

SCOLR INC
Form S-8
June 28, 2004

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SCOLR, Inc.

(Exact name of registrant as specified in its charter)

Delaware

91-1689591

(State of incorporation)

I.R.S. Employer Identification No.)

3625 132 ND Avenue S.E.
BELLEVUE, WASHINGTON 98006

(Address principal executive offices) (Zip code)

SCOLR, Inc.
2004 Equity Incentive Plan
(Full title of the Plan)

Daniel O. Wilds
President & Chief Executive
Officer
SCOLR, Inc.
3625 - 132nd Avenue Southeast
Bellevue, Washington 98006
(425) 373-0171
(Name and address of agent for
service,
including telephone number,
including
area code, of agent for service)

Copies to:
Alan M. Mitchel, Esq.
Gray Cary Ware & Freidenrich LLP
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044
(206) 839-4880

This registration statement shall hereafter become effective in accordance with Rule 462 promulgated under the Securities Act of 1933, as amended (the Securities Act).

TABLE OF CONTENTS

PART II

Item 3. Incorporation of Documents by Reference

Item 4. Description of Securities

Item 5. Interests of Named Experts and Counsel

Item 6. Indemnification of Directors and Officers

Item 7. Exemption From Registration Claimed

Item 8. Exhibits

Item 9. Undertakings

SIGNATURE

POWER OF ATTORNEY

EXHIBIT INDEX

EXHIBIT 5

EXHIBIT 23.2

Table of Contents

CALCULATION OF REGISTRATION FEE

Title of Securities to be registered¹	Amount to be registered²	Proposed maximum offering price per share³	Proposed maximum aggregate offering price³	Amount of registration fee
2004 Equity Incentive Plan Common Stock Par Value \$0.001	4,407,857	\$ 2.71	\$ 11,945,293	\$ 1,514.00
TOTAL				\$ 1,514.00

¹ The securities to be registered include options and rights to acquire Common Stock.

² Pursuant to Rule 416(a), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction, plus an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

³ Estimated pursuant to Rule 457 solely for purposes of calculating the registration fee. The \$2.71 price is based upon the average of the high and low prices of the Common Stock on June 24, 2004 as reported on the American Stock Exchange.

Table of Contents

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

SCOLR, Inc. (the Company) hereby incorporates by reference in this registration statement the following documents:

(a) The Company's latest annual report on Form 10-KSB filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), containing audited financial statements for the Company's latest fiscal year ended December 31, 2003, as filed with the Securities and Exchange Commission on March 24, 2004.

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the registrant document referred to in (a) above.

(c) The description of the Company's Common Stock contained in the Company's Registration Statement on Form 10-SB filed under the Exchange Act on July 27, 1998 (Registration No. 000-24693), including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company 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 securities remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

Inapplicable.

Item 5. Interests of Named Experts and Counsel

Inapplicable.

Item 6. Indemnification of Directors and Officers

Section 102(b) of the Delaware General Corporation Law authorizes a corporation to provide in its Certificate of Incorporation that a director of the corporation shall not be personally liable to a corporation or its stockholders for monetary damages for breach or alleged breach of the director's duty of care. While this statute does not change the directors' duty of care, it enables corporations to limit available relief to equitable remedies such as injunction or rescission. The statute has no effect on a director's duty of loyalty or liability for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, illegal payment of dividends or stock redemptions or repurchases, or for any transaction from which the director derives an improper personal benefit. As permitted by the statute, the Company has adopted

Table of Contents

provisions in its Certificate of Incorporation which eliminate to the fullest extent permissible under Delaware law the personal liability of its directors to the Company and its stockholders for monetary damages for breach or alleged breach of their duty of care.

Section 145 of the General Corporation Law of the State of Delaware provides for the indemnification of officers, directors, employees and agents of a corporation. The Bylaws of the Company provide for indemnification of its directors, officers, employees and agents to the full extent permitted by Delaware law, including those circumstances in which indemnification would otherwise be discretionary under Delaware law. The Company's Bylaws also empower it to enter into indemnification agreements with its directors and officers and to purchase insurance on behalf of any person whom it is required or permitted to indemnify.

Section 145 of the General Corporation Law of the State of Delaware provides for indemnification in terms sufficiently broad to indemnify such individuals, under certain circumstances, for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933, as amended (the Securities Act).

Item 7. Exemption From Registration Claimed

Inapplicable.

Item 8. Exhibits

See Exhibit Index.

Item 9. Undertakings

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;

(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;

(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) do not apply if the registration statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective

Table of Contents

amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 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.

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 Section 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.

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 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 Act and will be governed by the final adjudication of such issue.

Table of Contents

POWER OF ATTORNEY

The officers and directors of SCOLR, Inc. whose signatures appear below, hereby constitute and appoint Daniel O. Wilds and Gail T. Vitulli, and each of them, their true and lawful attorneys and agents, with full power of substitution, each with power to act alone, to sign and execute on behalf of the undersigned any amendment or amendments to this registration statement on Form S-8, and each of the undersigned does hereby ratify and confirm all that each of said attorney and agent, or their or his substitutes, shall do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on June 25, 2004.

Signature	Title
<hr/> /s/ Daniel O. Wilds <hr/>	President, Chief Executive Officer, and Director
Daniel O. Wilds	
<hr/> /s/ Gail T. Vitulli <hr/>	Director of Finance (Principal Financial and Accounting Officer)
Gail T. Vitulli	
<hr/> /s/ Randall L-W. Caudill, Ph.D. <hr/>	Director
Randall L-W. Caudill, Ph. D.	
<hr/>	Director
Reza Fassihi, Ph.D.	
<hr/> /s/ David T. Howard <hr/>	Chairman of the Board, Director
David T. Howard	
<hr/> /s/ Herbert L. Lucas <hr/>	Director
Herbert L. Lucas	
<hr/> /s/ Wayne L. Pines <hr/>	Director
Wayne L. Pines	
<hr/> /s/ Robert C. Schroeder <hr/>	Director
Robert C. Schroeder	

Table of Contents

Signature	Title
<hr/> <u>/s/ Michael Sorell, M D.</u> <hr/> Michael Sorell, M.D.	Director
<hr/> <u>/s/ Michael N. Taglich</u> <hr/> Michael N. Taglich	Director

Table of Contents

EXHIBIT INDEX

- 4.1 SCOLR, Inc., Certificate of Incorporation, as amended, is incorporated by reference to the Company's Form 10-QSB for the quarterly period ending June 30, 2002, as filed with the Securities and Exchange Commission on August 14, 2002.
- 4.2 SCOLR, Inc., Bylaws, as amended, is incorporated by reference to Company's Form 10-QSB for the quarterly period ending March 31, 2004, as filed with the Securities and Exchange Commission on April 14, 2004.
- 4.3 Certificate of Designation of Series A Junior Participating Preferred Stock of SCOLR, Inc., is incorporated by reference to the Company's current report on Form 8-K as filed with the Securities and Exchange Commission on November 6, 2002.
- 4.4 Rights Agreement, dated as of November 1, 2002, between SCOLR, Inc. and OTR, Inc. is incorporated by reference to the Company's current report on Form 8-K as filed with the Securities and Exchange Commission on November 6, 2002.
- 5 Opinion of Legality
- 23.1 Consent of Counsel (included in Exhibit 5)
- 23.2 Consent of Grant Thornton LLP, Independent Auditors
- 24 Power of Attorney (included in signature pages to this registration statement)