

Edgar Filing: ACAMBIS PLC - Form S-8

ACAMBIS PLC  
Form S-8  
February 09, 2007

As filed with the Securities and Exchange Commission on February 9, 2007

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  
\_\_\_\_\_

ACAMBIS PLC  
(Exact name of registrant as specified in its charter)

England and Wales \_\_\_\_\_ N/A  
(State or other jurisdiction of (I.R.S. Employer  
Incorporation or organization) Identification Number.)

Peterhouse Technology Park, 100 Fulbourn Road  
Cambridge, CB1 9PT, United Kingdom  
(Address of principal executive offices)

The Acambis 2006 Deferred Bonus Plan  
(Full title of the Plan)

David Lawrence  
Chief Financial Officer  
Peterhouse Technology Park, 100 Fulbourn Road  
Cambridge, CB1 9PT, United Kingdom  
011-44-1223-275-300  
(Name, address and telephone number of agent for service)

Copy to:  
Kristian E. Wiggert, Esq.  
Morrison & Foerster MNP  
7th Floor, CityPoint, One Ropemaker Street  
London, EC2Y 9AW, United Kingdom  
011-44-207-920-4000

\_\_\_\_\_  
CALCULATION OF REGISTRATION FEE

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Title of Securities to be Registered	Amount to be registered (1)	Proposed maximum offering price per share (3)	Proposed maximum aggregate offering price (3)
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Ordinary Shares, nominal value			
10 pence each	1,000,000 shares (2)	\$2.13	\$2,130,000

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement includes an indeterminate number of additional shares which may be offered and issued to prevent dilution from stock splits, stock dividends or similar transactions as provided in the above-referenced plan.
- (2) This total represents the amount of shares to be registered for issuance pursuant to the Registrant's 2006 Deferred Bonus Plan.
- (3) Estimated solely for the purpose of calculating the registration fee. Pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, the proposed maximum offering price per share and the proposed maximum aggregate offering price have been determined on the basis of the average of the high (GBP1.10) and low (GBP1.063) sale prices reported on the London Stock Exchange on February 6, 2007. The U.S. dollar amount was calculated using the Noon exchange rate for pounds (GBP1 = \$1.9693) as reported by the Federal Reserve Bank of New York on February 6, 2007.

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### PART I INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information specified in this Part I of Form S-8 (plan information and registrant information and employee plan annual information) will be sent or given to employees as specified by Securities and Exchange Commission Rule 428(b)(1). Such documents need not be filed with the Securities and Exchange Commission (the "Commission") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended (the "Securities Act").

### PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission are incorporated by reference herein:

a. The Registrant's Annual Report on Form 20-F for the year ended December 31, 2005, filed on June 28, 2006, which includes audited financial statements for such year.

b. All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since December 31, 2005.

c. The description of the Registrant's Ordinary Shares, nominal value 10 pence per share, contained in the Registration Statement on Form F-4,

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as filed with the Commission on February 10, 1999 (File No. 333-72077), including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 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 de-registers all securities then remaining unsold, 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, except as to any portion of any future annual or quarterly report to stockholders or document that is not deemed filed under such provisions. Any statement contained in a document 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 other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any 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.

Articles 225 and 226 of the Registrant's Articles of Association provide:

"225 Directors and secretaries may be indemnified subject to the Statutes

"Subject to the provisions of the Statutes, but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every director or other officer of the Company (other than any person (whether an officer or not) engaged by the Company as auditor) shall be indemnified out of the assets of the Company against any liability incurred by him for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company, provided that this Article 225 shall be deemed not to provide for, or entitle any such person to, indemnification to the extent that it would cause this Article 225 or any element of it, to be treated as void under the 1985 Act or otherwise under the Statutes."

"226 Power to purchase and maintain insurance

"Without prejudice to the provisions of Article 225, the Directors shall have power to purchase and maintain, at the cost of the Company, insurance for, or for the benefit of, any persons who are or were at any time Directors, officers or employees of the Company, or of any other company or undertaking which is (a) the holding company or parent undertaking of the Company or (b) a subsidiary or subsidiary undertaking of the Company or of such holding company or parent undertaking or any such holding company or parent undertaking or subsidiary of subsidiary undertaking or in which the Company or such holding company or parent undertaking or subsidiary or subsidiary undertaking has any interest whether directly or indirectly, or who are or were at any time trustees of any retirement benefits scheme or employees' share scheme in which employees of the Company or of any such other company or undertaking are interested, including (without prejudice to the generality of the foregoing) insurance against any

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liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or the exercise or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to the Company or any such other company or undertaking, retirement benefit scheme or employees' share scheme."

Pursuant to the provisions of Section 310(3) of the Companies Act 1985 (as amended by the Companies Act 1989) the Company may purchase and maintain insurance to indemnify any director, officer, manager or auditor of the Company. Section 310 of the Companies Act 1985 (as amended by Section 137 of the Companies Act 1989) provides as follows:

### "310. Provisions protecting auditors from liability

(1) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise, for exempting any ..... person (whether an officer or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

(2) Except as provided by the following subsection, any such provision is void.

(3) This section does not prevent a company -

(a) from purchasing and maintaining for any such ..... auditor insurance against any such liability, or

(b) from indemnifying any such ..... auditor against any liability incurred by him -

(i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or

(ii) in connection with any application under section 727 (general power to grant relief in case of honest and # reasonable conduct) in which relief is granted to him by the court."

Section 727 of the Companies Act 1985 provides as follows:

### "727 Power of court to grant relief in certain cases

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability in such terms as it thinks fit.

(2) If any such officer or person as above- mentioned has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this section it would have had if it had been a

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court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper."

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4.1 Memorandum of Association of Acambis plc(1)
- 4.2 Articles of Association of Acambis plc(2)
- 5.1 Opinion of Morrison & Foerster MNP
- 23.1 Consent of Morrison & Foerster MNP (contained in Exhibit 5.1)
- 23.2 Consent of PricewaterhouseCoopers LLP
- 24.1 Power of Attorney (see Signature Page)

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 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.

(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.

(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 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

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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 the 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.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant, Acambis plc, 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 Cambridge, England, on February 9, 2007.

ACAMBIS PLC

By: /s/ David Lawrence\_\_\_\_\_

David Lawrence

Chief Financial Officer

## POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Gordon Cameron and David Lawrence, and each of them, as attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting to said attorneys-in-fact, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming the said attorney-in-fact or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature

Title

Date \_\_\_\_\_

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<div><div>/s/ G.B. Cameron</div><div>Gordon Cameron</div></div>	Chief Executive Officer and Director	February 9, 2007
<div><div>/s/ David Lawrence</div><div>David Lawrence</div></div>	Chief Financial Officer and Director	February 9, 2007
<div><div></div><div>Randal Chase</div></div>	Non-Executive Director	
<div><div>/s/ Alan Dalby</div><div>Alan Dalby</div></div>	Non-Executive Director	February 9, 2007
<div><div>/s/ P.J. Fellner</div><div>Peter Fellner</div></div>	Non-Executive Director	February 9, 2007
<div><div>/s/ William J. Jenkins</div><div>William Jenkins</div></div>	Non-Executive Director	February 9, 2007
<div><div>/s/ Ross Graham</div><div>Ross Graham</div></div>	Non-Executive Director	February 9, 2007
<div><div>/s/ John A. Lambert</div><div>John Lambert</div></div>	Non-Executive Director	February 9, 2007

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Exhibit Number	Document
4.1	Memorandum of Association of Acambis plc(3)
4.2	New Articles of Association of Acambis plc(4)
5.1	Opinion of Morrison & Foerster MNP
23.1	Consent of Morrison & Foerster MNP (contained in Exhibit 5.1)
23.2	Consent of PricewaterhouseCoopers LLP
24.1	Power of Attorney (see Signature Page)

### EXHIBIT 5.1

#### OPINION OF MORRISON & FOERSTER MNP

[ON MORRISON & FOERSTER MNP LETTERHEAD]

February 9, 2007

Acambis plc  
Peterhouse Technology Park  
100 Fulbourn Road  
Cambridge CB1 9PT  
United Kingdom

Re: The Acambis 2006 Deferred Bonus Plan

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters of English law in relation to the Registration Statement on Form S-8 (the "Registration Statement") to be filed by Acambis plc ("Acambis") with the Securities and Exchange Commission, in connection with the registration under the Securities Act of 1933, as amended, of up to 1,000,000 ordinary shares of 10p each in Acambis (the "Shares") offered pursuant to the provisions of Acambis' 2006 Deferred Bonus Plan (the "Plan"). As your English legal counsel, we have examined the proceedings taken and are familiar with the proceedings proposed to be taken in connection with the issue of the Shares.

It is our opinion that, upon completion of the proceedings being taken or to be taken prior to issue of the Shares, and upon completion of the proceedings being taken in order to permit such transactions to be carried out in accordance with the securities laws of the United States and the various states in the United States and in the United Kingdom, where required, the Shares, when issued in accordance with the terms of the Plan, will be legally and validly issued, fully paid and non-assessable.

Our opinions expressed above are limited to the laws of England and Wales and we do not express any opinion herein concerning any other law.



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We consent to the filing of this Opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Morrison & Foerster MNP

EXHIBIT 23.2

[ON PRICEWATERHOUSECOOPERS LETTERHEAD]

### CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of Acambis plc of our report dated June 26, 2006 relating to the principal statements, which appears in the Annual Report on Form 20-F of Acambis plc for the year ended December 31, 2005.

/s/ PricewaterhouseCoopers LLP

Cambridge, England  
February 9, 2007

(1) Filed as Exhibit 3.1 to the Registrant's Registration Statement on Form F-4, as filed with the Commission on February 10, 1999 (File No. 333-72077), and incorporated herein by reference.

(2) Filed as Exhibit 1.2 to the Registrant's Annual Report on Form 20-F for the year ended December 31, 2004 on June 30, 2005 and incorporated herein by reference.

(3) Filed as Exhibit 3.1 to the Registrant's Registration Statement on Form F-4, as filed with the Commission on February 10, 1999 (File No. 333-72077), and incorporated herein by reference.

(4) Filed as Exhibit 1.2 to the Registrant's Annual Report on Form 20-F for the year ended December 31, 2004 on June 30, 2005 and incorporated herein by reference.