

DEXCOM INC  
Form S-8  
March 28, 2012

As filed with the Securities and Exchange Commission on March 28, 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*

**DexCom, Inc.**

(Exact name of Registrant as Specified in Its Charter)

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

**33-0857544**  
(I.R.S. Employer  
Identification Number)

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6340 Sequence Drive

San Diego, California 92121

(Address, including zip code, of Registrant's principal executive offices)

2005 Equity Incentive Plan

2005 Employee Stock Purchase Plan

(Full Title of the Plans)

Terrance H. Gregg

Chief Executive Officer

c/o DexCom, Inc.

6340 Sequence Drive

San Diego, California 92121

(858) 200-0200

(Name, Address and Telephone Number of Agent For Service)

*Copies to:*

Robert A. Freedman, Esq.

Michael A. Brown, Esq.

Fenwick & West LLP

801 California Street

Mountain View, CA 94041

(650) 988-8500

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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 Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value(2)	2,026,478(3)	\$10.31(4)	\$20,892,988.18(4)	\$2,394.34
Common Stock, \$0.001 par value(2)	675,493(5)	\$8.76(6)	\$5,917,318.68(6)	\$678.12

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the *Securities Act*), this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the 2005 Equity Incentive Plan (the *EIP*) and 2005 Employee Stock Purchase Plan (the *ESPP*) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) Each share of common stock includes one stockholder right as described under Description of Capital Stock in the Registrant's registration statement on Form S-1, as amended (File No. 333-122454).
- (3) Shares to be registered and available for grant under the EIP resulting from the automatic annual 3% increase in the number of authorized shares available for issuance under the EIP.
- (4) Estimated pursuant to Rule 457(c) and (h) of the Securities Act, solely for purposes of calculating the registration fee, based on the average of the high and low sales price reported on The NASDAQ Global Select Market on March 23, 2012.
- (5) Shares to be registered and available for grant under the ESPP resulting from the automatic annual 1% increase in the number of authorized shares available for issuance under the ESPP.
- (6) Estimated pursuant to Rule 457(c) and (h) of the Securities Act, solely for purposes of calculating the registration fee, based on the average of the high and low sales price reported on the NASDAQ Global Select Market on March 23, 2012. This amount is multiplied by 85% pursuant to the terms of the ESPP, which provides that the purchase price of a share of common stock is equal to 85% of the fair market value of the common stock on the offering date (i.e., the first business day of a 12-month offering period) or the purchase date (i.e., the last business day of a six-month purchase period), whichever is less.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

The following documents filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act ), are incorporated herein by reference:

1. The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2011 filed with the Commission on February 23, 2012, pursuant to Section 13 of the Exchange Act;
2. The Registrant's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2011 filed with the Commission on March 28, 2012, pursuant to Section 13 of the Exchange Act;
3. 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's Annual Report referred to in (a) above; and
4. The description of the Registrant's common stock and rights to purchase Series A Junior Participating Preferred Stock contained in the Registrant's registration statement on Form 8-A filed on March 25, 2005 under Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently 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 which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents, except as to specific sections of such statements as set forth therein. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K prior or subsequent to the date hereof shall not be incorporated by reference into this Registration Statement. 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 in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such 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 authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended (the Securities Act ).

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breach of fiduciary duty as a director, except for liability:

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for any breach of the director's duty of loyalty to the Registrant or its stockholders,

for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law,

under section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases), or

for any transaction from which the director derived an improper personal benefit.

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As permitted by the Delaware General Corporation Law, the Registrant's restated bylaws provide that:

the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions,

the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law,

the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions, and

the rights conferred in the bylaws are not exclusive.

The Registrant has entered into Indemnification Agreements with its directors and officers to provide such directors and officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director, officer or employee of the Registrant regarding which indemnification is sought.

The Registrant has directors' and officers' liability insurance for securities matters.

See also the undertakings set out in response to Item 9 hereof.

Reference is made to the following documents regarding relevant indemnification provisions described above and elsewhere in the Registration Statement on Form S-1:

Exhibit Number	Exhibit Document	Form	Incorporated by Reference		Exhibit Number	Provided Herewith
			File No.	Date of First Filing		
3.01	Registrant's Restated Certificate of Incorporation.	S-1/A	333-122454	March 3, 2005	3.03	
3.02	Registrant's Amended and Restated Bylaws.	8-K	000-51222	March 23, 2011	99.01	
10.01	Form of Indemnity Agreement between Registrant and each of its	S-1	333-122454	February 1, 2005	10.01	

directors and executive officers.

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

Not applicable.

**Item 8. Exhibits.**

(a) The following exhibits are filed herewith:

Exhibit Number	Exhibit Document	Form	Incorporated by Reference		Exhibit	Provided
			File No.	Date of First Filing		

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					<b>Number</b>	<b>Herewith</b>
4.01	Registrant's Restated Certificate of Incorporation.	S-1/A	333-122454	March 3, 2005	3.03	
4.02	Registrant's Amended and Restated Bylaws.	8-K	000-51222	March 23, 2011	99.01	
4.03	Form of Specimen Certificate for Registrant's common stock.	S-1/A	333-122454	March 24, 2005	4.01	
4.04	Form of Rights Agreement, between DexCom, Inc.	S-1/A	000-51222	March 24, 2005	4.03	

and American Stock Transfer & Trust Company,

including the Certificate of Designations of Series

A Junior Participating Preferred Stock,

Summary of Stock Purchase Rights and Forms of

Right Certificate attached thereto as Exhibit A, B and C, respectively.

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Exhibit Number	Exhibit Document	Incorporated by Reference			Exhibit Number	Provided Herewith
		Form	File No.	Date of First Filing		
4.05	2005 Equity Incentive Plan, as amended, and forms of stock option agreement and stock option exercise agreements.	10-Q	000-51222	May 3, 2011	10.25	
4.06	2005 Employee Stock Purchase Plan and form of subscription agreement.	S-1/A	333-122454	March 24, 2005	10.04	
4.07	Form of Restricted Stock Unit Award Agreement.	10-Q	000-51222	May 5, 2010	10.26	
5.01	Opinion of Fenwick & West LLP regarding legality of the securities being registered.					X
23.01	Consent of Fenwick & West LLP (included in Exhibit 5.01).					X
23.02	Consent of Independent Registered Public Accounting Firm.					X
24.01	Power of Attorney (see the signature page to this Registration Statement).					X

**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;

(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 the 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 and high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 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 (1)(i) and (1)(ii) above do not apply if the Registration Statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission 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 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



Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the 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 hereby, 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, 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 San Diego, State of California, on this 28<sup>th</sup> day of March, 2012.

**DEXCOM, INC.**

By: */s/ TERRANCE H. GREGG*  
**Terrance H. Gregg**

**Chief Executive Officer**

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Terrance H. Gregg and Jess Roper, and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution, 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, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, 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 with respect to this Registration Statement, including post-effective amendments, 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 any of them, or his substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

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

Name	Title	Date
<b>Principal Executive Officer and Director:</b>		
<i>/s/ TERRANCE H. GREGG</i> <b>Terrance H. Gregg</b>	Chief Executive Officer and Director	March 28, 2012
<b>Principal Financial Officer and</b>		
<b>Principal Accounting Officer:</b>		
<i>/s/ JESS ROPER</i> <b>Jess Roper</b>	Chief Financial Officer	March 28, 2012
<b>Additional Directors:</b>		
<i>/s/ JONATHAN LORD, M.D.</i> <b>Jonathan Lord, M.D.</b>	Chairman of the Board of Directors	March 28, 2012
<i>/s/ KEVIN SAYER</i> <b>Kevin Sayer</b>	President and Director	March 28, 2012
<i>/s/ JAY SKYLER, M.D.</i>	Director	March 28, 2012

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**Jay Skyler, M.D.**

/s/ ERIC TOPOL, M.D.

Director

March 28, 2012

**Eric Topol, M.D.**

/s/ NICHOLAS AUGUSTINOS

Director

March 28, 2012

**Nicholas Augustinos**

/s/ MARTIN DOORDAN

Director

March 28, 2012

**Martin Doordan**

/s/ BARBARA KAHN

Director

March 28, 2012

**Barbara Kahn**

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**Exhibit Index**

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