

BIOGEN IDEC INC
Form S-8
November 12, 2003

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As filed with the United States Securities and Exchange Commission on November 12, 2003

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

BIOGEN IDEC INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

33-0112644

(I.R.S. Employer Identification No.)

14 Cambridge Center

Cambridge, Massachusetts 02142

(Address of Principal Executive Offices)

**Biogen, Inc. 1983 Employee Stock Purchase Plan
Biogen, Inc. 1985 Non-Qualified Stock Option Plan
Biogen, Inc. 1987 Scientific Board Stock Option Plan
Biogen, Inc. 1994 European Employee Stock Purchase Plan**

(Full title of the plan)

Thomas J. Bucknum

Biogen Idec Inc.

Executive Vice President, General Counsel and Secretary

14 Cambridge Center

Cambridge, Massachusetts 02142

(617) 679-2000

(Name, address and 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) | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee(2) |
|---|------------------------------------|---|---|--------------------------------------|
|---|------------------------------------|---|---|--------------------------------------|

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| Title of Securities To Be Registered | Amount to Be Registered (1) | Proposed Maximum Offering Price per Share(2) | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee(2) |
|--|-----------------------------|--|--|-------------------------------|
| Common Stock, \$0.0005 par value per share | 21,679,942 shares | \$32.965 | \$714,679,288 | \$0 |

(1)

This Registration Statement (the "**S-8 Registration Statement**") relates to the 21,679,942 shares of the Registrant's Common Stock, par value \$0.0005 per share (the "**Common Stock**"), which were registered on the Registrant's Form S-4/A (File No. 333-107098), declared effective by the United States Securities and Exchange Commission on October 3, 2003 (the "**S-4 Registration Statement**"). The S-4 Registration Statement effected the registration of an aggregate of 192,759,213 shares of Common Stock, which included: (i) 171,079,271 shares of Common Stock issuable to holders of outstanding shares of Biogen, Inc.'s Common Stock and (ii) 21,679,942 shares of Common Stock (the "**Option Shares**") issuable upon the exercise of outstanding stock options (the "**Biogen Options**") to purchase Biogen, Inc.'s Common Stock that were assumed by the Registrant at the closing of the merger of Bridges Merger Corporation, a Massachusetts corporation and wholly owned subsidiary of the Registrant, with and into Biogen, Inc., with Biogen, Inc. surviving as the wholly owned subsidiary of the Registrant (the "**Merger**"). This S-8 Registration Statement also shall cover any additional shares of Common Stock which become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction with respect to the Option Shares effected without the Registrant's receipt of consideration that results in an increase in the number of the outstanding shares of the Registrant's Common Stock. The Registrant's Common Stock registered pursuant to this S-8 Registration Statement includes registration of an equal number of rights issuable to the Registrant's stockholders pursuant to and under the circumstances described in the Registrant's Amended and Restated Rights Agreement dated as of July 27, 2001, as amended.

(2)

The registration fee payable pursuant to Rule 457(c) of the Securities Act of 1933 with respect to the Option Shares is \$57,818. The Registrant previously paid a registration fee in the amount of \$570,748.46 in connection with the S-4 Registration Statement, of which \$64,193 pertained to the Option Shares (the "**Option Share Registration Fee**"). Promptly following the closing of the Merger, the Registrant will issue up to issue up to approximately 171,079,271 shares of Common Stock to holders of outstanding shares of Biogen's common stock. The remaining 21,679,942 shares of Common Stock registered pursuant to the S-4 Registration Statement will not be issued pursuant to the S-4 Registration Statement and instead will be issued to holders of Biogen Options upon the exercise of such options pursuant to this S-8 Registration Statement. Pursuant to Rule 457(p) under the Securities Act of 1933, the Registrant hereby offsets the amount of the fees payable with respect to the Option Shares under this S-8 Registration Statement against the Option Share Registration Fee previously paid.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1: Plan Information*

Item 2: Registrant Information and Employee Plan Annual Information*

*

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from the Registration Statement in accordance with Rule 428 under the Securities Act of 1933 (the "**Securities Act**") and the Note to Part I of Form S-8.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3: Incorporation of Documents by Reference

The following documents, which have been previously filed by the Registrant with the United States Securities and Exchange Commission (the "**Commission**"), are hereby incorporated by reference into this Registration Statement:

- (1) Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 filed on March 31, 2003 and Registrant's amendment to such Annual Report on Form 10-K filed on Form 10-K/A on October 3, 2003;
- (2) Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2003 filed on May 15, 2003;
- (3) Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003 filed on August 14, 2003;
- (4) Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 filed on October 31, 2003;
- (5) Registrant's Current Reports on Form 8-K filed on April 15, 2003, June 23, 2003, July 17, 2003, July 31, 2003, September 3, 2003, October 3, 2003, October 14, 2003 and November 12, 2003;
- (6) Registrant's Definitive Proxy Statement on Form DEF14A filed on April 11, 2003; and
- (7) The description of Registrant's capital stock contained in Registrant's Registration Statement on Form S-4/A (File No. 333-107098).

Until such time that a post-effective amendment to this Registration Statement has been filed which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold at the time of such amendment, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**") shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be 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

The Registrant's 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

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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 purchases 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.

The Registrant's Bylaws provide that the Registrant shall indemnify its directors and may indemnify its officers and employees and other agents to the fullest extent permitted by law. The Registrant believes that indemnification under its Bylaws covers at least negligence and gross negligence on the part of indemnified parties.

The Registrant's Bylaws also permit the Registrant 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 Corporation Law of Delaware. The Registrant currently has secured such insurance on behalf of its directors and officers.

The Registrant has entered into agreements to indemnify its directors and executive officers, in addition to indemnification provided for in its Bylaws. These agreements, among other things, indemnify the Registrant's 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 the Registrant, arising out of such person's services as a director or executive officer of the Registrant, any subsidiary of the Registrant or any other company or enterprise to which the person provides services at the Registrant's request. The Registrant believes 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

| Exhibit Number | Description |
|----------------|--|
| 4.1(1) | Description of Common Stock. |
| 5.1 | Opinion of Pillsbury Winthrop LLP. |
| 10.1(2) | Biogen, Inc. 1983 Employee Stock Purchase Plan. |
| 10.2(3) | Biogen, Inc. 1985 Non-Qualified Stock Option Plan. |
| 10.3(4) | Biogen, Inc. 1987 Scientific Board Stock Option Plan. |
| 10.4(5) | Biogen, Inc. 1994 European Employee Stock Purchase Plan. |
| 23.1 | Consent of Independent Auditors KPMG LLP. |
| 23.2 | Consent of Pillsbury Winthrop LLP (included in Exhibit 5.1). |
| 23.3 | Consent of Independent Accountants PricewaterhouseCoopers LLP. |
| 24.1 | Powers of Attorney (included in signature page to Registration Statement). |

(1) Reference is made to the description of the Registrant's capital stock contained in the Registrant's Registration Statement on Form S-4/A (File No. 333-107098), which is incorporated herein by reference.

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- (2) Exhibit 10.1 is incorporated herein by reference to Exhibit 10.20 of Biogen, Inc.'s Registration Statement on Form 10-K for the year ended December 31, 2001 (File No. 000-12042) filed on March 29, 2002.
- (3) Exhibit 10.2 is incorporated herein by reference to Exhibit 10.21 of Biogen, Inc.'s Registration Statement on Form 10-K for the year ended December 31, 2002 (File No. 000-12042) filed on March 14, 2003.
- (4) Exhibit 10.3 is incorporated herein by reference to Exhibit 10.22 of Biogen, Inc.'s Registration Statement on Form 10-K for the year ended December 31, 2002 (File No. 000-12042) filed on March 14, 2003.
- (5) Exhibit 10.4 is incorporated herein by reference to Exhibit 10.1 of Biogen, Inc.'s Registration Statement on Form S-8 (File No. 333-63013) filed on September 28, 1995.

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; and

(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 the Registration Statement; and

(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; and

(2) That, for the purpose of determining any liability under the Securities 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 offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in 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 Securities Act 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 Securities 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 Securities Act and will be governed by the final adjudication of such issue.

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| | | |
|-------------------------|----------|-------------------|
| <hr/> | Director | November , 2003 |
| Mary L. Good, Ph.D. | | |
| <hr/> | Director | November , 2003 |
| Thomas F. Keller, Ph.D. | | |
| /s/ ROBERT W. PANGIA | Director | November 12, 2003 |
| <hr/> | | |
| Robert W. Pangia | | |
| /s/ BRUCE R. ROSS | Director | November 12, 2003 |
| <hr/> | | |
| Bruce R. Ross | | |
| /s/ LYNN SCHENK | Director | November 12, 2003 |
| <hr/> | | |
| Lynn Schenk | | |
| <hr/> | Director | November , 2003 |
| Phillip A. Sharp, Ph.D. | | |
| /s/ WILLIAM D. YOUNG | Director | November 12, 2003 |
| <hr/> | | |
| William D. Young | | |

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EXHIBIT INDEX

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SIGNATURES

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