

ATHERSYS, INC / NEW  
Form 8-K  
November 14, 2011

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 8-K  
CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): November 11, 2011**

**Athersys, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

**001-33876**

**20-4864095**

(State or other jurisdiction  
of incorporation)

(Commission File Number)

(IRS Employer Identification No.)

**3201 Carnegie Avenue, Cleveland, Ohio**

**44115-2634**

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **(216) 431-9900**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

Prior to market close, on November 11, 2011, Athersys, Inc. (the Company), entered into a common stock purchase agreement (the Purchase Agreement) with Aspire Capital Fund, LLC, an Illinois limited liability company (Aspire Capital), which provides that, upon the terms and subject to the conditions and limitations set forth therein, Aspire Capital is committed to purchase up to an aggregate of \$20.0 million of shares of the Company's common stock over the 24-month term of the Purchase Agreement. In consideration for entering into the Purchase Agreement, concurrently with the execution of the Purchase Agreement, the Company issued to Aspire Capital 266,667 shares of the Company's common stock (the Commitment Shares) and Aspire Capital purchased 666,667 shares of the Company's common stock (the Initial Purchase Shares) for an aggregate purchase price of \$1,000,000. Concurrently with entering into the Purchase Agreement, the Company also entered into a registration rights agreement with Aspire Capital (the Registration Rights Agreement), pursuant to which the Company agreed to file one or more registration statements, as permissible and necessary to register under the Securities Act of 1933, as amended (the Securities Act), the sale of the shares of the Company's common stock that have been and may be issued to Aspire Capital under the Purchase Agreement.

Pursuant to the Purchase Agreement and the Registration Rights Agreement, we intend to register under the Securities Act the sale of 8,000,000 shares of our common stock by Aspire Capital, which include the Commitment Shares and the Initial Purchase Shares that have already been issued to Aspire Capital and 7,066,666 shares of common stock that we may issue to Aspire Capital after the registration statement referred to above (the Registration Statement) is declared effective under the Securities Act.

After the U.S. Securities and Exchange Commission (the SEC) has declared effective the Registration Statement, we have the right, in our sole discretion, to present Aspire Capital with a purchase notice (each, a Purchase Notice), directing Aspire Capital (as principal) to purchase up to 100,000 shares of our common stock per trading day, provided that the aggregate price of such purchase shall not exceed \$500,000 per trading day, up to an additional \$19.0 million of our common stock in the aggregate at a per share price calculated by reference to the prevailing market price of our common stock.

In addition, on any date on which we submit a Purchase Notice to Aspire Capital in an amount equal to 100,000 shares, we also have the right, in our sole discretion, to present Aspire Capital with a volume-weighted average price purchase notice (each, a VWAP Purchase Notice) directing Aspire Capital to purchase an amount of stock equal to up to 30% of the aggregate shares of the Company's common stock traded on The NASDAQ Capital Market on the next trading day, subject to a maximum number of shares we may determine and a minimum trading price. The purchase price per Purchase Share pursuant to such VWAP Purchase Notice is calculated by reference to the prevailing market price of our common stock.

The Purchase Agreement provides that in no event will any shares of common stock be sold at a purchase price less than \$1.40 (the Floor Price), unless and until such time as the stockholders of the Company approve the transaction contemplated by the Purchase Agreement. This Floor Price and the respective prices and share numbers in the preceding paragraphs shall be appropriately adjusted for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split or other similar transaction. Additionally, the Purchase Agreement provides that the Company and Aspire Capital shall not effect any sales under the Purchase Agreement if such shares proposed to be issued and sold, when aggregated with all other shares of the Company's common stock that Aspire Capital and its affiliates beneficially own, would result in Aspire Capital and its affiliates beneficially owning more than 19.99% of the Company's then issued and outstanding common stock.

There are no trading volume requirements or restrictions under the Purchase Agreement, and we will control the timing and amount of any sales of our common stock to Aspire Capital. Aspire Capital has no right to require any sales by us, but is obligated to make purchases from us as we direct in accordance with the Purchase Agreement. There are no limitations on use of proceeds, financial or business covenants, restrictions on future fundings, rights of first refusal, participation rights, penalties or liquidated damages in the Purchase Agreement. The Purchase Agreement may be terminated by us at any time, at our discretion, without any penalty or cost to us. Also, Aspire Capital has agreed that neither it nor any of its agents, representatives and affiliates shall engage in any direct or indirect short-selling or hedging, which establishes a net short position with respect to our common stock during any time

prior to the termination of the Purchase Agreement.

The Purchase Agreement provides for customary events of default, upon the occurrence of which Aspire Capital may terminate the Purchase Agreement. Such events of default include, without limitation:

- the lapse, or unavailability to Aspire Capital for the sale of shares of the Company's common stock, of any registration statement that is required to be maintained effective pursuant to the terms of the Registration Rights Agreement, subject to specified cure periods.
- the delisting of the Company's common stock from the NASDAQ Capital Market, provided the Company's common stock is not immediately thereafter trading on the New York Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market, the NYSE Amex Equities or the OTC Bulletin Board; and
- any breach by the Company of the representations, warranties, covenants or other term or condition contained in the Purchase Agreement or any related agreements that would reasonably be expected to have a material adverse effect except, in the case of a breach of a covenant which is reasonably curable, only if such breach continues for a period of at least five business days.

The foregoing is a summary description of certain terms of the Purchase Agreement and the Registration Rights Agreement and, by its nature, is incomplete. Copies of the Purchase Agreement and the Registration Rights Agreement are filed herewith as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. All readers are encouraged to read the entire text of the Purchase Agreement and the Registration Rights Agreement.

The issuance of the Commitment Shares, the Initial Purchase Shares and all other shares of common stock that may be issued from time to time to Aspire Capital under the Purchase Agreement is exempt from registration under the Securities Act, pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.

A copy of the press release issued by the Company entitled "Athersys Enters Into \$20 million Equity Purchase Agreement with Aspire Capital" is attached hereto as Exhibit 99.1 and incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 3.02.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

Exhibit Number	Description
10.1	Common Stock Purchase Agreement, dated as of November 11, 2011, by and between Athersys, Inc. and Aspire Capital Fund, LLC
10.2	Registration Rights Agreement, dated as of November 11, 2011, by and between Athersys, Inc. and Aspire Capital Fund, LLC
99.1	Press Release, dated November 14, 2011, entitled "Athersys Enters Into \$20 million Equity Purchase Agreement with Aspire Capital"

**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 hereunto duly authorized.

ATHERSYS, INC.

Date: November 14, 2011

By: /s/ Laura K. Campbell  
Name: Laura K. Campbell  
Title: Vice President of Finance

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**Exhibit Index**

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