

CELL THERAPEUTICS INC
Form S-8
August 06, 2004

As filed with the Securities and Exchange Commission on August 6, 2004

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

The Securities Act of 1933

CELL THERAPEUTICS, INC.

(Exact name of Registrant as specified in its charter)

Washington
(State or other jurisdiction of
incorporation or organization)

91-1533912
(I.R.S. Employer Identification
Number)

501 Elliot Avenue West,
Suite #400
Seattle, WA
(Address of Principal Executive Offices)

98119
(Zip Code)

CELL THERAPEUTICS, INC. 2003 EQUITY INCENTIVE PLAN

CELL THERAPEUTICS, INC. 1996 EMPLOYEE STOCK PURCHASE PLAN

(Full title of the plan)

James A. Bianco

President and Chief Executive Officer

Cell Therapeutics, Inc.

501 Elliott Avenue West, Suite 400

Seattle, WA 98119

(206) 282-7100

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

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share(1) | Proposed Maximum Aggregate Offering Price(1) | Amount of Registration Fee |
|--|--------------------------------|---|---|-----------------------------------|
| Common Stock, no par value per share, to be issued pursuant to the Cell Therapeutics, Inc. 2003 Equity Incentive Plan, including associated Preferred Stock Purchase Rights | 5,000,000 | \$5.20 | \$26,000,000 | \$3,294 |
| Common Stock, no par value per share, to be issued pursuant to the Cell Therapeutics, Inc. 1996 Employee Stock Purchase Plan, including associated Preferred Stock Purchase Rights | 100,000 | \$5.20 | \$520,000 | \$66 |

(1) Estimated pursuant to Rule 457(h) under the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee on the basis of the average of the high and low prices as reported on the Nasdaq National Market on August 4, 2004.

The registration statement shall become effective upon filing in accordance with Rule 462 under the Securities Act of 1933, as amended.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this registration statement in accordance with Rule 424 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 Certain Documents by Reference.

The following documents filed by us with the Securities and Exchange Commission (the SEC) are incorporated by reference in this registration statement:

- (1) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2003, filed with the SEC on March 12, 2004.
- (2) Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, filed with the SEC on May 7, 2004.
- (3) Our Quarterly Report on Form 10-Q for the quarter ended June 30, 2004, filed with the SEC on August 6, 2004.
- (4) Our Current Reports on Form 8-K filed with the SEC on January 13, 2004, February 5, 2004, March 22, 2004, June 4, 2004 and July 13, 2004.
- (5) The description of our common stock contained in our registration statement on Form 10 as filed with the SEC on April 29, 1996, as amended.
- (6) The description of our preferred stock purchase rights contained in our registration statement on Form 8-A filed with the SEC on November 11, 1996, as amended.

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

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Sections 23B.08.500 through 23B.08.600 of the Washington Business Corporation Act (the "WBCA") authorize a court to award, or a corporation's board of directors to grant, indemnification to directors and officers on terms sufficiently broad to permit indemnification under certain circumstances for

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liabilities arising under the Securities Act. Article IX of our Restated Bylaws provides for indemnification of our directors, officers, employees and agents to the maximum extent permitted by Washington law. Our directors and officers also may be indemnified against liability that they may incur for serving in such capacity pursuant to a liability insurance policy maintained by us for such purpose.

Section 23B.08.320 of the WBCA authorizes a corporation to limit a director's liability to the corporation or its shareholders for monetary damages for acts or omissions as a director, except in certain circumstances involving intentional misconduct, knowing violations of law or illegal corporate losses or distributions, or any transaction from which the director personally receives a benefit in money, property or services to which the director is not legally entitled. Article VI of our Restated Articles of Incorporation contains provisions implementing, to the fullest extent permitted by Washington law, such limitations on a director's liability to us and our shareholders.

We have entered into an indemnification agreement with each of our executive officers and directors in which we agree to hold harmless and indemnify the officer or director to the fullest extent permitted by Washington law. We agree to indemnify the officer or director against any and all losses, claims, damages, liabilities or expenses incurred in connection with any actual, pending or threatened action, suit, claim or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, in which the officer or director is, was or becomes involved by reason of the fact that the officer or director is or was a director, officer, employee, trustee or agent of us or any related company, partnership or enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action (or inaction) by the officer or director in an official capacity and any action, suit, claim or proceeding instructed by or at the direction of the officer or director unless such action, suit, claim or proceeding is or was authorized by our Board of Directors. No indemnity pursuant to the indemnification agreements shall be provided by us on account of any suit in which a final, unappealable judgment is rendered against the officer or director for an accounting of profits made from the purchase or sale by the officer or director of our securities in violation of the provisions of Section 16(b) of the Exchange Act and amendments thereto, or for damages that have been paid directly to the officer or director by an insurance carrier under a policy of directors' and officers' liability insurance maintained by us.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

Number

Exhibit

- | <u>Number</u> | <u>Exhibit</u> |
|---------------|--|
| 4.1 | Cell Therapeutics, Inc. 2003 Equity Incentive Plan, as amended. |
| 4.2 | Cell Therapeutics, Inc. 1996 Employee Stock Purchase Plan, as amended. |
| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, with respect to the legality of the securities to be offered. |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. |
| 23.2 | Consent of Reconta Ernst & Young S.p.A., Independent Registered Public Accounting Firm, with respect to the financial statements of Novuspharma S.p.A. |
| 23.3 | Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1). |
| 24.1 | Power of Attorney (see page II-4 of this Form S-8). |

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 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;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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 of 1933 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.

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 Seattle, State of Washington, on August 6, 2004.

CELL THERAPEUTICS, INC.

By: /s/ JAMES A. BIANCO
James A. Bianco

President and Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints James A. Bianco and Louis A. Bianco, and each of them individually, as his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her 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 attorneys-in-fact and agents, the full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the foregoing, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

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

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|----------------|
| /s/ Max E. Link _____ Max E. Link | Chairman of the Board of Directors | August 6, 2004 |
| /s/ James A. Bianco _____ James A. Bianco | President, Chief Executive Officer and Director (Principal Executive Officer) | August 6, 2004 |
| /s/ Louis A. Bianco _____ Louis A. Bianco | Executive Vice President, Finance and Administration (Principal Financial Officer and Principal Accounting Officer) | August 6, 2004 |
| /s/ John M. Fluke _____ John M. Fluke | Director | August 6, 2004 |
| /s/ Vartan Gregorian _____ Vartan Gregorian | Director | August 6, 2004 |

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/s/ Mary O. Munding

Director

August 6, 2004

Mary O. Munding

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| | | |
|--------------------------------|----------|----------------|
| <u>/s/ Phillip M. Nudelman</u> | Director | August 6, 2004 |
| Phillip M. Nudelman | | |
| <u>/s/ Erich Platzer</u> | Director | August 6, 2004 |
| Erich Platzer | | |
| <u>/s/ Jack W. Singer</u> | Director | August 6, 2004 |
| Jack W. Singer | | |
| <u>/s/ Silvano Spinelli</u> | Director | August 6, 2004 |
| Silvano Spinelli | | |

INDEX TO EXHIBITS

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