

AVI BIOPHARMA INC
Form DEF 14A
April 18, 2006
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

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AVI BIOPHARMA, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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April 18, 2006

Dear Shareholder:

You are cordially invited to attend the Annual Meeting of the Shareholders of AVI BioPharma, Inc., which will be held on Wednesday, May 24, 2006, at 9:00 am, local time, at AVI BioPharma, Inc., 4575 SW Research Way, Corvallis, Oregon.

Details of the business to be conducted at the Annual Meeting are given in the attached Proxy Statement. The Company's Annual Report on Form 10-K for the year ended December 31, 2005 is also enclosed.

Whether or not you plan to attend the meeting, it is important that your shares be represented and voted at the meeting. Therefore, I urge you to sign, date, and promptly return the enclosed proxy in the enclosed postage-paid envelope. If you decide to attend the Annual Meeting and vote in person, you will, of course, have that opportunity. If you receive more than one proxy card because your shares are registered in different names or at different addresses, please sign and return each such proxy so that all of your shares will be represented at the Annual Meeting.

On behalf of the Board of Directors, I would like to express our continued appreciation for your interest in the affairs of the Company.

Sincerely,

Denis R. Burger, Ph.D.
Chief Executive Officer

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AVI BIOPHARMA, INC.

NOTICE OF ANNUAL MEETING

To Be Held on May 24, 2006

To the Shareholders of AVI BioPharma, Inc.:

NOTICE IS HEREBY GIVEN that the Annual Meeting of the shareholders of AVI BIOPHARMA, INC. (the Company or AVI) will be held on May 24, 2006 at 9:00 a.m. local time, at AVI BioPharma, Inc., 4575 SW Research Way, Corvallis, Oregon, for the following purposes:

1. To consider and vote upon a proposal to elect four Group I Directors, each for a two-year term;
2. To consider and vote upon a proposal to increase the reserve of shares under the Company s 2000 Employee Stock Purchase Plan from 250,000 to 500,000;
3. To consider and vote upon a proposal to ratify the appointment of KPMG LLP as independent registered public accounting firm for the Company for the year ending December 31, 2006; and
4. To transact such other business as may properly come before the meeting.

The Board of Directors has fixed March 24, 2006 as the record date for the determination of shareholders entitled to notice of and to vote at the Annual Meeting. Only shareholders of record at the close of business on that date will be entitled to notice of and to vote at the Annual Meeting or any adjournments thereof.

By Order of the Board of Directors
Denis R. Burger, Ph.D.
Chief Executive Officer

Portland, Oregon
April 18, 2006

AVI BIOPHARMA, INC.
One S.W. Columbia Street, Suite 1105
Portland, Oregon 97258

PROXY STATEMENT

for
ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON MAY 24, 2006

General

This Proxy Statement is furnished to shareholders of AVI BIOPHARMA, INC. (the Company or AVI) in connection with the solicitation by the Board of Directors of proxies from the shareholders of record of the Company's outstanding shares of Common Stock, \$0.0001 par value (the Common Stock), for use at the Company's Annual Meeting of Shareholders to be held on May 24, 2006, at 9:00 a.m. local time, at AVI BioPharma, Inc., 4575 SW Research Way, Corvallis, Oregon, and at any adjournments or postponements thereof (the Annual Meeting).

At the Annual Meeting, shareholders will be asked to consider and vote upon proposals to (i) elect four members to Group I of the Board of Directors, each for a two-year term, (ii) increase the reserve of shares available for issuance under the Company's 2000 Employee Stock Purchase Plan from 250,000 to 500,000 shares, (iii) ratify the appointment of KPMG LLP as independent registered public accounting firm for the Company for the year ending December 31, 2006, and (iv) transact such other business as may properly come before the meeting. This Proxy Statement, together with the enclosed proxy card, is first being mailed to the Company's shareholders on or about April 18, 2006.

Solicitation, Voting and Revocability of Proxies

The Board of Directors has fixed March 24, 2006, as the record date for the determination of the shareholders entitled to notice of and to vote at the Annual Meeting. Accordingly, only holders of record of shares of Common Stock at the close of business on such date will be entitled to notice of and to vote at the Annual Meeting, with each such share entitling its owner to one vote on all matters properly presented at the Annual Meeting. On the record date, there were approximately 18,100 beneficial holders of the 52,875,962 shares of Common Stock then outstanding. The presence, in person or by proxy, of a majority of the total number of outstanding shares of Common Stock entitled to vote at the Annual Meeting is necessary to constitute a quorum at the Annual Meeting.

If the enclosed form of proxy is properly executed and returned in time to be voted at the Annual Meeting, the shares represented thereby will be voted in accordance with the instructions marked therein. **EXECUTED BUT UNMARKED PROXIES WILL BE VOTED FOR (i) THE ELECTION OF THE DIRECTORS NAMED IN THE PROXY, (ii) INCREASING THE RESERVE OF SHARES UNDER THE COMPANY'S 2000 EMPLOYEE STOCK PURCHASE PLAN, AND (iii) RATIFICATION OF THE APPOINTMENT OF KPMG LLP AS INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE YEAR ENDING DECEMBER 31, 2006.** The Board of Directors does not know of any matters other than those described in the Notice of Annual Meeting that are to come before the Annual Meeting. If any other matters are properly brought before the Annual Meeting, the persons named in the proxy will vote the shares represented by such proxy in their discretion upon such matters.

The presence of a shareholder at the Annual Meeting will not automatically revoke such shareholder's proxy. A shareholder may, however, revoke a proxy at any time prior to its exercise by (i) filing a written notice of revocation with, (ii) delivering a duly executed proxy bearing a later date to, Assistant Secretary, AVI BioPharma, Inc., One S.W. Columbia Street, Suite 1105, Portland, Oregon 97258, or (iii) attending

the Annual Meeting and voting in person. In order to be effective, all revocations or later-filed proxies must be delivered to the Company at the address listed above not later than May 23, 2006, 5:00 p.m. local time. All valid, unrevoked proxies will be voted at the Annual Meeting. Under Oregon law, shareholders are not entitled to dissenters rights with respect to any of the proposals set forth in this proxy statement.

AVI BIOPHARMA, INC. DIRECTORS AND EXECUTIVE OFFICERS

Executive Officers and Directors

The following table sets forth certain information with respect to the current directors and executive officers of AVI:

Name	Age	Position(6)
Denis R. Burger, Ph.D.(1)	62	Chief Executive Officer and Chairman of the Board
Patrick L. Iversen, Ph.D.	50	Senior Vice President of Research and Development
Peter D. O Hanley, Ph.D., M.D.	55	Senior Vice President of Clinical Development and Regulatory Affairs
Alan P. Timmins(1)	46	President, Chief Operating Officer and Director
Mark M. Webber	51	Chief Financial Officer and Chief Information Officer
Dwight D. Weller, Ph.D.(1)(5)	55	Senior Vice President of Chemistry and Manufacturing and Director
Jack L. Bowman(2)(4)	73	Director
John W. Fara, Ph.D.(3)(4)	63	Director
K. Michael Forrest(2)(4)	62	Director
James B. Hicks, Ph.D.(3)	59	Director
John C. Hodgman(2)(3)	51	Director

(1) Member of the Executive Committee.

(2) Member of the Compensation Committee.

(3) Member of the Audit Committee.

(4) Member of the Nominating and Corporate Governance Committee.

(5) On February 16, 2006, Dr. Weller informed the Company that he will not seek re-election to the Company's Board at the upcoming 2006 Annual Meeting of Shareholders. He will serve on the Board until May 24, 2006. The Company's Nominating and Corporate Governance Committee has recommended to the Board of Directors, and the Board of Directors has accepted and ratified that recommendation, to nominate Michael D. Casey to the shareholders for election as a director at the Annual Meeting to assume office upon the expiration of Dr. Weller's term. Information regarding on Mr. Casey is set forth below.

(6) Effective March 21, 2006, Mr. Horn, formerly Vice President of Cardiology, resigned and accepted a position with The Cook Group, Inc., in connection with a supply and licensing transaction between the Company and The Cook Group, Inc. *See*, Certain Transactions and Relationships with AVI BioPharma, Inc.

Denis R. Burger, Ph.D. has served as Chief Executive Officer of AVI since January 1996, and as Chairman of the Board of AVI since 1998. From 1992 to May 2000, he was President of AVI and from 1992 to 1995, he was Chief Operating Officer of AVI. Dr. Burger has also been a member of Sovereign Ventures, LLC, a biotechnology consulting and merchant banking venture since 1991. Dr. Burger is a member of the Board of Directors of Trinity Biotech, PLC, a biopharmaceutical company. Dr. Burger received a B.A. in Bacteriology and Immunology from the University of California, Berkeley, and his M.S. and Ph.D. degrees in Microbiology and Immunology from the University of Arizona.

Patrick L. Iversen, Ph.D. has served as Senior Vice President of Research and Development from 1997 and as a director of AVI from 1997 through 2005. Dr. Iversen left the board on May 18, 2005. From 1987 through 1997, Dr. Iversen was on staff at the University of Nebraska Medical Center, most recently as a Professor in the College of Medicine. Dr. Iversen, who has published extensively on antisense research and development, additionally served as a consultant to various pharmaceutical and biotechnology companies, including GLAXO Inc., Innovir Pharmaceuticals, Lynx Therapeutics, and Isis Pharmaceuticals, as well as to AVI. He is a former member of the Leukemia Society of America Board of Directors. Dr. Iversen holds a B.S. in Biology from Westminster College and a Ph.D. in Biochemical Pharmacology and Toxicology from the University of Utah, followed by post-doctoral work at the Eppley Institute for Research in Cancer and Allied Diseases. Current services activities include being a member of the ALTX-1 study section of the National Institutes of Health and Scientific Advisory Board for the Linus Pauling Institute.

Peter D. O Hanley, Ph.D., M.D. has served as Senior Vice President of Clinical Development and Regulatory Affairs since March 2004. From 2002 to 2003 he served as the Vice President Clinical Development for Maxygen, Inc., and was the Chief Scientific Officer for Preventis, Inc. from 2000 to 2003. Prior to that, Dr. O Hanley was with Quintiles, Inc. from 1998 to 2000, most recently as the Vice President and Chief Scientific Officer of the Anti-Infective Therapeutic & Immunology Therapeutic Groups. Prior to that, he was with Shaman Pharmaceuticals as a Visiting Clinical Scientist from 1996 to 1997 while on sabbatical from the Stanford University School of Medicine, where he served from 1985 through 1998, most recently an Associate Professor. Dr. O Hanley holds a B.A. in Zoology from Pomona College, a Ph.D. in Anatomy and an M.D. from the Medical University of South Carolina. Dr. O Hanley also holds an M.P.H. in Epidemiology from the University of California, Berkeley.

Alan P. Timmins has served as President of AVI since May 2000, Chief Operating Officer of AVI since October 1996, and as a director of AVI since 1997. From 1992 to May 2000, he was Executive Vice President and Chief Financial Officer of AVI. Mr. Timmins received a B.B.A. in Accounting and Management from the University of Portland and an M.B.A. from Stanford University. He is a Certified Public Accountant (inactive).

Mark M. Webber has served as Chief Financial Officer and Chief Information Officer of AVI since May 2000 and as Controller since October 1997. From 1993 to 1997, he was Director of Finance for Pacific Rehabilitation and Sports Medicine, Inc., a physical therapy services company. Mr. Webber holds a B.S. in accounting from the University of Oregon.

Dwight D. Weller, Ph.D. has served as Senior Vice President of Chemistry and Manufacturing of AVI since 1997, as Vice President of Research and Development of AVI from 1992 to 1997, and as a director of AVI since 1991. Dr. Weller will leave the board effective May 24, 2006. Dr. Weller received a B.S. in Chemistry from Lafayette College and a Ph.D. in Chemistry from the University of California at Berkeley, followed by postdoctoral work in Bio-Organic Chemistry at the University of Illinois.

Jack L. Bowman has served as a director of AVI since March 2004. He served as the Chairman and Chief Executive Officer of NeoRx Corporation, a biopharmaceutical company, from March 2003 to May 2004. Between 1987 and 1994, he served as group chairman of Johnson & Johnson, with global responsibility for most of that company's pharmaceutical and diagnostic businesses. Mr. Bowman holds a B.Ed. from Western Washington University.

John W. Fara, Ph.D. has served as a director of AVI since May 2000. He has served as the President and Chief Executive Officer of DepoMed, Inc. a biopharmaceutical company, since 1996, and as its Chairman of the Board since April 2000. Between 1990 and 1996, he served as President and Chief Executive Officer of Anergen, Inc., a biotechnology company, and previously was President of Prototek, Inc., an early stage pharmaceutical development company. Dr. Fara holds a B.S. from the University of Wisconsin and a Ph.D. from the University of California at Los Angeles.

K. Michael Forrest has served as a director of AVI since March 2005. He served as the President, Chief Executive Officer, and a director of Cellegy Pharmaceuticals, Inc., a biopharmaceutical company, from December 1996 to January 2005. He also held the position of the Chairman of the Board from May 2000 to November 2003. From January 1996 to November 1996, he served as a biotechnology consultant. From November 1994 to December 1995, he served as President and Chief Executive Officer of Mercator Genetics, a private biotechnology company. From March 1991 to June 1994, he served as President and Chief Executive Officer of Transkaryotic Therapies, Inc., a public biotechnology company. He is a director of INEX Pharmaceuticals, a public company developing anti-cancer products. Mr. Forrest holds a B.S. in Business Administration from Georgetown University, with concentrations in marketing, finance and economics.

James B. Hicks, Ph.D. has served as a director of AVI since 1997. He has served as the Chief Executive Officer, Chief Scientist and a director of Hedral Therapeutics, Inc., a biotechnology company, since its founding in 1993. He has served as the Chief Technology Officer of Virogenomics, Inc. since 2001 and is a Senior Research Fellow at Cold Springs Harbor Lab since 2003. Dr. Hicks received his B.A. degree in Biology from Willamette University and his Ph.D. in Molecular Biology from the University of Oregon, followed by post-doctoral research at Cornell University.

John C. Hodgman has served as a director of AVI since March 2004. He has served as the President and Chief Executive Officer of Cygnus, Inc., a biopharmaceutical company, since 1998 and Chairman of that company's Board of Directors since 1999. Between 1995 and 1998, he served as President and Chief Financial Officer of Cygnus Diagnostics, during which time he was responsible for all commercialization efforts for the GlucoWatch Biographer, a wearable glucose monitoring device. Mr. Hodgman joined Cygnus in 1994 as Vice President of Finance and Chief Financial Officer. Mr. Hodgman holds a bachelor of science degree from Brigham Young University and an M.B.A. from the University of Utah. Mr. Hodgman serves on the Company's Audit Committee as its Chairman and financial expert.

Michael D. Casey is being nominated by the Board of Directors for election to the Board of Directors, effective immediately following the Annual Meeting. Since February 2002, Mr. Casey has been a self-employed consultant to the pharmaceutical industry. Previously, Mr. Casey served four years as President, Chief Executive Officer and Chairman of Matrix Pharmaceutical, Inc., a biopharmaceutical company, until Chiron Corporation acquired the company in February 2002. Prior to joining Matrix, Mr. Casey was President of two divisions of Schein Pharmaceutical, Inc. from 1995 to 1997, and President and Chief Operating Officer of Genetic Therapy, Inc. from 1993 to 1995 until it was sold to Sandoz (Novartis). Mr. Casey also spent 25 years with Johnson & Johnson, including serving as Vice President of Sales and Marketing of Ortho Pharmaceutical Corporation and President of McNeil Pharmaceuticals. Mr. Casey is a director of Allos Therapeutics, Inc., Celgene Corp., Cholestech Corporation, Durect Corporation and Orthologic Corp.

Board of Directors Meetings and Committees

During 2005, AVI's Board of Directors held four (4) meetings. Each incumbent director attended all of the aggregate of the total number of meetings held by the Board of Directors and all of the meetings held by committees of the Board on which he served during the fiscal year ended December 31, 2005.

The Board of Directors has appointed an Executive Committee, which held no meetings during the fiscal year ended December 31, 2005. The members of the Executive Committee currently are Alan P. Timmins and Drs. Denis R. Burger and Dwight D. Weller. The Executive Committee meets between Board Meetings and is authorized to take actions on behalf of the Board of Directors, except for certain material corporate actions, such as approval of a merger or sale of all or substantially all of the Company's assets.

The Board of Directors also has a standing Audit Committee which, during the fiscal year ended December 31, 2005, conducted four (4) meetings. The members of the Audit Committee are John C.

Hodgman and Drs. John W. Fara and James B. Hicks. Mr. Hodgman serves as the Committee's Chairman and the Committee's designated financial expert. The Audit Committee oversees the annual and quarterly financial reporting process, retains and replaces the Company's independent auditors, discusses with the auditors their independence from management and reviews the scope of the independent annual audit. The Audit Committee operates under an amended and restated written charter adopted by the Board of Directors on March 30, 2004, a copy of which is included in this Proxy Statement as Exhibit A and is posted on the Company's website (www.avibio.com). The Audit Committee reviewed and reassessed the charter for effectiveness during 2005.

The Board of Directors also has a standing Compensation Committee, which reviews executive compensation and makes recommendations to the full Board of Directors regarding compensation for the Company's executive officers and directors, and also administers AVI's stock option and employee stock purchase plans. During the fiscal year ended December 31, 2005, the Compensation Committee held one (1) meeting. The members of the Compensation Committee currently are Messrs. Jack L. Bowman, K. Michael Forrest and John C. Hodgman. Mr. Bowman serves as the Committee's Chairman.

The Board of Directors also has a standing Nominating and Corporate Governance Committee which is responsible for considering and making recommendations to the Board of Directors concerning the appropriate size, functions and needs of the Board of Directors and to ensure compliance with the Company's Code of Ethics and other corporate governance policies. The members of the Nominating and Corporate Governance Committee currently are Drs. John W. Fara and Messrs. Jack L. Bowman and K. Michael Forrest. Dr. Fara serves as the Chairman of the Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee operates under an amended and restated written charter adopted by the Board of Directors on February 16, 2006, a copy of which is included in this Proxy Statement as Exhibit B and is posted on the Company's website (www.avibio.com).

The members of the Audit, Nominating and Corporate Governance, and Compensation committees each are independent as defined under applicable listing requirements of the Nasdaq Stock Market and all members of the Audit Committee have the requisite financial experience.

Each director attended the Company's 2005 annual meeting of shareholders.

Director Compensation

The Compensation Committee has recommended the following revisions to the compensation package for the Company's outside directors. The Committee expects the Board of Directors to ratify and approve this proposal at the meeting of the Board of Directors held immediately following the Annual Meeting. These recommendations were developed after review of the Company's current compensation package for outside directors, which review included review and analysis of relevant information contained in the Radford Biotechnology Compensation Survey.

Current Compensation for Outside Directors. Under the current director compensation package, outside directors receive the following compensation:

- a nonqualified option upon joining the Board of Directors, to purchase 33,000 shares of Common Stock at an exercise price equal to the fair market value of the Common Stock on the date of the grant pursuant to AVI's 2002 Equity Incentive Plan. These options vest ratably on each anniversary date of the grant over four years of continued service to the Board;
- annual compensation of \$10,000 as a director;
- an additional \$5,000 to the Chairman of the Audit Committee;
- an additional \$2,500 to the Chairman of the Compensation Committee;

- an additional \$1,500 plus reasonable expenses incurred for attendance and participation in each meeting of the Board of Directors; and,
- each year at the meeting of the Board of Directors held immediately following the Annual Meeting, a nonqualified option to purchase 10,000 shares of Common Stock with an exercise price equal to the fair market value of the Common Stock on the date of the grant pursuant to AVI's 2002 Equity Incentive Plan. These options vest ratably on each monthly anniversary date of the grant over twelve months of continued service as a director.

Proposed Revised Compensation Package. If ratified and approved by the Board of Directors, the compensation package for outside directors would be as follows:

- upon joining the Board of Directors, outside directors would receive a nonqualified option to purchase 33,000 shares of Common Stock at an exercise price equal to the fair market value of the Common Stock on the date of the grant pursuant to AVI's 2002 Equity Incentive Plan, which will vest ratably on each anniversary date of the grant over four years of continued service to the Board;
- annual compensation of \$30,000 for being a director;
- \$12,000 would be paid to the Chairman of the Audit Committee;
- \$8,000 would be paid to each member of the Audit Committee;
- \$5,000 would be paid to the Chairman of the Compensation Committee;
- \$3,000 would be paid to each member of the Compensation Committee;
- \$5,000 would be paid to the Chairman of the Nominating and Corporate Governance Committee;
- \$3,000 would be paid to each member of the Nominating and Corporate Governance Committee; and,
- each year at the meeting of the Board of Directors held immediately following the Annual Meeting, each outside director would receive a nonqualified option to purchase 10,000 shares of Common Stock with an exercise price equal to the fair market value of the Common Stock on the date of the grant pursuant to AVI's 2002 Equity Incentive Plan, which will vest ratably on each monthly anniversary date of the grant over twelve months of continued service to the Board.

No fees would be paid for attendance at and participation in meetings of the Board of Directors and its committees.

In 2005, a total of 83,000 nonqualified options were granted and \$93,712.20 in the aggregate was paid to all outside directors in accordance with the current compensation package for outside directors as discussed above.

Scientific Advisory Committee

AVI has established relationships with a group of scientific advisors with expertise in their respective fields that complement AVI's product research and development. The following individuals serve on the Scientific Advisory Committee to AVI's Board of Directors:

Christopher K. Mathews, Ph.D. is Chairman of the Scientific Advisory Committee. He is the Chairman of the Biochemistry-Biophysics Department at Oregon State University. Dr. Mathews received a B.A. from Reed College and a Ph.D. in Biochemistry from the University of Washington. He performed postdoctoral work in Biochemistry at the University of Pennsylvania. Dr. Mathews joined the Scientific Advisory Committee in 1994 and was a director of

AVI from 1991 to 1994.

Michael J. Buchmeier, Ph.D. serves as professor of neuropharmacology in the Division of Virology at The Scripps Research Institute. Dr. Buchmeier joined AVI's scientific advisory committee in March 2005. Dr. Buchmeier holds a Ph.D. from McMaster University. He is a member of the MIDRC Study Section of the National Institutes of Allergy and Infectious Diseases, and a member of the Scientific Review Group of the National Multiple Sclerosis Society. Dr. Buchmeier is also Coeditor of *Neurovirology, Viruses and the Brain, Advances in Virus Research, Volume 56.*

David N. Gilbert, M.D., M.A.C.P. is the William M. Garnjobst Chair of Graduate Medical Education, the Director of the Earle A. Chiles Research Institute, Providence Portland Medical Center, and a Professor of Medicine, Oregon Health Sciences University. Dr. Gilbert specializes in infectious diseases and was the former President of the Infectious Diseases Society of America. He joined AVI's scientific advisory committee in March, 2005. Dr. Gilbert received a B.S. from the University of Oregon in 1963, and an M.D. from the University of Oregon Medical School in 1964.

David J. Hinrichs, Ph.D. is a Research Scientist at the Veterans Administration Medical Center in Portland, Oregon and a Professor of Microbiology and Immunology at OHSU. From 1976 to 1985 he was a Professor of Microbiology at Washington State University. He received a Ph.D. in Microbiology from the University of Arizona in 1967.

Joseph Rubinfeld, Ph.D. is the former President and Chief Executive Officer of SuperGen, Inc. He served as a director of AVI between 1996 and 2004. Dr. Rubinfeld resigned from the Board of Directors in March 2004. Dr. Rubinfeld joined AVI's scientific advisory committee in the area of oncology in March 2004. He received his B.S. in Chemistry from C.C.N.Y., and his M.A. and Ph.D. degrees in Chemistry from Columbia University.

Raymond Ruddon, M.D., Ph.D. serves as adjunct profess