

RTI SURGICAL, INC.
Form S-8
May 05, 2015

As filed with the Securities and Exchange Commission on May 5, 2015

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT

Under
The Securities Act of 1933

RTI SURGICAL, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

11621 Research Circle

59-3466543
(I.R.S. Employer

Identification No.)

32615

Alachua, Florida
(Address of Principal Executive Offices) **(Zip Code)**
RTI SURGICAL, INC.

2015 INCENTIVE COMPENSATION PLAN

(Full title of the plan)

Brian K. Hutchison

Chief Executive Officer

RTI Surgical, Inc.

11621 Research Circle

Alachua, Florida 32615

(Name and address of agent for service)

(386) 418-8888

(Telephone number, including area code, of agent for service)

Copies of all communications to:

Robert J. Grammig, Esq.

Holland & Knight LLP

100 North Tampa Street, Suite 4100

Tampa, Florida 33602

Phone: (813) 227-8500

Fax: (813) 229-0134

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.

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share(2)	Proposed maximum aggregate offering price(2)	Amount of registration fee(2)
Common Stock, par value \$0.001 per share reserved under 2015 Incentive Compensation Plan	4,656,587	\$5.855	\$27,264,317	\$3,168.11

- (1) The provisions of Rule 416 under the Securities Act of 1933 shall apply to this Registration Statement and the number of shares registered on this Registration Statement shall increase or decrease as a result of stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee. The fee is calculated upon the basis of the average between the high and low sales prices for shares of common stock of the Registrant as reported on the NASDAQ Stock Market on April 29, 2015.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

In accordance with the rules and regulations of the Securities and Exchange Commission (the Commission), the documents containing the information called for in Part I of Form S-8 will be sent or given to individuals who participate in the 2015 Incentive Compensation Plan adopted by RTI Surgical, Inc. (the Company or the Registrant) and are not being filed with or included in this Form S-8.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed with the Commission by the Registrant are incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2014, filed March 4, 2015 (including information specifically incorporated by reference into the Registrant's Form 10-K from the Registrant's definitive Proxy Statement);
- (b) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, filed May 4, 2015;
- (c) The Registrant's Current Reports on Form 8-K filed with the SEC on February 20, 2015 and February 12, 2015 (other than Item 2.02);
- (d) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year ended December 31, 2014; and
- (e) The description of the Common Stock contained in the Registrant's Registration Statement on Form 8-A, dated August 7, 2000, filed pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended (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 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.

Section 145 of the General Corporation Law of Delaware permits indemnification of directors, officers and employees of a corporation under certain conditions and subject to certain limitations. The Amended and Restated Certificate of Incorporation and By-Laws of the Company contain provisions for the indemnification of directors, officers and employees within the limitations permitted by Section 145. The Company insures its directors and officers against losses arising from any claim against them as such for wrongful acts or omission, subject to certain limitations.

The general effect of the foregoing provisions may be to reduce the circumstances in which an officer or director may be required to bear the economic burden of the foregoing liabilities and expense.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us under the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

4.1 RTI Surgical, Inc. 2015 Incentive Compensation Plan.

5.1 Opinion of Holland & Knight LLP re legality of the Common Stock.

23.1 Consent of Holland & Knight LLP (included in Exhibit 5.1).

23.2 Consent of Deloitte & Touche LLP.

24.1 Powers of Attorney (included on signature page).

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 this 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 this 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 prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective 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 paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant 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 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 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 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 Securities Act of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant, RTI Surgical, Inc., a corporation organized and existing under the laws of the State of Delaware, 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 Alachua, State of Florida, on May 5, 2015.

RTI SURGICAL, INC.

By: /s/ Brian K. Hutchison
 Brian K. Hutchison
 President and Chief Executive Officer

POWER OF ATTORNEY

KNOWN TO ALL PERSONS BY THESE PRESENTS, we, the undersigned officers and directors of RTI Surgical, Inc., hereby severally constitute and appoint Brian K. Hutchison and Robert P. Jordheim, each acting alone as an attorney-in-fact with the full power of substitution, for and in the name, place and stead of each of us in any and all capacities, to sign any and all 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, hereby ratifying and confirming all that said attorneys-in-fact, or either of their substitute or substitutes, may do or cause to be done by virtue hereof.

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.

Signatures	Title	Date
/s/ Brian K. Hutchison	President and Chief Executive Officer	May 5, 2015
Brian K. Hutchison	(Principal Executive Officer) and Director	
/s/ Robert P. Jordheim	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	May 5, 2015
Robert P. Jordheim		
/s/ Dean H. Bergy	Chairman of the Board of Directors	May 5, 2015
Dean H. Bergy		
/s/ Philip R. Chapman	Director	May 5, 2015
Philip R. Chapman		
/s/ Roy D. Crowninshield, Ph.D.	Director	May 5, 2015
Roy D. Crowninshield, Ph.D.		

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/s/ Peter F. Gearen, M.D.	Director	May 5, 2015
Peter F. Gearen, M.D.		
/s/ Curt M. Selquist	Director	May 5, 2015
Curt M. Selquist		
/s/ Adrian J.R. Smith	Director	May 5, 2015
Adrian J.R. Smith		
/s/ Ned H. Villers	Director	May 5, 2015
Ned H. Villers		
/s/ Shirley A. Weis	Director	May 5, 2015
Shirley A. Weis		

INDEX OF EXHIBITS

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