

DCAP GROUP INC  
Form S-8  
March 31, 2006

As filed with the Securities and Exchange Commission on March 31, 2006

Registration No. 333-\_\_\_\_\_

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

\_\_\_\_\_  
**FORM S-8**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

\_\_\_\_\_  
**DCAP GROUP, INC.**  
(Exact Name of Registrant as Specified in Its Charter)

**DELAWARE**  
(State or Other Jurisdiction of Incorporation or Organization)

**36-2476480**  
(I.R.S. Employer Identification No.)

**1158 Broadway, Hewlett, New York 11557**  
(Address of Principal Executive Offices)

**2005 EQUITY PARTICIPATION PLAN**  
(Full Title of the Plan)

**Barry B. Goldstein**  
**Chief Executive Officer**  
**DCAP Group, Inc.**  
**1158 Broadway**  
**Hewlett, New York 11557**  
**Telephone: (516) 374-7600**  
**Telecopier: (516) 295-7216**  
(Name, Address and Telephone Number of Agent For Service)

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Copies of all communications and notices to:  
**Fred S. Skolnik, Esq.**  
**Certilman Balin Adler & Hyman, LLP**  
**90 Merrick Avenue**  
**East Meadow, New York 11554**  
**Telephone: (516) 296-7000**

Telecopier: (516) 296-7111

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**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities To Be Registered</b>	<b>Amount To Be Registered</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
<b>Common Shares (par value \$.01 per share)</b>	<b>300,000(1)</b>	<b>\$2.79(2)</b>	<b>\$837,000</b>	<b>\$89.56</b>

(1) Represents Common Shares reserved for issuance under the Plan.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) promulgated under the Securities Act 1933, as amended. Represents the average of the high and low prices of the Registrant's Common Shares on March 30, 2006, as reported on The Nasdaq Stock Market.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### **Item 3. Incorporation of Documents by Reference**

Incorporated herein by reference are the following documents filed by the Registrant with the Securities and Exchange Commission (the "Commission") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"):

- (a) Annual Report on Form 10-KSB for the year ended December 31, 2005.
- (b) Current Report on Form 8-K for an event dated January 31, 2006.
- (c) Current Report on Form 8-K for an event dated February 27, 2006.
- (d) Current Report on Form 8-K for an event dated March 29, 2006.
- (e) The description of the Registrant's Common Shares contained in the Registrant's Registration Statement on Form 8-A (File No. 0-15362).

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from their respective dates of filing.

#### **Item 4. Description of Securities**

Not applicable.

#### **Item 5. Interests of Named Experts and Counsel**

Certain legal matters in connection with the offering of securities registered hereunder are being passed upon for the Registrant by Certilman Balin Adler & Hyman, LLP, 90 Merrick Avenue, East Meadow, New York 11554. Morton L. Certilman, who is affiliated with Certilman Balin Adler & Hyman, LLP, is a director, officer and principal shareholder of the Registrant.

#### **Item 6. Indemnification of Directors and Officers**

Article TWELFTH of the Registrant's Restated Certificate of Incorporation eliminates, absent fraud, the personal liability of directors to the Registrant, stockholders or creditors thereof, or any other persons, in connection with losses incurred by the Registrant under or by reason of any contract or business transaction between a director and the Registrant, nor shall a director be accountable for any gains or profits realized thereon.

Article THIRTEENTH of the Registrant's Restated Certificate of Incorporation provides that each director and each officer now or hereafter serving the Registrant or, at the request of the Registrant, any other corporation in which the Registrant has an interest as stockholder or creditor, and his heirs, executors and administrators, shall be indemnified and held harmless by the Registrant from and against all costs, expenses and liabilities, including but not limited to counsel fees and amounts of judgments and amounts paid in settlement, which may be imposed upon or incurred by him in connection with or resulting from any claim made against him or any action, suit or proceeding in which he may be involved, by reason of his being or having been a director or officer of the Registrant or any of such other corporation, whether or not he continues to be a director or officer at the time such costs, expenses and liabilities are imposed or incurred; provided, however, that no such director or officer shall be so indemnified (a) with respect to any matter as to which he shall, in any such action, suit or proceeding, be finally adjudged to be liable for misconduct in the performance of his duties as a director or officer, or (b) in the event of a settlement of any such claim, action, suit or proceeding unless (i) such settlement shall, with knowledge of the indemnification provided for hereby, be approved by the court having jurisdiction of such claim, action, suit or proceeding or (ii) such settlement shall have been made upon the written opinion of independent legal counsel, selected by or in a manner determined by the board of directors of the corporation, to the effect that there is no reasonable ground of liability for misconduct on the part of such director or officer and that the entire cost of such settlement will not substantially exceed the estimated cost of defending such claim, action, suit or proceeding to a final conclusion. The Registrant's Restated Certificate of Incorporation also states that the foregoing rights of indemnification shall be in addition to any other rights to which such director or officer may otherwise be entitled as a matter of law.

Article FIFTEENTH of the Registrant's Restated Certificate of Incorporation eliminates the personal liability of directors to the Registrant and its stockholders for monetary damages for breach of fiduciary duty as a director except for liability of a director (i) for breach of the director's duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) arising under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

Additionally, the Registrant has included in its by-laws provisions to indemnify its directors, officers, employees and agents and to purchase insurance with respect to liability arising out of the performance of their duties as directors, officers, employees and agents as permitted by Section 145 of the Delaware General Corporation law. The Delaware General Corporation law provides further that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors, officers, employees and agents may be entitled under the Registrant's by-laws, any agreement, vote of stockholders or otherwise.

The effect of the foregoing is to require the Registrant, to the extent permitted by law, to indemnify the officers, directors, employees and agents of the Registrant for any claim arising against such persons in their official capacities if such person acted in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that, in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

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| 5    | Opinion of Certilman Balin Adler & Hyman LLP as to the legality of the Common Shares reserved for issuance under the Registrant's 2005 Equity Participation Plan |
| 23.1 | Consent of Holtz Rubenstein Reminick, LLP.   |
| 23.2 | Consent of Certilman Balin Adler & Hyman, LLP (included in the opinion filed as Exhibit 5 hereto)  |
| 24   | Powers of Attorney (included in signature page forming a part hereof)  |
| 99   | 2005 Equity Participation Plan (1)   |

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- (1) Denotes document filed as an exhibit to the Registrant's Current Report on Form 8-K for an event dated December 21, 2005 and incorporated herein by reference.

**Item 9. Undertakings**

The undersigned Registrant hereby undertakes to:

- (1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to include any additional or changed material information on the plan of distribution.
- (2) For determining liability under the Securities Act of 1933, treat each post-effective amendment as a new registration statement of the securities offered, and the offering of the securities at that time to be the initial *bona fide* offering.
- (3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.
- (4) For determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the Registrant undertakes that in a primary offering of securities of the Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the Registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the Registrant or used or referred to by the Registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the Registrant or its securities provided by or on behalf of the Registrant; and
- (iv) Any other communication that is an offer in the offering made by the Registrant to the purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the small business issuer has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**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-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Hewlett, State of New York, on the 29th day of March, 2006.

**DCAP GROUP, INC.**

By: /s/ Barry B. Goldstein  
 Barry B. Goldstein  
 Chief Executive Officer

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS**, that each person whose signature appears below does hereby make, constitute and appoint Barry B. Goldstein his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for him and in his name, place and stead, in any and all capacities to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, and each of his substitutes, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ Barry B. Goldstein</u> Barry B. Goldstein	President, Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Treasurer and Director (Principal Executive, Financial and Accounting Officer)	March 29, 2006
<u>/s/ Morton L. Certilman</u> Morton L. Certilman	Secretary and Director	March 29, 2006
<u>/s/ Jay M. Haft</u> Jay M. Haft	Director	March 29, 2006
<u>/s/ David A. Lyons</u> David A. Lyons	Director	March 29, 2006

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/s/ Jack D. Seibald  
Jack D. Seibald

Director

March 29, 2006

Robert M. Wallach

Director

March \_\_, 2006