

ATHERSYS, INC / NEW

FORM S-3MEF

(Registration of Additional Securities (up to 20%))

Filed 01/27/17

Address	3201 CARNEGIE AVENUE CLEVELAND, OH 44115-2634
Telephone	216-431-9900
CIK	0001368148
Symbol	ATHX
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

**FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

ATHERSYS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

20-4864095
(I.R.S. Employer
Identification Number)

**3201 Carnegie Avenue
Cleveland, Ohio 44115-2634
(216) 431-9900**
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Dr. Gil Van Bokkelen
Chief Executive Officer
Athersys, Inc.
3201 Carnegie Avenue
Cleveland, Ohio 44115-2634
(216) 431-9900**
(Address, including zip code, and telephone number, including area code, of agent for service)

Copies To:
**Christopher M. Kelly
Michael J. Solecki
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
Phone: (216) 586-3939
Fax: (216) 579-0212**

Approximate Date of Commencement of Proposed Sale to the Public: From time to time after the effective date of this registration statement.

If the only securities being 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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

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: (Registration No. 333-194538)

If this Form is a post-effective amendment filed pursuant to Rule 462(c) 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 this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box:

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box:

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Amount to be Registered	Proposed Maximum Offering Price Per Unit (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee(3)
Common Stock, \$0.001 par value per share	2,772,300	\$ 1.01	\$ 2,800,023	\$ 324.52

- (1) This registration statement relates to the Registration Statement on Form S-3 (Registration No. 333-194538) of Athersys, Inc. (the "Company") filed with the U.S. Securities and Exchange Commission (the "SEC") on March 13, 2014 and declared effective on March 27, 2014 (the "Prior Registration Statement"), pursuant to which the Company registered up to 20,000,000 shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), and/or warrants to purchase Common Stock with a maximum aggregate offering price of \$73,200,000. This registration statement is being filed to register an additional 2,772,300 shares of Common Stock pursuant to Rule 462(b) under the Securities Act of 1933 (the "Securities Act").
- (2) As of the date of this registration statement, the maximum aggregate offering price of the securities that remain to be offered pursuant to the Prior Registration Statement is \$73,200,000. The maximum aggregate offering price of the 2,772,300 additional shares of Common Stock being registered hereby pursuant to Rule 462(b) under the Securities Act is \$ 2,800,023, which, together with such number of shares, represents no more than 20% of the maximum aggregate offering price of the securities that remain to be offered pursuant to the Prior Registration Statement.
- (3) The registration fee is calculated in accordance with Rule 457(a) under the Securities Act based on the proposed maximum aggregate offering price.

This registration statement will become effective upon filing with the SEC in accordance with Rule 462(b) of the Securities Act.

EXPLANATORY NOTE

Pursuant to its Registration Statement on Form S-3 (Registration No. 333-194538), declared effective on March 27, 2014, and as supplemented to date, Athersys, Inc. (the “Registrant”) registered an aggregate of 20,000,000 shares of the Registrant’s common stock, par value \$0.001 per share (the “Common Stock”), and warrants to purchase Common Stock with a maximum aggregate offering price of \$73,200,000 and paid an aggregate registration fee of \$9,428.16. The Registrant is filing this Registration Statement on Form S-3 pursuant to General Instruction IV to Form S-3 and Rule 462(b) of the Securities Act of 1933, as amended, solely to register 2,772,300 additional shares of Common Stock. In connection with the registration of the additional shares Common Stock, the Registrant is paying an additional registration fee of \$ 324.52.

STATEMENT OF INCORPORATION BY REFERENCE

This Registration Statement incorporates by reference the contents of the Registration Statement on Form S-3 (Registration No. 333-194538), including all amendments, supplements and exhibits thereto and all information incorporated or deemed to be incorporated by reference therein. Additional opinions and consents required to be filed with this Registration Statement are listed on the Index to Exhibits attached to and filed with this Registration Statement.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cleveland, State of Ohio, on January 27, 2017.

ATHERSYS, INC.

By: /s/ Laura K. Campbell

Name: Laura K. Campbell

Title: Senior Vice President of Finance

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated below.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
* _____ Gil Van Bokkelen	Chief Executive Officer and Chairman of the Board of Directors <i>(Principal Executive Officer)</i>	January 27, 2017
/s/ Laura K. Campbell _____ Laura K. Campbell	Senior Vice President of Finance <i>(Principal Financial and Accounting Officer)</i>	January 27, 2017
* _____ John J. Harrington	Director	January 27, 2017
* _____ Lee E. Babiss	Director	January 27, 2017
* _____ Ismail Kola	Director	January 27, 2017
* _____ Lorin J. Randall	Director	January 27, 2017
* _____ Jack L. Wyszomierski	Director	January 27, 2017
* _____ Jordan S. Davis	Director	January 27, 2017

* This registration statement has been signed on behalf of the above-indicated officers and directors by Gil Van Bokkelen, as attorney-in-fact, pursuant to a power of attorney filed herewith.

By: /s/ Laura K. Campbell

Laura K. Campbell,
Attorney-in-fact

January 27, 2017

EXHIBIT INDEX

<u>No.</u>	<u>Description of Document</u>
5.1	Opinion of Jones Day.
23.1	Consent of Independent Registered Public Accounting Firm – Ernst & Young LLP.
23.2	Consent of Jones Day (included in Exhibit 5.1).
24.1	Power of Attorney.

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114.1190

TELEPHONE: +1.216.586.3939 • FACSIMILE: +1.216.579.0212

January 27, 2017

Athersys, Inc.
3201 Carnegie Avenue
Cleveland, Ohio 44115-2634

Re: Registration Statement on Form S-3 Filed by Athersys, Inc.

Ladies and Gentlemen:

We are acting as counsel for Athersys, Inc., a Delaware corporation (the “*Company*”), in connection with the public offering and sale by the Company of up to 2,772,300 additional shares (the “*Shares*”) of common stock, \$0.001 par value per share, of the Company pursuant to the Underwriting Agreement (the “*Underwriting Agreement*”) between the Company and William Blair & Company, L.L.C., acting as representative of the several underwriters to be named in Schedule I thereto. The Shares are included in a registration statement on Form S-3 under the Securities Act of 1933 (the “*Act*”), filed with the Securities and Exchange Commission on the date hereof (as the same may be amended from time to time, the “*Registration Statement*”), to which this opinion is an exhibit.

In connection with the opinion expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of such opinion. Based on the foregoing, and subject to the further limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares, when issued and delivered pursuant to the Underwriting Agreement against payment of the consideration therefor as provided in the Underwriting Agreement, will be validly issued, fully paid and nonassessable.

The opinion set forth above is subject to the following limitations, qualifications and assumptions:

As to facts material to the opinion and assumptions expressed herein, we have relied upon oral or written statements and representations of the officers and other representatives of the Company and others.

The opinion expressed herein is limited to the General Corporation Law of the State of Delaware, as currently in effect, and we express no opinion as to the effect of the laws of any other jurisdiction on the opinion expressed herein.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement filed by the Company to effect the registration of the Shares under the Act. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Jones Day

ALKHOBAR • AMSTERDAM • ATLANTA • BEIJING • BOSTON • BRISBANE • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS
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DIEGO • SAN FRANCISCO • SÃO PAULO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement of Athersys, Inc. on Form S-3 filed pursuant to Rule 462(b) of the Securities Act of 1933 of the reference to our firm under the caption "Experts" from the Registration Statement (Form S-3 No. 333-194538) and the related Prospectus of Athersys, Inc. for the registration of its common stock; and to the incorporation by reference therein of our reports dated March 10, 2016, with respect to the consolidated financial statements and schedule of Athersys, Inc., and the effectiveness of internal control over financial reporting of Athersys, Inc., included in its Annual Report (Form 10-K) for the year ended December 31, 2015, filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

Cleveland, Ohio
January 27, 2017

**ATHERSYS, INC.
REGISTRATION STATEMENT
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned officers and directors of Athersys, Inc., a Delaware corporation (the "Registrant"), hereby constitutes and appoints Gil Van Bokkelen, William Lehmann, Jr. and Laura K. Campbell, and each of them, his true and lawful attorney or attorneys-in-fact, with full power of substitution and resubstitution, for each of the undersigned and in the name, place and stead of each of the undersigned, to sign and file with the Securities and Exchange Commission under the Securities Act of 1933 (the "Securities Act") one or more Registration Statements on Form S-3 relating to the registration of certain equity securities of the Registrant, with any and all amendments, supplements and exhibits thereto, including pre-effective and post-effective amendments or supplements and Registration Statements filed pursuant to Rule 462(b) of the Securities Act, with full power and authority to do and perform any and all acts and things whatsoever required, necessary or desirable to be done in the premises, hereby ratifying and approving the act of said attorneys and any of them and any such substitute.

This Power of Attorney may be executed in multiple counterparts, each of which shall be deemed an original with respect to the person executing it.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the 11th day of January, 2017 .

/s/ Gil Van Bokkelen

Gil Van Bokkelen
Chief Executive Officer and Chairman of the Board
of Directors

/s/ Lee E. Babiss

Lee E. Babiss
Director

/s/ Laura K. Campbell

Laura K. Campbell
Senior Vice President of Finance

/s/ Jordan S. Davis

Jordan S. Davis
Director

/s/ John J. Harrington

John J. Harrington
Executive Vice President, Chief Scientific Officer and Director

/s/ Jack L. Wyszomierski

Jack L. Wyszomierski
Director

/s/ Lorin J. Randall

Lorin J. Randall
Director

/s/ Ismail Kola

Ismail Kola
Director