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ORTHOFIX INTERNATIONAL N V

Form S-8

March 16, 2005

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM S-8  
REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933  
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Orthofix International N.V.  
(Exact name of Registrant as specified in its charter)

Netherlands Antilles (State or other jurisdiction of incorporation or organization)	Not Applicable (I.R.S. Employer Identification Number)
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7 Abraham de Veerstraat  
Curacao, Netherlands Antilles  
(Address of Registrant's principal executive offices)

ORTHOFIX INTERNATIONAL N.V.  
2004 LONG-TERM INCENTIVE PLAN  
(Full title of the plan)

Orthofix International N.V.  
10115 Kinsey Avenue  
Suite 250  
Huntersville, North Carolina 28078  
(704) 948-2600  
(Name, address and telephone number of agent for service)

-----  
Copies to:  
John J. Cannon, III  
Shearman & Sterling LLP  
599 Lexington Avenue, New York, NY 10022-6069  
(212) 848-4000

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Security (2)	Proposed Maximum Aggregate Offering Price
Common Stock, par value U.S.			
\$ 0.10 per share ("Common Stock")	509,000	\$37.881	\$19,281,429
	1,491,000	\$39.20	\$58,447,200
	-----		-----
	2,000,000		\$77,728,629

(1) 2,000,000 shares of Common Stock are being registered under the Orthofix International N.V. 2004 Long-Term Incentive Plan (the "Plan"). In addition, this Registration Statement, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), shall cover any additional shares of Common Stock that become issuable under the Plan by reason of any stock

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dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of shares of Common Stock of Orthofix International N.V. (the "Registrant").

- (2) The Proposed Maximum Offering Price Per Share and the Proposed Maximum Aggregate Offering Price are based on (I) with respect to 509,000 shares of Common Stock under the Plan underlying stock options previously awarded, the weighted average exercise price of \$37.881 and (II) with respect to 1,491,000 shares of Common Stock under the Plan available for future awards under the Plan, estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) and 457(c) under the Securities Act, based upon the average of the bid and asked prices for the Registrant's shares of Common Stock reported on the Nasdaq National Market (the "Nasdaq") on March 15, 2005.

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Exhibit Index Appears on Page 10

### Part I

#### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

- Item 1. Plan Information.\*
- Item 2. Registrant Information and Employee Plan Annual Information.\*

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\* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the "Note" to Part I of Form S-8.

### Part II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

- Item 3. Incorporation of Documents by Reference.

The following documents which we have been filed with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference and made part of this Registration Statement:

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(a) our Annual Report on Form 10-K (Commission File No. 0-19961) for the fiscal year ended December 31, 2004, filed on March 15, 2005 (the "Form 10-K"); and

(b) the description of our shares of Common Stock contained in our Registration Statement on Form 8-A (Commission File No. 0-19961), filed with the Commission on March 20, 1992, under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the description of the Rights of the Registrant contained in our Registration Statement on Form 8-A (Commission File No. 0-19961), filed with the Commission on August 21, 1995.

In addition, all documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, after the date of this Registration Statement but before we file a post-effective amendment to this Registration Statement which indicate that all securities offered have been sold or which deregister all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and are a part thereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

### Item 4. Description of Securities.

Not applicable.

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

None.

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

Article 11 of the Registrant's Articles of Association generally provides, in relevant part:

The Company will have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to

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the best interests of the Company.

The Company will have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification will be made in respect of any claim, issue or matter as to which such person shall have been finally adjudged to be liable to the Company for improper conduct unless and only to the extent that the court in which such action or suit was brought or any other court having appropriate jurisdiction shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses, judgments, fines and amounts paid in settlement which the court in which the action or suit was brought or such other court having appropriate jurisdiction shall deem proper.

To the extent that a director, officer, employee or agent of the Company has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in the two preceding paragraphs, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under the first two paragraphs of Article 11 (unless ordered by a court) will be made by the Company only as authorized by contract approved, or by-laws, resolution or other action adopted or taken, by the Board of Directors or by the shareholders.

Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to

repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorized by Article 11.

The indemnification and advancement of expenses provided by or granted pursuant to the other paragraphs of Article 11 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, by-law, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of the estate of such a person.

The Company shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and

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incurred by him in any such capacity, or arising out of his status as such, whether or not the Company would have the power to indemnify him against such liability under the provisions of Article 11.

For purposes of Article 11, reference to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, and which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of Article 11 with respect to the resulting or surviving corporation if its separate existence had continued.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See attached "Index to Exhibits" list.

Item 9. Undertakings.

(a) We hereby undertake:

1. To file, during any period in which offers or sales are being made of securities registered hereby, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by us pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) We hereby further undertake that, for purposes of determining any liability under the Securities Act, each filing of our annual report filed on Form 10-K pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of us pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person of us 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, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Huntersville, State of North Carolina, on this 16th day of March 2005.

ORTHOFIX INTERNATIONAL N.V.

By: /s/ Charles W. Federico

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Name: Charles W. Federico

Title: Chief Executive Officer and President

POWERS OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints, jointly and severally, Charles W. Federico and Thomas Hein, his true and lawful attorneys-in-fact and agents, each of whom may act alone, with full powers of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign (1) a registration statement or statements on Form S-8, or such other form as may be recommended by

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counsel, to be filed with the Securities and Exchange Commission (the "Commission"), and any and all amendments and post-effective amendments thereto, and any and all post-effective amendments to registration statements or statements on Form S-8 previously filed with the Commission, and any and all instruments and documents filed as a part of or in connection with the said registration statement or amendments thereto, with respect to the Orthofix International N.V. 2004 Long-Term Incentive Plan, and (2) any registration statements, reports and applications relating thereto to be filed by Orthofix International N.V. (the "Company") with the Commission and/or any national securities exchanges under the Securities Exchange Act of 1934, as amended, and any and all amendments thereto, and any and all instruments and documents filed as part of or in connection with such registration statements or reports or amendments thereto; granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully for all intents and purposes as he or she might or could do in person, and hereby ratifying and confirming all that the said attorneys-in-fact and agents or any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the indicated capacities on this 16th day of March 2005.

Name and Signature -----	Title -----
*	
----- James F. Gero	Chairman of the Board of Directors
 /s/ Charles W. Federico ----- Charles W. Federico	Chief Executive Officer, President and Director (Principal Executive Officer)
 /s/ Thomas Hein ----- Thomas Hein	Chief Financial Officer (Principal Financial and Accounting Officer)
*	
----- Robert Gaines-Cooper	Director
Name and Signature -----	Title -----
*	
----- Jerry C. Benjamin	Director
*	
----- Peter J. Hewett	Director
*	
----- Walter von Wartburg	Director

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\_\_\_\_\_  
Thomas J. Kester                                              Director

\_\_\_\_\_  
Kenneth R. Weisshaar                                              Director

\_\_\_\_\_  
Guy Jordan                                              Director

\_\_\_\_\_  
Stefan Widensohler                                              Director

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\* By Thomas Hein,  
(As Attorney-in-Fact)

EXHIBIT INDEX

Exhibit No.	Description of Document
4.1	Articles of Association of Orthofix International N.V., as amended to date (filed as an exhibit to the Quarterly Report on Form 10-Q of Orthofix International N.V. for the quarter ended September 30, 2004 and incorporated herein by reference)
4.2	Orthofix International N.V. 2004 Long-Term Incentive Plan, as amended (filed as an exhibit to the Quarterly Report on Form 10-Q of Orthofix International N.V. for the quarter ended September 30, 2004 and incorporated herein by reference)
4.3	Form of Nonqualified Stock Option Agreement under the Orthofix International N.V. 2004 Long-Term Incentive Plan (filed as an exhibit to the Annual Report on Form 10-K of Orthofix International N.V. for the fiscal year ended December 31, 2004 and incorporated herein by reference)
4.4	Form of Nonqualified Stock Option Agreement for a Non-Employee Director under the Orthofix International N.V. 2004 Long-Term Incentive Plan (filed as an exhibit to the Annual Report on Form 10-K of Orthofix International N.V. for the fiscal year ended December 31, 2004 and incorporated herein by reference)
**5	Opinion of Smeets Thesseling van Bokhorst Spigt, as to the legality of the Common Shares being registered
**23.1	Consent of Ernst & Young LLP, independent auditors
**23.2	Consent of Smeets Thesseling van Bokhorst Spigt (included in Exhibit 5)
**24	Power of Attorney (included on signature pages)



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\*\* Filed herewith