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ANIKA THERAPEUTICS INC

Form S-8

June 19, 2009

As filed with the Securities and Exchange Commission on June 19, 2009

Registration No. 333-

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United States
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

ANIKA THERAPEUTICS, INC.
(Exact name of registrant as specified in its charter)

Massachusetts 04-3145961
(State or other jurisdiction (I.R.S. Employer Identification No.)
of incorporation or organization)

32 Wiggins Avenue
Bedford, Massachusetts 01730
(781) 457-9000
(Address of Principal Executive Offices)

ANIKA THERAPEUTICS, INC.
AMENDED AND RESTATED 2003 STOCK OPTION AND INCENTIVE PLAN
(Full title of the plan)

Charles H. Sherwood, Ph.D.
President and Chief Executive Officer
Anika Therapeutics, Inc.
32 Wiggins Avenue
Bedford, Massachusetts 01730
(781) 457-9000
(Name and address of agent for service)

With copies to:

H. David Henken, Esq.
Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109-2881
(617) 570-1000

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 ☐

Smaller Reporting Company ☐

(Do not check if a smaller reporting company)

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CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Share
Common Stock, par value \$0.01 per share (1)	850,000 (2)	\$5.22

(1) This Registration Statement also relates to the rights to purchase shares of Series B Junior Participating Cumulative Preferred Stock of the Registrant that are attached to all shares of common stock issued, pursuant to the terms of the Registrant's Shareholder Rights Agreement, dated as of April 7, 2008. Until the occurrence of certain prescribed events, the rights are not exercisable, are evidenced by the certificates for the common stock and will be transferred with and only with such common stock. Because no separate consideration is paid for the rights, the registration fee therefore is included in the fee for the common stock.

(2) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of common stock which become issuable under the Registrant's Amended and Restated 2003 Stock Option and Incentive Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction.

(3) An assumed price of \$5.22 per share, which is the average of the high and low prices of the Company's common stock reported on the NASDAQ Global Select Market on June 16, 2009, is set forth solely for purposes of calculating the filing fee pursuant to Rule 457(h) and Rule 457(c) under the Securities Act.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed by Anika Therapeutics, Inc. (the "Company" or the "Registrant") for the purpose of registering an additional 850,000 shares of Common Stock, par value \$0.01 per share ("Common Stock"), of the Company reserved for issuance under the Anika Therapeutics, Inc. Amended and Restated 2003 Stock Option and Incentive Plan (the "Plan"). The securities subject to this Registration Statement on Form S-8 are of the same class as other securities for which a Registration Statement on Form S-8 was previously filed by the Company and declared effective by the Securities and Exchange Commission (the "Commission"). Accordingly, pursuant to General Instruction E to Form S-8, the Company hereby incorporates by reference into this Registration Statement the contents of the Registration Statement on Form S-8 previously filed with the Commission on November 7, 2003 (File No. 333-110326) and the Common Stock registered thereunder is being carried forward to this Registration Statement. Following the registration of the additional shares of Common Stock under this Registration Statement, an aggregate total of 2,350,000 shares of Common Stock will be registered under the Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

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*The documents containing the information specified in this Part I will be sent or given to employees, directors or others as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended. In accordance with the rules and regulations of the Commission and the Introductory Note to Part I of Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 6. Indemnification of Directors and Officers.

The Company is a Massachusetts corporation. Section 2.02(b)(4) of the Massachusetts Business Corporation Act (the "MBCA") provides that a corporation may, in its articles of organization, eliminate or limit a director's personal liability to the corporation for monetary damages for breaches of fiduciary duty, except in circumstances involving (i) a breach of the director's duty of loyalty to the corporation or its shareholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) improper distributions, and (iv) transactions from which the director derived an improper personal benefit.

Section 8.51 of the MBCA permits a corporation to indemnify a director if the individual (i) acted in good faith, (ii) reasonably believed that his or her conduct was in the best interests of the corporation or at least not opposed to the best interest of the corporation, (iii) in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful, or (iv) engaged in conduct for which he or she would not be liable under the corporation's articles of organization, as authorized by Section 2.02(b)(4) of the MBCA. Section 8.56 of the MBCA permits a corporation to indemnify an officer to the same extent as a director, and to such further extent as may be provided in the corporation's articles of organization or by-laws, except for liability arising out of acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law. Indemnification may not be made under Section 8.51 of the MBCA until a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct. Under Section 8.55 of the MBCA, that determination must be made by (i) a majority vote of all disinterested directors or a majority of a committee of disinterested directors (in each case, if there are at least two disinterested directors), (ii) special legal counsel, or (iii) the stockholders of the corporation.

Under Sections 8.53 and 8.56 of the MBCA, a corporation may pay for or reimburse reasonable expenses prior to the final disposition of a proceeding involving a director or officer, provided that the director or officer has delivered a written undertaking of his or her good faith that he or she has met the standard of conduct necessary for indemnification, and a written undertaking to repay the funds if he or she is determined not to have met the relevant standard of conduct.

Sections 8.52 and 8.56(c) of the MBCA mandate indemnification for reasonable expenses in connection with proceedings in which a director or officer is wholly successful, on the merits or otherwise. Furthermore, Section 8.54 of the MBCA provides that a court may direct a corporation to indemnify a director or officer if the court determines that (i) the director or officer is

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entitled to mandatory indemnification under the MBCA, (ii) the director or officer is entitled to indemnification pursuant to a provision in the corporation's articles of organization or bylaws or in a contract or a board or shareholder resolution, or (iii) it is fair and reasonable to indemnify the director or officer, regardless of whether he or she met the relevant standard of conduct.

Article 6A of the Company's Restated Articles of Organization, as amended (the "Articles of Organization"), provides that: except to the extent that the MBCA prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Company shall be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability.

Article 6B of the Articles of Organization provides that the Company shall indemnify each 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, by reason of the fact that he is or was, or has agreed to become, a director or officer of the Company, or in any capacity with respect to any employee benefit plan of the Company (an "Indemnitee") against amounts paid and expenses incurred in connection with an action, suit or proceeding and any appeal therefrom, or settlement thereof, unless the Indemnitee shall be finally adjudicated not to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Company (or participants or beneficiaries of any employee benefit plan of the Company). The Company shall not indemnify an Indemnitee seeking indemnification in connection with a proceeding initiated by the Indemnitee unless the initiation thereof was approved by the Board of Directors of the Company.

Article 6B provides that the Company shall pay expenses incurred in defending any action, suit, proceeding or investigation in advance of its final disposition, if the Company does not assume the defense of the Indemnitee, subject to receipt of an undertaking by the Indemnitee to repay such payment if it is ultimately determined that such Indemnitee is not entitled to indemnification under the Articles of Organization.

Article 6B further provides that no indemnification or advancement of expenses may be made if such Indemnitee did not act in good faith in the reasonable belief that his or her action was in the best interest of the Company. Such determination shall be made in each instance by (a) a majority vote of a quorum of the directors of the Company, (b) a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote for directors, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the action, suit or proceeding in question, (c) independent legal counsel (who may be regular legal counsel to the Company) or (d) a court of competent jurisdiction.

The Company carries directors and officers liability insurance for the benefit of its directors and officers.

Item 8. Exhibits.

No.	Description	Location
4.1	Restated Articles of Organization	Filed as Exhibit 3.1 to the Company's Statement on Form 10 (File No.

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		Commission on March 5, 1993 and reference.
4.2	Certificate of Vote of Directors Establishing a Series of Convertible Preferred Stock	Filed as an Exhibit to the Comp on Form 10 (File No. 000-21326) on March 5, 1993 and incorporat
4.3	Amendment to the Restated Articles of Organization	Filed as Exhibit 3.1 to the Com Form 10-QSB for the quarterly p 1996 (File No. 000-21326), file January 14, 1997 and incorporat
4.4	Amendment to the Restated Articles of Organization	Filed as Exhibit 3.1 to the Com Form 10-QSB for the quarterly p (File No. 001-14027), filed wit 14, 1998 and incorporated herei
4.5	Amendment to the Restated Articles of Organization	Filed as Exhibit 3.3 to the Com Form 10-Q for the quarterly per (File No. 001-14027), filed wit 14, 2002 and incorporated herei
4.6	Amended and Restated Certificate of Vote of Directors Establishing a Series of Preferred Stock of the Company classifying and designating the Series B Junior Participating Cumulative Preferred Stock	Filed as Exhibit 3.1 to the C Statement on Form 8-A12B (Fil with the Commission on April herein by reference.
4.7	Amendment to the Restated Articles of Organization	Filed as Exhibit 3.7 to the C Form 10-K for the year ended No. 001-14027), filed with th 2009 and incorporated herein
4.8	Amended and Restated Bylaws	Filed as Exhibit 3.6 to the C on Form 10-Q for the quarterl 2002 (File No. 001-14027), fi on August 14, 2002 and incorp reference.
4.9	Shareholder Rights Agreement, dated as of April 7, 2008, between the Company and American Stock Transfer & Trust Company	Filed as Exhibit 4.1 to the C Statement on Form 8-A12B (Fil with the Commission on April herein by reference.
4.10	Amended and Restated 2003 Stock Option and Incentive Plan	Filed as Exhibit 10.1 to the on Form 8-K (File No. 001-140 Commission on June 11, 2009 a reference.
5.1	Opinion of Goodwin Procter LLP	Filed herewith.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Accounting Firm	Filed herewith.
23.2	Consent of Goodwin Procter LLP	Included in Exhibit 5.1 heret
24.1	Powers of Attorney	Included on signature pages t Statement.

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 Town of Bedford, Commonwealth of Massachusetts, on this 19th

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day of June, 2009.

Anika Therapeutics, Inc.

By: /s/ Charles H. Sherwood, Ph.D.

Charles H. Sherwood, Ph.D.
President and Chief Executive Officer
(Principal Executive Officer)

KNOW ALL BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Charles H. Sherwood as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's 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 all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent 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 such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, 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.

Signatures

Title

/s/ Charles H. Sherwood, Ph.D.

President, Chief Executive Officer and Director
(Principal Executive Officer)

Charles H. Sherwood, Ph.D.

/s/ Kevin W. Quinlan

Chief Financial Officer and
Treasurer (Principal Financial Officer and
Principal Accounting Officer)

Kevin W. Quinlan

/s/ Joseph L. Bower

Director

Joseph L. Bower

/s/ Eugene A. Davidson, Ph.D.

Director

Eugene A. Davidson, Ph.D.

/s/ Raymond J. Land

Director

Raymond J. Land

/s/ John C. Moran

Director

John C. Moran

/s/ Steven E. Wheeler

Director

Steven E. Wheeler

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