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IDEC PHARMACEUTICALS CORP / DE
Form S-8
July 20, 2001

As filed with the Securities and Exchange Commission on July 20, 2001
Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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

IDEC PHARMACEUTICALS CORPORATION
(Exact Name of Registrant as Specified in Its Charter)

DELAWARE (State or Other Jurisdiction of Incorporation or Organization) 33-0112644 (IRS Employer Identification No.)

3030 CALLAN ROAD
SAN DIEGO, CALIFORNIA 92121
(Address of Principal Executive Offices) (Zip Code)

1988 STOCK OPTION PLAN
(Amended and Restated Through January 16, 2001)
(Full Title of the Plan)

PHILLIP M. SCHNEIDER
VICE PRESIDENT AND CHIEF FINANCIAL OFFICER
IDEC PHARMACEUTICALS CORPORATION
3030 CALLAN ROAD, SAN DIEGO, CA 92121
(Name and Address of Agent For Service)

(858) 431-8500
(Telephone Number, Including Area Code, of Agent For Service)

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered(1) | Proposed Maximum Offering Price per Share(2) | Maximum Aggregate Offering Price(2) | Amount of Registrat Fee |
|--|----------------------------|--|-------------------------------------|-------------------------|
| ===== | | | | |
| 1988 Stock Option Plan (Amended and Restated Through January 16, 2001) | | | | |
| Common Stock, \$0.0005 par value | 5,640,000 shares | \$52.16 | \$ 294,182,400.00 | \$ 73,545 |

- =====
- (1) This Registration Statement shall also cover any additional shares of common stock which become issuable under the 1988 Stock Option Plan (Amended and Restated Through January 16, 2001) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the outstanding shares of the Registrant's common stock.
 - (2) Calculated solely for purposes of this offering under Rule 457(h) of the Securities Act of 1933, as amended (the "1933 Act") on the basis of the average of the high and low selling prices per share of the Registrant's common stock on July 16, 2001 as reported by The Nasdaq Stock Market.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

IDEC Pharmaceuticals Corporation (the "Registrant," "IDEC Pharmaceuticals," "we," "our" or "us") hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission ("SEC"):

- (a) Our Registration Statement on Form S-3/A filed with the SEC on November 16, 2000, in which there is described the terms, rights and provisions applicable to our outstanding common stock, and
- (b) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2000 filed with the SEC on April 2, 2001, pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act");
- (c) Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2001 filed with the SEC on May 15, 2001, pursuant to Section 13 of the Exchange Act;
- (d) Our Definitive Proxy Statement filed with the SEC on April 13, 2001 describing an amendment to our Amended and Restated Certificate of Incorporation to increase the number of authorized shares.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be

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deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which is also deemed to be incorporated by reference herein 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. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Our Amended and Restated Certificate of Incorporation limits the liability of directors to the maximum extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for (i) any breach of their duty of loyalty to the corporation or its stockholders, (ii) any acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) any unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law or (iv) any transaction from which the director derived an improper personal benefit.

Our Bylaws provide that we shall indemnify our directors and may indemnify our officers and employees and other agents to the fullest extent permitted by law. We believe that indemnification under our Bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our Bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether the Bylaws have the power to indemnify him or her against such liability under the General

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Corporation Law of Delaware. We currently have secured such insurance on behalf of our directors and officers.

We have entered into agreements to indemnify our directors and executive officers, in addition to indemnification provided for in our Bylaws. These agreements, among other things, indemnify our directors and executive officers for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by any such person in any action or proceeding, including any action by or in the right of IDEC Pharmaceuticals, arising out of such person's services as a director or executive officer of IDEC Pharmaceuticals, any subsidiary of ours or any other company or enterprise to which the person provides services at our request. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

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| EXHIBIT NUMBER | EXHIBIT |
|----------------|---|
| 4 | Reference is made to the Registrant's Registration Statement on Form S-3 filed with the SEC on November 3, 2000, which is incorporated herein by reference. |
| 4.1 | Reference is made to the Registrant's Definitive Proxy Statement filed with the SEC on April 13, 2001, which is incorporated herein by reference. |
| 5 | Opinion of Pillsbury Winthrop LLP. |
| 23.1 | Consent of Independent Auditors - KPMG LLP. |
| 23.2 | Consent of Pillsbury Winthrop LLP is contained in Exhibit 5. |
| 24 | Reference is made to the signature page of this Registration Statement. |
| 99.1 | 1988 Stock Option Plan (Amended and Restated Through January 16, 2001). |
| 99.2* | Form of Notice of Grant. |
| 99.3* | Form of Stock Option Agreement. |
| * | Exhibits 99.2 and 99.3 are incorporated herein by reference to Exhibits 28.2 and 28.3, respectively, of the Registrant's Registration Statement No. 33-45172 on Form S-8 which was filed with the Securities and Exchange Commission on January 21, 1992. |

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 1933 Act, (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, and (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 clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into this Registration Statement; (2) that for the purpose of determining any liability under

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the 1933 Act, 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 Registrants 1988 Stock Option Plan.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference into this 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 1933 Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnity provisions summarized in Item 6 or otherwise, the Registrant has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the 1933 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 our 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 1933 Act 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, 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 San Diego, State of California, on this 18th day of July, 2001.

IDEC PHARMACEUTICALS CORPORATION

By /s/ WILLIAM H. RASTETTER

William H. Rastetter, Ph.D.
Chairman, President and Chief Executive
Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

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That the undersigned officers and directors of IDEC Pharmaceuticals Corporation, a Delaware corporation, do hereby constitute and appoint William H. Rastetter and Phillip M. Schneider, and each of them, the lawful attorneys and agents, with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, or any one of them, determines may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, and any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signatures ----- | Title ----- | Date ---- |
|--|--|---------------|
| /s/ WILLIAM H. RASTETTER ----- William H. Rastetter, Ph.D. | Chairman, President and Chief Executive Officer (Principal Executive Officer) | July 18, 2001 |
| /s/ PHILLIP M. SCHNEIDER ----- Phillip M. Schneider | Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) | July 18, 2001 |

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| Signatures ----- | Title ----- | Date ---- |
|---|----------------|---------------|
| /s/ CHARLES C. EDWARDS ----- Charles C. Edwards, M.D. | Director | July 18, 2001 |

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/s/ ALAN B. GLASSBERG Director July 18, 2001

Alan B. Glassberg, M.D.

/s/ KAZUHIRO HASHIMOTO Director July 18, 2001

Kazuhiro Hashimoto

/s/ FRANKLIN P. JOHNSON, JR. Director July 18, 2001

Franklin P. Johnson, Jr.

/s/ ROBERT W. PANGIA Director July 18, 2001

Robert W. Pangia

/s/ BRUCE R. ROSS Director July 18, 2001

Bruce R. Ross

/s/ LYNN SCHENK Director July 18, 2001

Lynn Schenk

/s/ WILLIAM D. YOUNG Director July 18, 2001

William D. Young

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

EXHIBITS

TO

FORM S-8

UNDER

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SECURITIES ACT OF 1933

IDEC PHARMACEUTICALS CORPORATION

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| 5 | Opinion of Pillsbury Winthrop LLP. |
| 23.1 | Consent of Independent Auditors - KPMG LLP. |
| 23.2 | Consent of Pillsbury Winthrop LLP is contained in Exhibit 5. |
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