

STEMCELLS INC  
Form S-8  
September 04, 2012

As filed with the Securities and Exchange Commission on September 4, 2012

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

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**StemCells, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**94-3078125**  
(I.R.S. Employer  
Identification No.)

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7707 Gateway Blvd

Newark, CA 94560

(510) 456-4000

(Address of principal executive offices, including zip code)

**2012 COMMENCEMENT INCENTIVE PLAN**

(Full Title of the Plan)

**Kenneth B. Stratton, Esq.**

**General Counsel**

**StemCells, Inc.**

7707 Gateway Blvd

Newark, CA 94560

(510) 456-4000

(Name, address and telephone number, including area code, of agent for service)

*Please send copies of all communications to:*

**Geoffrey B. Davis, Esq.**

**Ropes & Gray LLP**

**Prudential Tower, 800 Boylston Street**

**Boston, MA 02199**

**(617) 951-7000**

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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	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.01 par value per share	500,000(2)	\$1.565(3)	\$782,500	\$89.67

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, this registration statement also covers such additional shares of Common Stock as may be issued to prevent dilution from stock splits, stock dividends and similar transactions.
- (2) Represents shares of Common Stock reserved for issuance upon the exercise of inducement awards to be granted pursuant to the 2012 Commencement Incentive Plan.
- (3) The offering price per share of \$1.565 has been estimated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and 457(h)(1) on the basis of the average high and low prices of the common stock, par value \$0.01 per share, as reported on the Nasdaq Capital Market on August 29, 2012.

**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed by the registrant to register five hundred thousand (500,000) shares of common stock, \$0.01 par value per share, issuable from time to time as inducement awards pursuant to the 2012 Commencement Incentive Plan adopted by the Board of Directors of the registrant.

**PART I**

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

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 of 1933, as amended, 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 Registrant hereby incorporates the following documents herein by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2011 filed with the Commission on March 15, 2012 (including the portions incorporated therein from the Registrant's Definitive Proxy Statement on Schedule 14A filed with the Commission on April 27, 2012).
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarter ended March 31, 2012 filed with the Commission on May 10, 2012 and for the quarter ended June 30, 2012 filed with the Commission on August 8, 2012.
- (c) The Registrant's Current Reports on Form 8-K filed with the Commission on April 2, 2012, May 17, 2012, May 21, 2012, June 15, 2012, July 18, 2012, July 30, 2012, August 2, 2012, and September 4, 2012.
- (d) The description of the common stock of the Registrant contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on August 3, 1998 (File No. 000-19871), including all amendments and reports filed for the purposes of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated herein by reference from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein 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 incorporated or deemed to be incorporated by reference herein, modifies or supersedes such statement. Any 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.**

Not applicable.

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

Section 145 of the Delaware General Corporation Law ( DGCL ) permits, in general, a Delaware corporation, to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation) by reason of the fact that or she is or was a director, or officer, of the corporation, or served another business enterprise in any capacity at the request of the corporation, against liability incurred in connection with such proceeding, including the expenses (including attorney s fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, in criminal actions or proceedings, additionally had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation s power to indemnify applies to actions brought by or in the right of the corporation by or in the right of the corporation as well, but only to the extent of expenses (including attorneys fees) actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit, provided that no indemnification shall be provided in such actions in the event of any adjudication of negligence or misconduct in the performance of such person s duties to the corporation, unless a court believes that in light of all the circumstances indemnification should apply. Section 145 of the Delaware General Corporation Law also permits, in general, a Delaware corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or served another entity in any capacity at the request of the corporation, against liability incurred by such person in such capacity, whether or not the corporation would have the power to indemnify such person against such liability.

Section 102(b)(7) of the DGCL permits a corporation to include in its certificate of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

The Company s restated certificate of incorporation provides that the Company s Directors shall not be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director except to the extent that exculpation from liabilities is not permitted under the DGCL as in effect at the time such liability is determined.

The Company s restated certificate of incorporation further provides that the Company shall indemnify its directors and officers to the fullest extent permitted by the DGCL.

The Company has a liability insurance policy in effect which covers certain claims against any officer or director of the Company by reason of certain breaches of duty, neglect, errors or omissions committed by such person in his or her capacity as an officer or director.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Exhibit

- 4.1 Form of equity award agreement.
- 5.1 Opinion of Ropes & Gray LLP.
- 23.1 Consent of Grant Thornton LLP.
- 23.2 Consent of Ropes & Gray LLP (included in the opinion filed as Exhibit 5.1).
- 24.1 Power of Attorney (included on the signature page of this Registration Statement under the caption Power of Attorney ).

**Item 9. Undertakings.**

- (a) The undersigned Registrant hereby undertakes:
  - (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
    - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the Securities Act );
    - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of a prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; *provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) above shall 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 the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the 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.

(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) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report 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 the 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 the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has 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 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 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 Newark, state of California, on September 4, 2012.

**STEMCELLS, INC.**

By: /s/ Martin M. McGlynn  
 Name: Martin M. McGlynn  
 Title: President and Chief Executive Officer

**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints Martin M. McGlynn and Rodney K.B. Young, and each of them singly, 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 on Form S-8 to be filed by StemCells, Inc., and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority 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 attorneys-in-fact and agents, or their substitutes, may lawfully do or cause to be done by virtue hereof.

\* \* \* \*

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

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Martin M. McGlynn Martin M. McGlynn	President, Chief Executive Officer and Director	September 4, 2012
/s/ Rodney K.B. Young Rodney K.B. Young	Chief Financial Officer (Principal Financial Officer)	September 4, 2012
/s/ George Koshy George Koshy	Chief Accounting Officer (Principal Accounting Officer)	September 4, 2012
/s/ John J. Schwartz, Ph.D. John J. Schwartz, Ph.D.	Chairman	August 30, 2012
/s/ Eric H. Bjerkholt Eric H. Bjerkholt	Director	September 4, 2012
/s/ Ricardo B. Levy, Ph.D. Ricardo B. Levy, Ph.D.	Director	September 4, 2012



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/s/ Roger M. Perlmutter M.D., Ph.D.

Director

August 29, 2012

Roger M. Perlmutter M.D., Ph.D.

/s/ R. Scott Greer

Director

September 4, 2012

R. Scott Greer

/s/ Irving L. Weissman, M.D.

Director

September 4, 2012

Irving L. Weissman, M.D.

**EXHIBIT INDEX**

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