

MEDAREX INC  
Form S-3/A  
July 30, 2004

As filed with the Securities and Exchange Commission on July 30, 2004

REGISTRATION NO. 333-114048

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# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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## AMENDMENT NO. 2

TO

FORM S-3

REGISTRATION STATEMENT

*UNDER THE SECURITIES ACT OF 1933*

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## MEDAREX, INC.

(Exact name of registrant as specified in its charter)

New Jersey  
(State or other jurisdiction of  
incorporation or organization)

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2836  
(Primary standard industrial  
classification code number)

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22-2822175  
(I.R.S. Employer Number)

Medarex, Inc.  
707 State Road  
Princeton, NJ 08540  
(609) 430-2880

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Donald L. Drakeman**

**President and Chief Executive Officer**

**Medarex, Inc.**

**707 State Road**

**Princeton, NJ 08540**

**(609) 430-2880**

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**COPIES TO:**

**W. Bradford Middlekauff, Esq.**

**Senior Vice President, General Counsel**

**and Secretary**

**Medarex, Inc.**

**707 State Road**

**Princeton, NJ 08540**

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**230 Park Avenue**

**New York, NY 10169**

**(212) 818-9200**

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Approximate date of commencement of proposed sale to the public:

From time to time after the effective date of the Registration Statement, as determined by the Registrant.

If the only securities registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. x

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. "

**THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.**

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PROSPECTUS

**\$21,986,000**

**MEDAREX, INC.**

**4.25% Convertible Senior Notes Due August 15, 2010**

**Shares of Common Stock Issuable Upon Conversion of the Notes**

In January 2004, we issued \$21,986,000 aggregate principal amount of a new series of 4.25% Convertible Senior Notes due August 15, 2010, in a private offering, in connection with the exchange and cancellation of \$33,000,000 principal amount of our 4.50% Convertible Subordinated Notes due 2006. This prospectus will be used by selling securityholders to resell the new series of notes and the common stock issuable upon conversion of such notes at any time at market prices prevailing at the time of sale or at privately negotiated prices. The selling securityholders may sell the notes or the common stock directly to purchasers or through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, concessions or commissions. We will not receive any proceeds from these resales.

The notes have the following provisions:

The holders of the notes may convert the notes into shares of our common stock at any time at a conversion rate of 148.8261 shares per each \$1,000 principal amount of notes, subject to adjustment, which is equivalent to a conversion price of approximately \$6.72 per share of common stock;

We will pay interest on the notes on August 15 and February 15 of each year commencing August 15, 2004;

The notes are senior unsecured obligations, except we have purchased and pledged a portfolio of U.S. treasury securities as security for the notes, in an amount sufficient to pay the first five scheduled interest payments due on the notes;

The notes are subject to redemption prior to maturity upon the occurrence of certain events in accordance with the terms and conditions set forth herein under the sections entitled Description of the Notes Provisional Redemption and Optional Redemption ; and

In the event of a Change of Control, as described in this prospectus, each holder of the notes may require us to repurchase some or all of the holder's notes at 100% of the principal amount of the notes plus accrued and unpaid interest. At our option, we may repurchase the notes for cash or common stock or a combination of cash, common stock or securities of a company that acquires us.

We do not intend to list the notes for trading on any national securities exchange or on the NASDAQ National Market.

Our common stock currently trades on the NASDAQ National Market under the symbol MEDX. The last reported sale price on July 29, 2004 was \$5.91 per share.

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**Investing in our securities involves risks. See Risk Factors on page 9 of this prospectus.**

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

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**The date of this prospectus is July 30, 2004**

YOU SHOULD RELY ONLY ON THE INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS PROSPECTUS. WE HAVE NOT AUTHORIZED ANYONE TO PROVIDE YOU WITH DIFFERENT INFORMATION. THE SELLING SECURITYHOLDERS ARE NOT MAKING AN OFFER OF THE SECURITIES TO BE SOLD UNDER THIS PROSPECTUS IN ANY JURISDICTIONS WHERE THE OFFERS OR SALES ARE NOT PERMITTED. YOU SHOULD NOT ASSUME THAT THE INFORMATION CONTAINED IN THIS PROSPECTUS IS ACCURATE AS OF ANY DATE OTHER THAN THE DATE ON THE FRONT COVER OF THIS PROSPECTUS, OR THAT THE INFORMATION CONTAINED IN ANY DOCUMENT INCORPORATED BY REFERENCE IS ACCURATE AS OF ANY DATE OTHER THAN THE DATE OF THE DOCUMENT INCORPORATED BY REFERENCE. THE DELIVERY OF THIS PROSPECTUS DOES NOT, UNDER ANY CIRCUMSTANCES, MEAN THAT THERE HAS NOT BEEN A CHANGE IN OUR AFFAIRS SINCE THE DATE HEREOF. THIS PROSPECTUS WILL ONLY BE DISTRIBUTED IN PRINTED FORM BY HAND OR THROUGH THE MAILES.

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**PROSPECTUS SUMMARY**

*This summary does not contain all the information that is important to you. You should read the entire prospectus, including the section entitled Risk Factors, and the documents incorporated by reference in this prospectus, including the financial statements and related notes, identified under the section entitled Incorporated by Reference carefully before making an investment decision. When used in this prospectus, unless otherwise indicated, the terms we, our, and us refer to Medarex and its subsidiaries.*

**Medarex, Inc.**

We are a biopharmaceutical company focused on the discovery and development of fully human antibody-based therapeutic products. We believe that our UltiMAB Human Antibody Development System<sup>®</sup> enables us to rapidly create and develop therapeutic products for a wide range of diseases, including cancer, inflammation and autoimmune diseases.

We believe that antibodies are proven candidates for therapeutic products. To date, the United States Food and Drug Administration, or FDA, has approved 17 antibody-based therapeutic products for sale in the United States. In 2003, 15 of these products generated aggregate worldwide sales in excess of \$5.0 billion. We intend to participate in this market and, to this end, are developing an expanding pipeline of therapeutic antibody products generated through the use of our proprietary UltiMAB human antibody development technology.

Currently, 17 antibody products derived from our UltiMAB human antibody development technology are currently in human clinical trials, or have had regulatory applications submitted for such trials. These antibodies are designed to treat a wide range of diseases, such as cancer (including various lymphomas), rheumatoid arthritis and other inflammatory and autoimmune diseases.

As of June 30, 2004, we have more than 45 partnerships with pharmaceutical and biotechnology companies to jointly develop and commercialize products or to enable other companies to use our proprietary technology in their development of new therapeutic products.

We are subject to a number of risks which could materially and adversely affect our business, results of operations and financial condition including, among other things, our history of operating losses and anticipation of future losses; uncertainties relating to our technology, product development, patent and proprietary rights, clinical trials, government regulation, obtaining regulatory approval, market acceptance of our products, health care reform and third-party reimbursement; our need for additional capital; our dependence on our key personnel and our research collaborators and scientific advisors; and the risk of product liability. These risks are described in more detail in the section herein entitled Risk Factors.

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We were incorporated in 1987. Our principal executive offices are located at 707 State Road, Princeton, New Jersey 08540. Our telephone number is (609) 430-2880. We maintain a worldwide website at [www.medarex.com](http://www.medarex.com). The reference to our worldwide web address does not constitute incorporation by reference of the information contained on our website. Our Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q, our Current Reports on Form 8-K and all amendments to those reports that we file with the Securities and Exchange Commission, or SEC, are currently available free of charge to the general public through our website at [www.medarex.com](http://www.medarex.com). These reports are accessible on our website at a reasonably practicable time after being filed with the SEC.

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Medarex<sup>®</sup>, HuMAb-Mouse<sup>®</sup>, GenPharm<sup>®</sup>, UltiMAb Human Antibody Development System<sup>®</sup>, Trans-Phage Technology<sup>®</sup> and KM-Mouse<sup>®</sup> are registered U.S. trademarks of Medarex, Inc. UltiMAb and Ultra-Potent Toxin are trademarks of Medarex, Inc. All other company names, trademarks and service marks included herein are trademarks, registered trademarks, service marks or trade names of their respective owners.



**The Offering**

<b>Issuer</b>	Medarex, Inc.
<b>Securities Offered</b>	\$21,986,000 aggregate principal amount of a new series of 4.25% convertible senior notes due August 15, 2010 and shares of our common stock issuable upon conversion of the notes.
<b>Maturity Date</b>	August 15, 2010, unless earlier redeemed, repurchased or converted.
<b>Interest</b>	4.25% per annum on the principal amount, payable semi-annually in arrears in cash on August 15 and February 15 of each year, commencing August 15, 2004. The first interest payment will include interest from January 30, 2004, the date of issuance of the notes.
<b>Security</b>	We have entered into a pledge agreement with Wilmington Trust Company, as securities intermediary, pursuant to which we have purchased and pledged to the securities intermediary, as security for the notes and for the exclusive benefit of the holders of the notes, a portfolio of approximately \$2.4 million of U.S. treasury securities. This treasury portfolio consists of U.S. treasury securities that mature on or prior to the business day immediately preceding each of the first five interest payment dates for the notes in such amounts as will be sufficient to provide for payment in full of the first five scheduled interest payments on the notes when due. In limited circumstances involving an event of default under the notes, the pledged U.S. treasury securities and the pledge account will also secure the repayment of the principal amount of the notes and our obligation to pay the make-whole payment referred to below under the section herein entitled Description of Notes Provisional Redemption. The notes will otherwise not be secured.
<b>Conversion</b>	<p>You may convert the notes at any time into shares of common stock at a conversion rate equal to 148.8261 shares of common stock per \$1,000 principal amount of notes, which is equivalent to a conversion price of approximately \$6.72 per share of common stock. The conversion rate is subject to adjustment in certain events.</p> <p>You may convert the notes at any time before the close of business on the maturity date, unless we have previously redeemed or repurchased the notes. Holders of notes called for redemption or repurchase will be entitled to convert the notes up to and including the business day prior to the date fixed for redemption or repurchase, as the case may be.</p>
<b>Ranking</b>	The notes are senior unsecured (except as set forth under the section herein entitled Description of the Notes Security ) obligations and will rank equal in right of payment with our existing and future unsecured and unsubordinated indebtedness. The notes will be effectively subordinated to any future secured indebtedness to the extent of the value of the assets securing such indebtedness. The notes

will also be structurally subordinated to the indebtedness and other liabilities of our existing subsidiaries and any future subsidiaries, including trade payables in existence on or after the date hereof. As of March 31, 2004, our subsidiaries had approximately \$2.7 million of indebtedness and other liabilities as to which the notes would have been structurally subordinated, excluding intercompany liabilities. The indenture under which the notes were issued does not restrict us or any of our subsidiaries from incurring additional senior or other indebtedness and other liabilities, including secured indebtedness.

#### **Provisional Redemption**

We may redeem the notes, in whole or in part, at any time prior to August 15, 2006, at a redemption price, payable in cash, equal to 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest to the redemption date and the additional make-whole payment described below if:

the closing price of our common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day prior to the date of mailing of the provisional redemption notice; and

the shelf registration statement covering resales of the notes and the common stock issuable upon conversion of the notes is effective and available for use and is expected to remain effective and available for use for the 30 days following the provisional redemption date unless registration is no longer required to be effective pursuant to the terms and conditions of the registration rights agreement.

Upon any provisional redemption, we will make an additional make-whole payment on the provisional redemption date with respect to the notes called for redemption in an amount equal to \$130.10 per \$1,000 principal amount of notes, less the sum of, without duplication, (1) the amount of any interest actually paid on such notes prior to the provisional redemption date and (2) the amount of any interest that would have accrued on such notes for the period from July 23, 2003 to January 30, 2004 had such notes been issued on July 23, 2003. We may make this additional payment, at our option, in either cash or our common stock (or a combination of both). We will state the form of consideration to be paid in the redemption notice. Payments made in our common stock will be valued at 95% of the average of the closing sale prices for the five consecutive trading days ending on the third trading day prior to the redemption date. We will be obligated to make this additional payment on all notes called for provisional redemption, including any notes converted after the notice date and prior to the provisional redemption date.

#### **Optional Redemption**

On or after August 15, 2006, we may redeem some or all of the notes at any time at the redemption prices specified in this prospectus, plus accrued and unpaid interest to the redemption date.

**Form and Denomination**

The notes were issued in definitive form to the initial purchasers. At such time as the notes are no longer restricted securities, we will, if the notes meet applicable eligibility requirements, deposit the notes with The Depository Trust Company. See Description of Notes Form, Denomination, Transfer, Exchange and Book-Entry Procedures.

**Repurchase at Holder's Option Upon a Change in Control**

You may require us to repurchase your notes upon a change in control in cash, or, at our option, in our common stock or a combination of cash and common stock, at 100% of the principal amount of the notes to be repurchased plus accrued and unpaid interest to, but excluding, the repurchase date. If we pay the repurchase price in common stock, the common stock will be valued at 95% of the average closing sales price of the common stock on the NASDAQ National Market for the five consecutive trading days ending on the third trading day prior to the repurchase date.

**Use of Proceeds**

The selling securityholders will receive all of the proceeds from the sale under this prospectus of the notes and the common stock issuable upon conversion of the notes. We will not receive any proceeds from these sales.

**Events of Default**

The following are events of default under the indenture for the notes:

we fail to pay the principal of or any premium on any note when due;

we fail to pay any interest or any liquidated damages on any note when due, which failure continues for 30 days;

we fail to provide notice of a change in control;

we fail to perform any other covenant in the indenture and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;

any indebtedness under any bonds, debentures, notes or other evidences of indebtedness for money borrowed, or any guarantee thereof, by us or any of our significant subsidiaries, in an aggregate principal amount in excess of \$20 million is not paid when due either at its stated maturity or upon acceleration thereof, and such indebtedness is not discharged, or such acceleration is not rescinded or annulled, within a period of 30 days after notice as provided in the indenture;

the pledge agreement in favor of the holders of the notes governing the pledge of the portfolio of U.S. treasury securities shall cease to be in full force and effect or enforceable in accordance with its terms, other than in accordance with its terms; and

events of bankruptcy, insolvency or reorganization specified in the indenture.

**The NASDAQ National Market Symbol for Common Stock** MEDX.

**Trading of Notes** We do not intend to list the notes for trading on any national securities exchange or on the NASDAQ National Market.

**Governing Law** The indenture and the notes will be governed by the laws of the State of New York.

**Risk Factors** You should carefully consider all of the information contained or incorporated by reference in this prospectus prior to investing in the notes. In particular, we urge you to carefully consider the information set forth under **Risk Factors** beginning on page 9 of this prospectus for a discussion of risks and uncertainties relating to us, our business and an investment in the notes.

## SUMMARY CONSOLIDATED FINANCIAL DATA

The following table sets forth consolidated financial information for the periods indicated. The summary consolidated financial information for each of the years in the five-year period ended December 31, 2003 and at December 31 of each of those years has been derived from our audited consolidated financial statements. The financial information set forth below for the three months ended March 31, 2003 and 2004 has been derived from unaudited consolidated financial information, which we believe presents fairly such consolidated information in conformity with accounting principles generally accepted in the United States and includes all adjustments, consisting only of normal recurring adjustments, that in the opinion of management are necessary for a fair presentation. Results for the three months ended March 31, 2004 are not necessarily indicative of the results that may be expected for any other interim periods or for the year as a whole. You should read the summary consolidated financial information in conjunction with our consolidated financial statements and the notes thereto and the other financial information incorporated by reference in this prospectus.

	For the Year Ended December 31,					For the Three Months Ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
						(unaudited)	
<b>Statement of Operations Data:</b>							
Revenues:							
Sales	\$ 1,079	\$ 264	\$ 191	\$ 176	\$ 25	\$ 25	
Contract and license revenues	8,593	19,619	37,140	24,552	5,833	2,174	1,106
Sales, contract and license revenues from Genmab	252	2,574	4,973	14,751	5,316	1,765	823
<b>Total revenues</b>	<b>9,924</b>	<b>22,457</b>	<b>42,304</b>	<b>39,479</b>	<b>11,174</b>	<b>3,964</b>	<b>1,929</b>
Costs and expenses:							
Cost of sales	709	1,189	642	8,327	3	3	
Research and development	19,929	33,942	38,626	82,626	95,459	23,526	22,988
General and administrative	8,036	18,142	19,344	22,852	21,727	5,684	5,808
Write-off of facility costs				11,294			
Acquisition of in-process technology				16,312	6,500		
<b>Total costs and expenses</b>	<b>28,674</b>	<b>53,273</b>	<b>58,612</b>	<b>141,411</b>	<b>123,689</b>	<b>29,213</b>	<b>28,796</b>
Operating loss	(18,750)	(30,816)	(16,308)	(101,932)	(112,515)	(25,249)	(26,867)
Equity in net loss of affiliate		(353)	(7,334)	(50,625)	(14,997)	(3,754)	(4,766)
Interest and investment income	1,205	21,158	24,728	18,495	12,342	2,632	3,988
Impairment loss on investment in partners				(11,886)	(1,400)		
Additional payments related to asset acquisition				(2,425)	(31)	(86)	
Interest expense	(8)	(3)	(4,615)	(9,065)	(11,777)	(2,308)	(3,635)
Gain on disposition of Genmab stock			1,442				
Gain on extinguishment of debt							326
<b>Income (loss) before provision (benefit) for income taxes</b>	<b>(17,553)</b>	<b>(10,014)</b>	<b>(2,087)</b>	<b>(157,438)</b>	<b>(128,378)</b>	<b>(28,765)</b>	<b>(30,954)</b>
Provision (benefit) for income taxes	(522)	(13,075)	600	103	69	28	6
<b>Income (loss) before cumulative effect of change in accounting principle</b>	<b>\$ (17,031)</b>	<b>\$ 3,061</b>	<b>\$ (2,687)</b>	<b>\$ (157,541)</b>	<b>(128,447)</b>	<b>(28,793)</b>	<b>(30,960)</b>
Cumulative effect of change in accounting principle							