures, Ltd. on September 12, 2000 (g)
- 4.10 Form of warrant issued to:
 - Aventic Partners AG on February 5, 2001 for 85,324 shares
 - Basellandschaftliche Kantonbank on February 5, 2001 for 85,324 shares
 - HCI Healthcare Investments Limited on February 5, 2001 for 127,986 shares
 - Lombard Odier & Cie on March 5, 2001 for 127,986 shares (g)
- 10.0 Stock Purchase Agreement with Permaterc Holding AG, Permaterc Pharma AG, Permaterc Technologie AG and Permaterc NV with First and Second Amendments dated July 14, 2000 (f)
- 10.1 Third Amendment to Stock Purchase Agreement, dated January 31, 2001 (g)
- 10.2 Registration Rights Agreement with Permaterc Holding AG dated January 31, 2001 (g)
- 10.3 Registration Rights Agreement with Aventic Partners AG, Basellandschaftliche Kantonbank and HCI Healthcare Investments Limited dated February 5, 2001, and Lombard Odier & Cie dated March 5, 2001 (g)
- 10.4 Office/Warehouse/Showroom Lease, dated January 2, 1995, including amendments thereto (a)
- 10.5 Exclusive License & Supply Agreement with Bio-Technology General Corporation, dated December 22, 1999 (e)
- 10.6 Preferred Stock Purchase Agreement with Bio-Technology General Corporation, dated December

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22, 1999 (e)

- 10.7 Preferred Stock, Option and Warrant Purchase Agreement, dated January 25, 1996, with Becton Dickinson and Company (a)
- 10.8* Employment Agreement, dated January 31, 2001, with Franklin Pass, M.D. (g)
- 10.9* Employment Agreement, dated March 12, 2001, with Roger Harrison, Ph.D. (g)
- 10.10* Employment Agreement and Term and Compensation Addendum for 2000, dated May 1, 2000, with Lawrence Christian (g)
- 10.11* Employment Agreement and Term and Compensation Addendum for 2000, dated May 1, 2000, with Peter Sadowski (g)
- 10.12* Employment Agreement, dated May 31, 2000 with Dr. Dario Carrara (i)

3

- 10.13* 1993 Stock Option Plan (a)
- 10.14* Form of incentive stock option agreement for use with 1993 Stock Option Plan (a)
- 10.15* Form of non-qualified stock option agreement for use with 1993 Stock Option Plan (a)
- 10.16* 1996 Stock Option Plan, with form of stock option agreement (a)
- 10.17+ Development and License Agreement with Becton Dickinson and Company, effective January 1, 1996 (terminated January 1, 1999). See Exhibit 10.21 (a)
- 10.18 Office - Warehouse lease with Carlson Real Estate Company, dated February 11, 1997 (b)
- 10.19* 1998 Stock Option Plan for Non-Employee Directors (c)
- 10.20* Letter consulting agreement dated February 20, 1998 with Geoffrey W. Guy (c)
- 10.21# Agreement with Becton Dickinson dated January 1, 1999 (d)
- 10.22 Securities Purchase Agreement with Elan International Services, Ltd. dated November 10, 1998 (d)
- 10.23# License & Development Agreement with Elan Corporation, plc, dated November 10, 1998 (d)

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- 10.24 2001 Stock Option Plan for Non-Employee Directors and Consultants (h)
- 10.25 2001 Incentive Stock Option Plan for Employees (h)
- 10.26* Consulting Agreement with JG Consulting AG dated February 1, 2001 (i)
- 10.27 Office lease agreement with 707 Eagleview Boulevard Associates, a Pennsylvania Partnership, dated June 18, 2001 (i)
- 10.28** \$2,000,000 Term Note with Dr. Jacques Gonella dated February 20, 2002
- 10.29*** Securities Purchase Agreement, dated July 12, 2002, between Antares Pharma, Inc. and AJW Partners, LLC; AJW/New Millennium Offshore Ltd.; Pegasus Capital Partners, LLC; XMark Fund, L.P.; XMark Fund, Ltd.; SDS Merchant Fund, LP; and OTATO Limited Partnership.
- 10.30*** Registration Rights Agreement, dated July 12, 2002, between Antares Pharma, Inc. and AJW Partners, LLC; AJW/New Millennium Offshore, Ltd.; Pegasus Capital Partners, LLC; XMark Fund, L.P.; XMark Fund, Ltd.; SDS Merchant Fund, LP; and OTATO Limited Partnership.
- 10.31*** Security Agreement, dated July 12, 2002, between Antares Pharma, Inc. and AJW Partners, LLC; AJW/New Millennium Offshore, Ltd.; Pegasus Capital Partners, LLC; XMark Fund, L.P.; XMark Fund, Ltd.; SDS Merchant Fund, LP; and OTATO Limited Partnership.
- 10.32*** Form of Secured Convertible Debenture, dated July 12, 2002.
- 10.33**** License Agreement with Solvary Pharmaceuticals BV, dated June 9, 1999.

4

- 10.34**** License Agreement with BioSante Pharmaceuticals, Inc., dated June 13, 2000.
- 10.35**** Amendment No. 1 to License Agreement with BioSante Pharmaceuticals, Inc., dated May 20, 2001.
- 10.36**** Amendment No. 2 to License Agreement with BioSante Pharmaceuticals, Inc., dated July 5, 2001.
- 10.37**** Amendment No. 3 to License Agreement with BioSante Pharmaceuticals, Inc., dated August 28, 2001.
- 10.38**** Amendment No. 4 to License Agreement with BioSante Pharmaceuticals, Inc., dated August 8, 2002. (j)

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24.1++ Form of Confirming Statement, together with form of Power of Attorney

99.1 Section 906 CEO and CFO Certification.

* Indicates management contract or compensatory plan or arrangement.

** Previously filed as an Exhibit to our Form 10-Q for the period ended March 31, 2002, filed with the SEC on May 13, 2002.

*** Previously filed as the same numbered exhibit to our Current Report on Form 8-K filed with the SEC on July 17, 2002.

**** Confidential portions of this document have been redacted and have been separately filed with the Securities and Exchange Commission.

+ Pursuant to Rule 406 of the Securities Act of 1933, as amended, confidential portions of Exhibit 10.17 were deleted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment, which was subsequently granted by the Securities and Exchange Commission.

++ Previously filed as the same numbered exhibit to our Form 10-K/A for the year ended December 31, 2001, filed with the SEC on September 19, 2002.

Pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, confidential portions of Exhibits 10.21 and 10.23 were deleted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

(a) Incorporated by reference to the Registration Statement on Form S-1 (File No. 333-6661), filed with the Securities and Exchange Commission on October 1, 1996.

(b) Incorporated by reference to Form 10-K for the year ended December 31, 1996.

(c) Incorporated by reference to Form 10-K for the year ended December 31, 1997.

(d) Incorporated by reference to Form 10-K for the year ended December 31, 1998.

(e) Incorporated by reference to Form 10-K for the year ended December 31, 1999.

(f) Incorporated by reference to the Proxy Statement filed December 28, 2000.

(g) Incorporated by reference to Form 10-K for the year ended December 31, 2000.

(h) Incorporated by reference to the Registration Statement on Form S-8 (File No. 333-64480), filed with the Securities and Exchange Commission on July 3, 2001.

(i) Previously filed with our Form 10-K for the year ended December 31, 2001, filed with the SEC on April 15, 2002.

(j) Previously filed with our Form 10-K/A for the year ended December 31, 2001, filed with the SEC on September 19, 2002."

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5

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized, in the City of Minneapolis, State of Minnesota, on October 9, 2002.

ANTARES PHARMA, INC.

/s/ Roger G. Harrison

Roger G. Harrison, Ph.D.
Chief Executive Officer

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, this Report has been signed by the following persons on behalf of the registrant in the capacities indicated on October 9, 2002.

| Signature ----- | Title ----- |
|---|---|
| /s/ Roger G. Harrison ----- Roger G. Harrison, Ph.D. | Chief Executive Officer and Director (principal executive officer) |
| /s/ Lawrence M. Christian ----- Lawrence M. Christian | Vice President of Finance, Chief Financial Officer and Secretary (principal financial and accounting officer) |
| * ----- Dr. Jacques Gonella | Director, Chairman of the Board |
| * ----- Franklin Pass, M.D. | Director, Vice Chairman of the Board |
| * ----- Jim Clark | Director |
| * ----- Prof. Ubaldo Conte | Director |
| * ----- Dr. Philippe Dro | Director |
| * ----- John S. Gogol | Director |
| * ----- Jacques F. Rejeange | Director |

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* Director

Dr. Thomas Rinderknecht

* By /s/ Lawrence M. Christian

Lawrence M. Christian,
Attorney in fact

6

Certifications

I, Roger G. Harrison, Ph.D., certify that:

1. I have reviewed this amended annual report on Form 10-K/A of Antares Pharma, Inc.;
2. Based on my knowledge, this amended annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this amended annual report; and
3. Based on my knowledge, the financial statements, and other financial information included in this amended annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this amended annual report.

[Items 4, 5 and 6 omitted pursuant to the transition provisions of Release No. 34-46427.]

Date: October 9, 2002

/s/ Roger G. Harrison

Roger G. Harrison, Ph.D.
Chief Executive Officer and President

7

I, Lawrence M. Christian, certify that:

1. I have reviewed this amended annual report on Form 10-K/A of Antares Pharma, Inc.;
2. Based on my knowledge, this amended annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this amended annual report; and
3. Based on my knowledge, the financial statements, and other financial

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information included in this amended annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this amended annual report.

[Items 4, 5 and 6 omitted pursuant to the transition provisions of Release No. 34-46427.]

Date: October 9, 2002

/s/ Lawrence M. Christian

Lawrence M. Christian
Chief Financial Officer , Vice
President - Finance and Secretary