

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



04031432

FORM D

NOTICE OF SALE OF SECURITIES  
PURSUANT TO REGULATION D,  
SECTION 4(6), AND/OR  
UNIFORM LIMITED OFFERING EXEMPTION

OMB APPROVAL	
OMB Number: 3235-0076 Expires: May 31, 2005 Estimated average burden hours per form.....1	
SEC USE ONLY	
Prefix	Serial
DATE RECEIVED	

Name of Offering (  check if this is an amendment and name has changed, and indicate change.)

**Issuance of Convertible Promissory Notes and Warrants to Purchase Shares of Series B Preferred Stock**

Filing Under (Check box(es) that apply):

Rule 504

Rule 505

Rule 506

Section 4(6)

ULOE

Type of Filing:

New Filing

Amendment

**A. BASIC IDENTIFICATION DATA**

I. Enter the information requested about the issuer

Name of Issuer (  check if this is an amendment and name has changed, and indicate change.)

**Avera Pharmaceuticals, Inc.**

Address of Executive Offices

(Number and Street, City, State, Zip Code)

**12730 High Bluff Drive, Suite 160, San Diego, CA 92130**

Telephone Number (Including Area Code)

**(858) 847-0650**

Address of Principal Business Operations (Number and Street, City, State, Zip Code)  
(if different from Executive Offices)

**Same as above**

Telephone Number (Including Area Code)

Brief Description of Business

**Pharmaceutical development and commercialization**

Type of Business Organization

corporation

limited partnership, already formed

other (please specify):

business trust

limited partnership, to be formed

Actual or Estimated Date of Incorporation or Organization:

Month

11

Year

01

Actual

Estimated

Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State;

CN for Canada; FN for other foreign jurisdiction)

DE

**GENERAL INSTRUCTIONS**

**Federal:**

*Who Must File:* All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

*When to File:* A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

*Where to File:* U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

*Copies Required:* Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

*Information Required:* A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

*Filing Fee:* There is no federal filing fee.

**State:**

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

**ATTENTION**

**Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.**

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

**A. BASIC IDENTIFICATION DATA**

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check  Promoter       Beneficial Owner       Executive Officer       Director       General and/or Managing Partner  
 Box(es) that Apply:

Full Name (Last name first, if individual)

**McKelvy, Jeffrey F., Ph.D.**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o Avera Pharmaceuticals, Inc., 12730 High Bluff Drive, Suite 160, San Diego, CA 92130**

Check  Promoter       Beneficial Owner       Executive Officer       Director       General and/or Managing Partner  
 Box(es) that Apply:

Full Name (Last name first, if individual)

**Megargel, Bret E.**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o Avera Pharmaceuticals, Inc., 12730 High Bluff Drive, Suite 160, San Diego, CA 92130**

Check Boxes  Promoter       Beneficial Owner       Executive Officer       Director       General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Glenn Holdings, L.P.**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o Scott Glenn, Windamere Venture Partners LLC, 12230 El Camino Real, Suite 300, San Diego, CA 92130**

Check Boxes  Promoter       Beneficial Owner       Executive Officer       Director       General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Bay City Capital Funds\***

Business or Residence Address (Number and Street, City, State, Zip Code)

**750 Battery Street, Suite 600, San Francisco, CA 94111**

Check Boxes  Promoter       Beneficial Owner       Executive Officer       Director       General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Frazier Healthcare Funds\*\***

Business or Residence Address (Number and Street, City, State, Zip Code)

**601 Union Street, Suite 3300, Seattle, WA 98101**

Check Boxes  Promoter       Beneficial Owner       Executive Officer       Director       General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**InterWest Partners Funds \*\*\***

Business or Residence Address (Number and Street, City, State, Zip Code)

**2710 Sand Hill Road, Second Floor, Menlo Park, CA 94025**

Check Boxes  Promoter       Beneficial Owner       Executive Officer       Director       General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**St. Paul Venture Capital VI, LLC**

Business or Residence Address (Number and Street, City, State, Zip Code)

**10411 Viking Drive, Suite 550, Eden Prairie, MN 55344**

\* Includes Bay City Capital Fund III, L.P., Bay City Capital Management III, LLC and Bay City Capital Fund III Co-Investment Fund, L.P.

\*\* Includes Frazier Healthcare IV, L.P. and Frazier Affiliates IV, L.P.

\*\*\* Includes InterWest Partners VIII, L.P., InterWest Investors Q VIII, L.P., and InterWest Investors VIII, L.P.

**A. BASIC IDENTIFICATION DATA**

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- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 Box(es) that Apply:

Full Name (Last name first, if individual)

**Heron, Patrick**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o Frazier Healthcare IV, L.P., 601 Union Street, Suite 3300, Seattle, WA 98101**

Check  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 Box(es) that Apply:

Full Name (Last name first, if individual)

**Goldfischer, Carl, M.D.**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o Bay City Capital Management III, LLC, 750 Battery Street, Suite 600, San Francisco, CA 94111**

Check Boxes  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Erlich, Chris**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o InterWest Partners, L.P., 2710 Sand Hill Road, Second Floor, Menlo Park, CA 94025**

Check Boxes  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Kisner, Daniel, L., M.D.**

Business or Residence Address (Number and Street, City, State, Zip Code)

**4948 Rancho Viejo Drive, Del Mar, CA 92014**

Check Boxes  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Pilgrim, Alison, B.M. B.Ch. D. Phil. CMO**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o Avera Pharmaceuticals, Inc., 12730 High Bluff Drive, Suite 160, San Diego, CA 92130**

Check Boxes  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Johnson, Richard G.**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o Avera Pharmaceuticals, Inc., 12730 High Bluff Drive, Suite 160, San Diego, CA 92130**

Check Boxes  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Glenn, Scott L.**

Business or Residence Address (Number and Street, City, State, Zip Code)

**P.O. Box 3496, 448 W. Dakota Ave., Telluride, CO 91435**

Check Boxes  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner  
 that Apply:

Full Name (Last name first, if individual)

**Glaxo Group Limited**

Business or Residence Address (Number and Street, City, State, Zip Code)

**c/o GlaxoSmithKline, CN8 25.6, 980 Great West Road, Brentford, Middlesex, TW8 9GS United Kingdom**

**A. BASIC IDENTIFICATION DATA**

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Boxes  
that Apply:

Promoter

Beneficial Owner

Executive Officer

Director

General and/or  
Managing Partner

Full Name (Last name first, if individual)

**SmithKline Beecham Corporation**

Business or Residence Address (Number and Street, City, State, Zip Code)

**One Franklin Plaza, 200 N. 16th Street, FP2355, Philadelphia, PA 19102**

B. INFORMATION ABOUT OFFERING

1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering?..... Yes \_\_\_ No X  
Answer also in Appendix, Column 2, if filing under ULOE.

2. What is the minimum investment that will be accepted from any individual?..... \$ N/A

3. Does the offering permit joint ownership of a single unit?..... Yes \_\_\_ No X

4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States).....  All States

[AL] [AK] [AZ] [AR] [CA] [CO] [CT] [DE] [DC] [FL] [GA] [HI] [ID]  
[IL] [IN] [IA] [KS] [KY] [LA] [ME] [MD] [MA] [MI] [MN] [MS] [MO]  
[MT] [NE] [NV] [NH] [NJ] [NM] [NY] [NC] [ND] [OH] [OK] [OR] [PA]  
[RJ] [SC] [SD] [TN] [TX] [UT] [VT] [VA] [VA] [WV] [WI] [WY] [PR]

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States).....  All States

[AL] [AK] [AZ] [AR] [CA] [CO] [CT] [DE] [DC] [FL] [GA] [HI] [ID]  
[IL] [IN] [IA] [KS] [KY] [LA] [ME] [MD] [MA] [MI] [MN] [MS] [MO]  
[MT] [NE] [NV] [NH] [NJ] [NM] [NY] [NC] [ND] [OH] [OK] [OR] [PA]  
[RI] [SC] [SD] [TN] [TX] [UT] [VT] [VA] [VA] [WV] [WI] [WY] [PR]

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States).....  All States

[AL] [AK] [AZ] [AR] [CA] [CO] [CT] [DE] [DC] [FL] [GA] [HI] [ID]  
[IL] [IN] [IA] [KS] [KY] [LA] [ME] [MD] [MA] [MI] [MN] [MS] [MO]  
[MT] [NE] [NV] [NH] [NJ] [NM] [NY] [NC] [ND] [OH] [OK] [OR] [PA]  
[RI] [SC] [SD] [TN] [TX] [UT] [VT] [VA] [VA] [WV] [WI] [WY] [PR]

**C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS**

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if answer is "none" or "zero." If the transaction is an exchange offering, check this box  and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

Type of Security	Aggregate Offering Price	Amount Already Sold
Debt .....	\$ _____	\$ _____
Equity .....	\$ _____	\$ _____
<input type="checkbox"/> Common <input type="checkbox"/> Preferred		
Convertible Securities (including warrants) .....	<u>\$ 3,400,000.00</u>	<u>\$ 3,329,499.93</u>
Partnership Interests .....	\$ _____	\$ _____
Other (Specify _____) .....	\$ _____	\$ _____
Total .....	<u>\$3,400,000.00</u>	<u>\$ 3,329,499.93*</u>

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

	Number Investors	Aggregate Dollar Amount of Purchases
Accredited Investors .....	<u>16</u>	<u>\$ 3,329,499.93*</u>
Non-accredited Investors .....	<u>0</u>	<u>\$ --</u>
Total (for filings under Rule 504 only) .....	_____	\$ _____

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, in the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C - Question 1.

Type of Offering	Type of Security	Dollar Amount Sold
Rule 505 .....	_____	\$ _____
Regulation A .....	_____	\$ _____
Rule 504 .....	_____	\$ _____
Total .....	_____	\$ _____

4. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

Transfer Agent's Fees .....	<input type="checkbox"/>	\$ _____
Printing and Engraving Costs .....	<input type="checkbox"/>	\$ _____
Legal Fees .....	<input checked="" type="checkbox"/>	<u>\$ 10,000.00</u>
Accounting Fees .....	<input type="checkbox"/>	\$ _____
Engineering Fees .....	<input type="checkbox"/>	\$ _____
Sales Commissions (specify finders' fees separately) .....	<input type="checkbox"/>	\$ _____
Other Expenses (Identify) <u>Blue Sky Filing Fees</u> .....	<input checked="" type="checkbox"/>	<u>\$ 1,225.00</u>
Total .....	<input checked="" type="checkbox"/>	<u>\$ 11,225.00</u>

\* The Company has issued notes and warrants in the aggregate amount of \$3,329,499.93. The Company may issue notes and warrants in a maximum aggregate amount of \$3,400,000. The Warrants are exercisable for the number of shares of the Company's Preferred Stock equal to the quotient obtained by dividing (a) 20% of the loan amount under the corresponding Notes by (b)(i) if the Company issues Preferred Stock in a subsequent equity financing under certain circumstances, the per share price of the securities into which the Notes are converted in such financing, or (ii) at the election of the holder of the Warrant or if the Company does not effect such an equity financing, \$0.40., the per share price of the Company's Series B Preferred Stock. Such warrants have not yet been exercised.

**C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS**

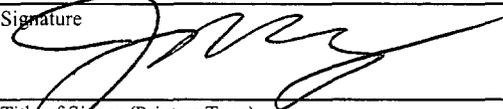
b. Enter the difference between the aggregate offering price given in response to Part C - Question 1 and total expenses furnished in response to Part C - Question 4.a. This difference is the "adjusted gross proceeds to the issuer" ..... **\$ 3,328,274.93**

5. Indicate below the amount of the adjusted gross proceeds to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C - Question 4.b above.

	Payment to Officers, Directors, & Affiliates	Payment To Others
Salaries and fees .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Purchase of real estate .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Purchase, rental or leasing and installation of machinery and equipment .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Construction or leasing of plant buildings and facilities .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger) .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Repayment of indebtedness .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Working capital .....	<input type="checkbox"/> \$ _____	<input checked="" type="checkbox"/> \$ <b>3,328,274.93</b>
Other (specify): _____	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Column Totals .....	<input type="checkbox"/> \$ _____	<input checked="" type="checkbox"/> \$ <b>3,328,274.93</b>
Total Payments Listed (column totals added) .....		<input checked="" type="checkbox"/> \$ <b>3,328,274.93</b>

**D. FEDERAL SIGNATURE**

The issuer had duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

Issuer (Print or Type) <b>Avera Pharmaceuticals, Inc.</b>	Signature 	Date <b>May 25, 2004</b>
Name of Signer (Print or Type) <b>Jeffrey F. McKelvy</b>	Title of Signer (Print or Type) <b>President and Chief Executive Officer</b>	

**ATTENTION**

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

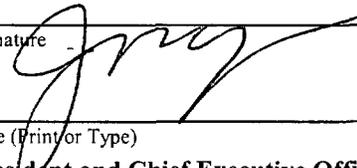
E. STATE SIGNATURE

1. Is any party described in 17 CFR 230.252(c), (d), (e) or (f) presently subject to any of the disqualification provisions of such rule? ..... Yes  No

See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to the state administrator of any state in which the notice is filed, a notice on Form D (17 CFR 239.500) at such times as required by state law.
3. The undersigned issuer hereby undertakes to furnish to any state administrators, upon written request, information furnished by the issuer to offerees.
4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Issuer (Print or Type) <b>Avera Pharmaceuticals, Inc.</b>	Signature 	Date <b>May 25, 2004</b>
Name (Print or Type) <b>Jeffrey F. McKelvy</b>	Title (Print or Type) <b>President and Chief Executive Officer</b>	

*Instruction:*

Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.