

Edgar Filing: IR BIOSCIENCES HOLDINGS INC - Form 8-K

IR BIOSCIENCES HOLDINGS INC

Form 8-K

April 19, 2006

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 13, 2006

IR BIOSCIENCES HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware

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(State or other jurisdiction  
of incorporation)

033-05384

-----  
(Commission  
File Number)

13-3301899

-----  
(IRS Employer  
Identification No.)

4021 North 75th Street, Suite 201 Scottsdale, Arizona

85251

-----  
(Address of principal executive offices)

-----  
(Zip Code)

480-922-3926

-----  
Registrant's telephone number, including area code

Not applicable

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(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange

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Act (17 CFR 240.13e-4(c))

### ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

Effective April 13, 2006, IR BioSciences Holdings, Inc. (the "Company") entered into an unsecured Senior Promissory Note in the amount of \$500,000 (the "Note"). Following the payment of commissions and expenses, the Company received net proceeds of approximately \$439,875. The outstanding principal amount of the Note, plus interest at the rate of 12% per annum, is payable in cash on or before the earlier of (i) April 12, 2007 or (ii) the date upon which the Company sells any of its equity or debt securities in a financing transaction, or a series of financings, with gross proceeds equal to \$1,000,000 or more ("Subsequent Financing Transaction"); provided, however, that a Subsequent Financing Transaction will not include (x) issuances of common stock to employees of the Company, (y) the exercise of any options to purchase common stock of the Company that are outstanding as of the date hereof, or (z) the grant, issuance or exercise of options or common stock of the Company under the Company's stock, option, deferred stock and restricted stock plan for the purpose of satisfying the Company's payables.

Pursuant to the terms of the Note, the Company agreed to use the proceeds from the Note for working capital and general corporate purposes. The Company also agreed not to engage in any of the following actions, among others, so long as the Note remains outstanding or any other amount is owed to the holder of the Note: (i) increase the base salary of any officer of the Company more than 5% per year unless required to do so by an outstanding employment agreement, (ii) pay any dividends, (iii) incur indebtedness which is senior or pari passu to the Note, (iv) sell account receivables, (v) expend more than \$100,000 in any fiscal year for capital expenditures, or (vi) advance money to or invest in any firm, corporation or other person, except in certain enumerated situations. In an event of default, as defined in the Note, the Note shall become immediately due and payable, and during the continuation of an event of default, the Company must pay interest on the Note in an amount equal to 2% per month until the event of default is cured or waived.

The Note was sold to one investor whom the Company had reasonable grounds to believe was an "accredited investor" within the meaning of Rule 501 of Regulation D under the Securities Act of 1933, as amended (the "Securities Act"). The investor was provided access to business and financial about the Company and had such knowledge and experience in business and financial matters that it was able to evaluate the risks and merits of an investment in the Company. The Note included a legend to the effect that the Note was not registered under the Securities Act and could not be resold absent registration or the availability of an applicable exemption from registration. No general solicitation or advertising was used in connection with the transaction. The Company paid Joseph Stevens & Company, Inc. a placement agent fee equal to 10% of the face amount of the Note, or \$50,000.

The issuance of the Note was exempt from the registration requirements of the Securities Act by reason of Section 4(2) of the Securities Act and the rules and regulations, including Regulation D thereunder, as transactions by an issuer not involving a public offering.

The above description, which summarizes the material terms of the Note, is not complete. Please read the full text of the Note, which has been filed with the Securities and Exchange Commission as Exhibits 10.1 to this Form 8-K.

### ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN

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## OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.

The information set forth above under Item 1.01 is hereby incorporated by reference into this Item 2.03.

### ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

#### (d) Exhibits

10.1 Unsecured 12% Senior Promissory Note dated April 13, 2006.

### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

IR Biosciences Holdings, Inc.

Date: April 19, 2006

By: /s/ Michael K. Wilhelm

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Name: Michael K. Wilhelm  
Title: Chief Executive Officer

### EXHIBIT INDEX

10.1 Unsecured 12% Senior Promissory Note dated April 13, 2006.