

CELL THERAPEUTICS INC
Form 8-A12B/A
January 10, 2003

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-A/A

Amendment No. 1

**FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES
PURSUANT TO SECTION 12(b) OR (g) OF THE
SECURITIES EXCHANGE ACT OF 1934**

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 Elliott Avenue West, Suite 400
Seattle, Washington
(Address of principal executive offices)

98119
(Zip code)

Securities to be registered pursuant to Section 12(b) of the Act:

| Title of each class to be so registered | Name of each exchange on which each class is to be registered |
|--|--|
| Preferred Stock Purchase Rights | None |

If this Form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A. (c), please check the following box. x

If this Form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A. (d), please check the following box. ..

Securities Act registration statement file number to which this form relates: Not applicable

Securities to be registered pursuant to Section 12(g) of the Act:

None
(Title of Class)

This Form 8-A/A is filed by Cell Therapeutics, Inc., a Washington corporation, to amend and restate Item 1 of the Form 8-A filed by Cell Therapeutics, Inc. on November 15, 1996 and to file exhibit 4.2 listed under Item 2 to reflect the adoption of an amendment to the Rights Agreement, dated November 11, 1996 between Cell Therapeutics, Inc. and Harris Trust Company of California as Rights Agent, such amendment made as of November 20, 2002 between Cell Therapeutics, Inc., Harris Trust Company of California and Computershare Investor Services LLC as successor Rights Agent.

Item 1. Description of Registrants Securities to Be Registered.

On November 11, 1996, the Board of Directors of Cell Therapeutics, Inc. (the *Company*) declared a distribution of one Right for each outstanding share of common stock, no par value (the *Company Common Stock*), to shareholders of record at the close of business on November 21, 1996 and for each share of Company Common Stock issued (including shares distributed from Treasury) by the Company thereafter and prior to the Distribution Date. Each Right entitles the registered holder, subject to the terms of the Rights Agreement, to purchase from the Company one one-thousandth of a share (a *Unit*) of Series C Preferred Stock, no par value (the *Preferred Stock*), at a Purchase Price of \$50.00 per Unit, subject to adjustment. The Purchase Price is payable in cash or by certified or bank check or money order payable to the order of the Company. The description and terms of the Rights are set forth in a Rights Agreement dated November 11, 1996 between the Company and Harris Trust Company of California as Rights Agent, as amended by the First Amendment to Rights Agreement dated November 20, 2002, between the Company, Harris Trust Company of California and Computershare Investor Services LLC as Successor Rights Agent (as so amended, the *Rights Agreement*).

Initially, the Rights will attach to all certificates representing shares of outstanding Company Common Stock, and no separate Rights Certificates will be distributed. The Rights will separate from the Company Common Stock and the Distribution Date will occur upon the earlier of (i) 10 business days following a public announcement (the date of such announcement being the *Stock Acquisition Date*) that a person or group of affiliated or associated persons (other than the Company, any Subsidiary of the Company or any employee benefit plan of the Company or such Subsidiary) (an *Acquiring Person*) has acquired, obtained the right to acquire or otherwise obtained beneficial ownership of 15% or more of the then outstanding shares of Company Common Stock, and (ii) 10 business days (or such later date as may be determined by action of the Board of Directors prior to such time as any person becomes an Acquiring Person) following the commencement of a tender offer or exchange offer that would result in a person or group beneficially owning 15% or more of the then outstanding shares of Company Common Stock. Until the Distribution Date, (i) the Rights will be evidenced by Company Common Stock certificates and will be transferred with and only with such Company Common Stock certificates, (ii) new Company Common Stock certificates issued after November 21, 1996 (also including shares distributed from Treasury) will contain a notation incorporating the Rights Agreement by reference and (iii) the surrender for transfer of any certificates representing outstanding Company Common Stock will also constitute the transfer of the Rights associated with the Company Common Stock represented by such certificates.

The Rights are not exercisable until the Distribution Date and will expire at the close of business on the tenth anniversary of the Rights Agreement unless earlier redeemed by the Company as described below.

As soon as practicable after the Distribution Date, Rights Certificates will be mailed to holders of record of Company Common Stock as of the close of business on the Distribution Date and, thereafter, the separate Rights Certificates alone will represent the Rights.

In the event that (i) the Company is the surviving corporation in a merger with an Acquiring Person and shares of Company Common Stock shall remain outstanding, (ii) a Person becomes an Acquiring Person, (iii) an Acquiring Person engages in one or more self-dealing transactions as set forth in the Rights Agreement, or (iv) during such time as there is an Acquiring Person, an event occurs which results in such Acquiring Person's ownership interest being increased by more than 1% by means of a reverse stock split or recapitalization) (each such event being a *Section 11(a)(ii) Event*), then, in each such case, each holder of a Right will thereafter have the right to receive, upon exercise, Units of Preferred Stock (or, in certain circumstances, Company Common Stock, cash, property or other securities of the Company) having a value equal to two times the exercise price of the Right. The exercise price is the Purchase Price multiplied by the number of Units of Preferred Stock issuable upon exercise of a Right prior to the events described in this paragraph. Notwithstanding any of the foregoing, following the occurrence of any of the events set forth in this paragraph, all Rights that are, or (under certain circumstances specified in the Rights Agreement) were, beneficially owned by any Acquiring Person will be null and void.

In the event that, at any time following the Stock Acquisition Date, (i) the Company is acquired in a merger or other business combination transaction and the Company is not the surviving corporation (other than a merger described in the preceding paragraph), (ii) any Person consolidates or merges with the Company and all or part of the Company Common Stock is converted or exchanged for securities, cash or property of any other Person or (iii) 50% or more of the Company's assets or earning power is sold or transferred, each holder of a Right (except Rights which previously have been voided as described above) shall thereafter have the right to receive, upon exercise, common stock of the Acquiring Person having a value equal to two times the exercise price of the Right.

The Purchase Price payable, and the number of Units of Preferred Stock issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) if holders of the Preferred Stock are granted certain rights or warrants to subscribe for Preferred Stock or convertible securities at less than the current market price of the Preferred Stock, or (iii) upon the distribution to the holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular quarterly cash dividends) or of subscription rights or warrants (other than those referred to above).

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price. The Company is not required to issue fractional Units. In lieu thereof, an adjustment in cash may be made based on the market price of the Preferred Stock prior to the date of exercise.

At any time until ten business days following the Stock Acquisition Date, a majority of the Continuing Directors may redeem the Rights in whole, but not in part, at a price of \$.001 per Right (the *Redemption Price*), payable, at the election of such majority of the Continuing Directors, in cash or shares of Company Common Stock. Immediately upon the action of a majority of Continuing Directors ordering the redemption of the Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

The Board of Directors, at its option, may exchange each Right for (i) one Unit of Preferred Stock or (ii) such number of Units of Preferred Stock as will equal (x) the difference between the aggregate market price of the number of Units of Preferred Stock to be received upon a Section 11(a)(ii) Event and the Purchase Price divided by (y) the market price per Unit of Preferred Stock upon the Section 11(a)(ii) Event.

Until a Right is exercised, the holder thereof, as such, will have no rights as a shareholder of the Company, including, without limitation, the right to vote or to receive dividends. While the distribution of the Rights will not be taxable to shareholders or to the Company, shareholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Units of Preferred Stock (or other consideration).

Any of the provisions of the Rights Agreement may be amended at any time prior to the Distribution Date. After the Distribution Date, the provisions of the Rights Agreement may be amended in order to cure any ambiguity, defect or inconsistency, to make changes which do not adversely affect the interests of holders of Rights (excluding the interests of any Acquiring Person),

or to shorten or lengthen any time period under the Rights Agreement; *provided, however*, that no amendment to adjust the time period governing redemption shall be made at such time as the Rights are not redeemable. Supplements or amendments to the Rights Agreement may be made only if approved by a majority of Continuing Directors.

A total of 100,000 shares of Preferred Stock have been reserved for issuance upon exercise of the Rights. The Units of Preferred Stock that may be acquired upon exercise of the Rights will be nonredeemable and subordinate to any other shares of preferred stock that may be issued by the Company.

Each Unit of Preferred Stock will have a minimum preferential quarterly dividend rate of \$1.00 per Unit but will, in any event, be entitled to a dividend equal to the per share dividend declared on the Company Common Stock.

In the event of liquidation, the holder of a Unit of Preferred Stock will receive a preferred liquidation payment equal to the greater of per Unit and the per share amount paid in respect of a share of Company Common Stock.

Each Unit of Preferred Stock will have one vote, voting together with the Company Common Stock. The holders of Units of Preferred Stock, voting as a separate class, shall be entitled to elect two directors if dividends on the Preferred Stock are in arrears for six fiscal quarters.

In the event of any merger, consolidation or other transaction in which shares of Company Common Stock are exchanged, each Unit of Preferred Stock will be entitled to receive the per share amount paid in respect of each share of Company Common Stock.

The rights of holders of the Preferred Stock to dividends, liquidation and voting, and in the event of mergers and consolidations, are protected by customary antidilution provisions.

Because of the nature of the Preferred Stock's dividend, liquidation and voting rights, the economic value of one Unit of Preferred Stock that may be acquired upon the exercise of each Right should approximate the economic value of one share of Company Common Stock.

The Rights may have certain anti-takeover effects. The Rights will cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by a majority of the Continuing Directors unless the offer is conditioned on a substantial number of Rights being acquired. However, the Rights should not interfere with any merger or other business combination approved by a majority of the Continuing Directors because the Rights may be redeemed by the Company at \$.001 per Right at any time on or prior to the tenth business day following the Stock Acquisition Date (subject to extension by a majority of the Continuing Directors). Thus, the Rights are intended to encourage persons who may seek to acquire control of the Company to initiate such an acquisition through negotiations with the Board of Directors. However, the effect of the Rights may be to discourage a third party from making a partial tender offer or otherwise attempting to obtain a substantial equity position in the equity securities of, or seeking to obtain control of, the Company. To the extent any potential acquirors are deterred by the Rights, the Rights may have the effect of preserving incumbent management in office.

The Rights Agreement and the First Amendment to Rights Agreement are attached hereto as Exhibits 4.1 and 4.2, respectively, and are incorporated herein by reference. The foregoing description of the Rights does not purport to be complete and is qualified in its entirety by reference to such exhibits.

Item 2. Exhibits.

4.1 Rights Agreement dated as of November 11, 1996, between Cell Therapeutics, Inc. and Harris Trust Company of California, which includes the Form of Rights Certificate as Exhibit A, the Summary of Rights to Purchase Preferred Stock as Exhibit B and the Form of Certificate of Designation of the Preferred Stock as Exhibit C.*

4.2. First Amendment to Rights Agreement, dated as of November 20, 2002, between Cell Therapeutics, Inc., Harris Trust Company of California, and Computershare Investor Services LLC.

* Previously filed with the Registrant's registration statement on Form 8-A, dated November 15, 1996.

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

CELL THERAPEUTICS, INC.

By: /s/ JAMES A.
BIANCO, M.D.

**James A. Bianco,
M.D.
President and Chief
Executive Officer**

Date: January 9, 2003

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