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PERRIGO CO
Form S-8
August 15, 2006

As filed with the Securities and Exchange Commission on August 15, 2006

Registration No. 333-_____

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

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

PERRIGO COMPANY
(Exact name of registrant as specified in its charter)

Michigan
(State or other jurisdiction
of incorporation or organization)

38-2799573
(I.R.S. Employer
Identification No.)

515 Eastern Avenue
Allegan, Michigan 49010
Telephone: (269) 673-8451
(Address, including zip code, telephone number, including area code, of
registrant's principal executive offices)

PERRIGO COMPANY 2003 LONG-TERM INCENTIVE PLAN
(formerly the Perrigo Company Employee Stock Option Plan, the Non-Qualified
Stock Option Plan for Directors and the Restricted Stock Plan for Directors II)
(Full title of the plan)

Todd W. Kingma
Executive Vice President, Secretary and General Counsel
Perrigo Company
515 Eastern Avenue
Allegan, Michigan 49010
Telephone: (269) 686-1941
(Name, address, including zip code, and telephone number, including area code,
of agent for service)

Copies to:

George C. McKann, Esq.
Gardner, Carton & Douglas LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606

CALCULATION OF REGISTRATION FEE

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| Title of Each Class of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price |
|--|-------------------------|---|---|
| Common Stock (without par value) (1) (2) | \$4,500,000 | \$15.425 | \$69,412,500 |

- (1) Together with an indeterminable number of additional securities in order to adjust the number of securities reserved for issuance pursuant to the Plan as the result of a stock split, stock dividend or similar transaction affecting the Common Stock, pursuant to 17 C.F.R. Section 230.416.
- (2) Estimated in accordance with Rule 457(c) and (h) (1), the proposed maximum offering price per share, proposed maximum aggregate offering price and the amount of the registration fee are based upon the average of the high and low prices reported on the Nasdaq Stock Market on August 10, 2006.

INCORPORATION BY REFERENCE OF EARLIER REGISTRATION STATEMENTS ON FORM S-8

Perrigo Company ("Registrant") has earlier filed a registration statement on Form S-8 (File No. 333-118194) relating to the Perrigo Company 2003 Long-Term Incentive Plan (the "Earlier Registration Statement"). In accordance with General Instruction E to Form S-8, this Registration Statement registers 4,500,000 additional shares for issuance pursuant to such plan. Subject to Item 3 of Part II of this Registration Statement and except as modified or superseded herein, the contents of the Earlier Registration Statement are incorporated herein by reference.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

There are hereby incorporated by reference into this Registration Statement the following documents and information heretofore filed with the Securities and Exchange Commission (the "Commission") by the Registrant:

- 1. The Registrant's Annual Report on Form 10-K for the fiscal year ended July 1, 2006;
- 2. The Registrant's Current Report on Form 8-K, filed with the Commission on July 7, 2006; and
- 3. The description of Registrant's capital stock contained in its Registration Statements pursuant to Section 12 of the Exchange Act and any amendments or reports filed for the purpose of updating any such descriptions.

In addition, each document filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date hereof and prior to the filing of a post-effective amendment that indicates that all securities offered hereunder have been sold or that deregisters all securities then remaining unsold under this registration statement, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated herein by reference shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein or in any other

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subsequently filed document incorporated herein by reference 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 hereof.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Under Sections 561 through 571 of the Michigan Business Corporation Act (the "MBCA"), directors and officers of a Michigan corporation may be entitled to indemnification by the corporation against judgments, expenses, fines, and amounts paid by the director or officer in settlement of claims brought against them by third persons or by or in the right of the corporation if those directors and officers acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation or its shareholders.

The Registrant is obligated under its amended and restated articles of incorporation and bylaws to indemnify its directors and executive officers to the full extent permitted under the MBCA. The effect of this provision is to eliminate the personal liability of directors to the Registrant or its shareholders for monetary damages for actions involving a breach of their fiduciary duty of care, including any actions involving gross negligence. The Registrant may similarly indemnify persons who are not directors or executive officers to the extent authorized by the Registrant's board of directors.

The MBCA provides for indemnification of directors and officers if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the Registrant or its shareholders (and, if a criminal proceeding, if they had no reasonable cause to believe their conduct was unlawful) against: (a) expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding (other than an action by or in the right of the Registrant) arising out of a position with the Registrant (or with some other entity

at the Registrant's request); and (b) expenses (including attorneys' fees) and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding by or in the right of the Registrant, unless the director or officer is found liable to the Registrant, provided that an appropriate court could determine that he or she is nevertheless fairly and reasonably entitled to indemnity for reasonable expenses incurred. The MBCA requires indemnification for expenses to the extent that a director or officer is successful in defending against any such action, suit, or proceeding.

The MBCA generally requires that the indemnification provided for above be made only on a determination that the director or officer met the applicable standard of conduct by a majority vote of a quorum of the board of directors who were not parties or threatened to be made parties to the action, suit or proceeding, by a majority vote of a committee of not less than two disinterested directors, by independent legal counsel, by all independent directors not parties or threatened to be made parties to the action, suit or proceeding, or by the shareholders. If the articles of incorporation include a provision eliminating or limiting the liability of a director, however, a corporation may indemnify a director for certain expenses and liabilities without a determination that the director met the applicable standards of conduct, unless the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders, violated Section 551 of the MBCA or intentionally committed a criminal act. In connection with an action by or in the right of the corporation, such indemnification may

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be for expenses (including attorneys' fees) actually and reasonably incurred. In connection with an action, suit, or proceeding other than an action, suit or proceeding by or in the right of the corporation, such indemnification may be for expenses (including attorneys' fees) actually and reasonably incurred, and for judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred.

In certain circumstances, the MBCA further permits advances to cover such expenses before a final determination that indemnification is permissible or required, upon receipt of a written affirmation by the director or officer of his or her good faith belief that he or she has met the applicable standard of conduct and an undertaking, which need not be secured and which may be accepted without reference to the financial ability of the person to make repayment, by or on behalf of the director or officer to repay such amounts if it shall ultimately be determined that he or she has not met the applicable standard of conduct. If a provision in the articles of incorporation or bylaws, a resolution of the board or shareholders or an agreement makes indemnification mandatory, then the advancement of expenses is also mandatory, unless the provision, resolution or agreement specifically provides otherwise. The bylaws of the Registrant generally provide for the mandatory indemnification of, and payment of expenses incurred by, its directors and officers to the fullest extent permitted by applicable law unless the proceedings were initiated by the director or officer and not authorized by the board of directors.

Indemnification under the MBCA is not exclusive of other rights to indemnification to which a person may be entitled under the Registrant's amended and restated articles of incorporation, bylaws or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources may not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for under the MBCA continues as to a person who ceases to be a director or executive officer.

The MBCA authorizes a court to award, or a corporation to grant, indemnification to directors and officers in terms that are sufficiently broad to permit indemnification for liabilities arising under the Securities Act of 1933. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the Registrant has been informed that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The MBCA permits the Registrant to purchase insurance on behalf of its directors and officers against liabilities arising out of their positions with the Registrant, whether or not such liabilities would be within the above indemnification provisions. Pursuant to this authority, the Registrant maintains such insurance on behalf of its directors and officers.

ITEM 8. EXHIBITS.

| Exhibit Number | Description of Document |
|----------------|--|
| ----- | ----- |
| 4.1 | Amended and Restated Articles of Incorporation of Registrant, incorporated herein by reference from the Registrant's |

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Quarterly Report on Form 10-Q filed on February 2, 2005.

- 4.2 Restated Bylaws of Registrant, as amended through March 1, 2005, incorporated herein by reference from the Registrant's Current Report on Form 8-K filed on March 3, 2005.
- 4.3 Perrigo Company 2003 Long-Term Incentive Plan, as amended, incorporated herein by reference from the Registrant's Proxy Statement for its 2003 Annual Meeting of Shareholders filed on September 26, 2003.
- 4.4 Registration Rights Agreement, dated as of November 14, 2004, between the Registrant and Moshe Arkin, incorporated herein by reference from Appendix H to the Registrant's Proxy Statement/Prospectus included in the Registrant's Registration Statement on Form S-4/A (No. 333-121574), filed on February 11, 2005.
- 4.5 Amendment to the 2003 Long-Term Incentive Plan, incorporated herein by reference from the Registrant's Current Report on Form 8-K filed on November 3, 2005.
- 4.6 Form of Non-Qualified Stock Option Agreement, incorporated herein by reference from the Registrant's Quarterly Report on Form 10-Q filed on February 2, 2005.
- 4.7 Form of Restricted Stock Agreement, incorporated herein by reference from the Registrant's Quarterly Report on Form 10-Q filed on February 2, 2005.
- 5.1* Opinion of Todd W. Kingma, Executive Vice President, Secretary and General Counsel, regarding legality of securities.
- 23.1* Consent of BDO Seidman, LLP.
- 23.2* Consent of Todd W. Kingma, Executive Vice President, Secretary and General Counsel (included in Exhibit 5.1).
- 24.1* Powers of Attorney (included on signature page).

* Filed herewith

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 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;

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(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;

3

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(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 in this 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.

(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 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 that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offering herein, 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 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.

4

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 Allegan, State of Michigan, on this 15th day of August, 2006.

PERRIGO COMPANY

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By: /s/ Judy L. Brown

Judy L. Brown
Executive Vice President and
Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David T. Gibbons, Judy L. Brown or Todd W. Kingma, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution for him or her and in his or her name, place and stead, in any and all capacities, to sign, execute and file this Registration Statement and any amendments (including, without limitation, post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and all documents required to be filed with respect therewith, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith and about the premises in order to effectuate the same as fully to all intents and purposes as he or she might or could do if personally present, hereby ratifying and confirming all that such attorneys-in-fact and agents or his or their substitute or substitutes, may lawfully do or cause to be done.

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 indicated on this 15th day of August, 2006.

/s/ David T. Gibbons

David T. Gibbons
Chairman of the Board,
President and Chief Executive Officer

/s/ Judy L. Brown

Judy L. Brown
Executive Vice President and
Chief Financial Officer
(Principal Accounting and Financial
Officer)

/s/ Moshe Arkin

Moshe Arkin
Vice Chairman and Director

/s/ Laurie Brlas

Laurie Brlas
Director

/s/ Gary M. Cohen

Gary M. Cohen
Director

/s/ Larry D. Fredricks

Larry D. Fredricks
Director

/s/ Ran Gottfried

Ran Gottfried
Director

/s/ Michael J. Jandernoa

Michael J. Jandernoa
Director

/s/ Gary K. Kunkle, Jr.

/s/ Herman Morris, Jr.

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Gary K. Kunkle, Jr.
Director

Herman Morris, Jr.
Director

S-1

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