

# DEXCOM INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 03/03/11

Address	6340 SEQUENCE DRIVE SAN DIEGO, CA 92121
Telephone	8582000200
CIK	0001093557
Symbol	DXCM
SIC Code	3841 - Surgical and Medical Instruments and Apparatus
Industry	Medical Equipment & Supplies
Sector	Healthcare
Fiscal Year	12/31

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

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**FORM S-8**

**REGISTRATION STATEMENT  
UNDER THE  
SECURITIES ACT OF 1933**

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**DexCom, Inc.**

(Exact name of Registrant as Specified in Its Charter)

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

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

**6340 Sequence Drive  
San Diego, California 92121**  
(Address, including zip code, of Registrant's principal executive offices)

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**2005 Equity Incentive Plan  
2005 Employee Stock Purchase Plan**  
(Full Title of the Plans)

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**Terrance H. Gregg  
President and 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)

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*Copies to:*

**Robert A. Freedman, 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

Non-accelerated Filer

(Do not check if a smaller reporting company)

Accelerated Filer

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 Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value(2)	1,862,340(3)	\$14.68(4)	\$27,339,151(4)	\$ 3,174
Common Stock, \$0.001 par value(2)	620,780(5)	\$12.48(6)	\$ 7,746,093(6)	\$ 899

- (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 to 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 Market on February 28, 2011.
- (5) Shares to be registered and available for grant under the ESPP resulting from the automatic annual 1% increase to 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 Market on February 28, 2011. 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.

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**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, 2010 filed with the Commission on March 3, 2011, pursuant to Section 13 of the Exchange Act.
2. 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.
3. Report on Form 8-K/A filed pursuant to Section 13(a) or 15(d) of the Exchange Act, on January 4, 2011.

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.

**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:

- 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.

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 Registrant's Restated Certificate of Incorporation, and Form of Indemnification Agreement filed as exhibits 3.03, 4.02 and 10.01, respectively, to the Registrant's Registration Statement on Form S-1 (File No. 333-122454) (the "Form S-1") and the Registrant's Restated Bylaws filed as exhibit 99.01 to the Registrant's Form 8-K filed on May 22, 2009, regarding relevant indemnification provisions described above and elsewhere in the Registration Statement on Form S-1.

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

Not applicable.

#### **Item 8. Exhibits.**

(a) The following exhibits are filed herewith:

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>			<u>Exhibit Number</u>	<u>Provided Herewith</u>
		<u>Form</u>	<u>File No.</u>	<u>Date of First Filing</u>		
4.01	Registrant's Restated Certificate of Incorporation.	S-1	333-122454	March 3, 2005	3.03	
4.02	Registrant's Amended & Restated Bylaws.	8-K	000-51222	May 22, 2009	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. 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.	S-1/A	333-122454	March 24, 2005	4.03	
4.05	2005 Equity Incentive Plan and forms of stock option agreement and stock option exercise agreements.*	S-1/A	333-122454	March 24, 2005	10.03	
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

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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 page 5 of 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.



## Exhibit Index

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24.01	Power of Attorney (see page 5 of this registration statement).					X



950 W. BANNOCK STREET, SUITE 850 BOISE, ID 83702  
TEL 208.331.0700 FAX 208.331.7723 WWW.FENWICK.COM

March 3, 2011

DexCom, Inc.  
6340 Sequence Drive  
San Diego, California 92121

Gentlemen/Ladies:

At your request, we have examined the Registration Statement on Form S-8 (the “**Registration Statement**”) to be filed by DexCom, Inc., a Delaware corporation (the “**Company**”), with the Securities and Exchange Commission (the “**Commission**”) on or about March 3, 2011, in connection with the registration under the Securities Act of 1933, as amended, of an aggregate of 1,862,340 additional shares of the Company’s common stock reserved for issuance by the Company pursuant to Section 2.1 of the 2005 Equity Incentive Plan, as amended, (the “**2005 Plan**”) and an aggregate of 620,780 additional shares of the Company’s Common Stock (together, the “**Stock**”) reserved for issuance by the Company pursuant to Section 1 of the Company’s 2005 Employee Stock Purchase Plan (the “**Purchase Plan**” and together with the 2005 Plan, the “**Plans**”). The Stock is subject to issuance by the Company upon the exercise of (a) stock options, restricted stock units or purchase rights to be granted under the 2005 Plan or (b) purchase rights to be granted under the Purchase Plan. In rendering this opinion, we have examined such matters of fact as we have deemed necessary in order to render the opinion set forth herein, which included examination of the following:

- (1) the Company’s Restated Certificate of Incorporation filed with the Delaware Secretary of State on April 19, 2005, as certified by the Delaware Secretary of State on May 2, 2006;
- (2) the Company’s Amended & Restated Bylaws, as certified by the Company’s Secretary on November 15, 2010;
- (3) the Registration Statement, together with the exhibits filed as a part thereof or incorporated therein by reference;
- (4) the prospectuses prepared in connection with the Registration Statement (the “**Prospectuses**”);
- (5) the 2005 Plan and forms of stock option agreement, stock option exercise agreement and restricted stock unit award agreement;
- (6) the Purchase Plan and form of subscription agreement;
- (7) the minutes of meetings and actions by written consent of the Company’s stockholders and the Company’s Board of Directors (the “**Board**”) that are contained in the Company’s minute books that are in our possession (the “**Minute Book Contents**”);
- (8) verification by the Company’s transfer agent as to the number of the Company’s issued and outstanding shares of capital stock as of February 28, 2011 and a list of all outstanding options, warrants and other rights to purchase shares of the Company’s capital stock prepared by the Company and dated February 28, 2011 (the “**Stock Records**”); and
- (9) a Management Certificate addressed to us and dated of even date herewith and executed by the Company containing certain factual and other representations (the “**Management Certificate**”).

In our examination of documents for purposes of this opinion, we have assumed, and express no opinion as to, the genuineness of all signatures on original documents, the authenticity and completeness of all documents submitted to us as originals, the conformity to originals and completeness of all documents submitted to us as copies, the legal capacity of all persons or entities executing the same, and the lack of any undisclosed termination, modification, waiver or amendment to any document reviewed by us. We have also assumed that the certificates representing the Stock have been, or will be when issued, properly signed by authorized officers of the Company or their agents.

As to matters of fact relevant to this opinion, we have relied solely upon our examination of the documents referred to above and have assumed the current accuracy and completeness of the information obtained from the documents referred to above and the representations and warranties made by representatives of the Company to us, including but not limited to those set forth in the Management Certificate. We have made no independent investigation or other attempt to verify the accuracy of any such information or to determine the existence or non-existence of any other factual matters.

We are admitted to practice law in the State of California, and we render this opinion only with respect to, and express no opinion herein concerning the application or effect of the laws of any jurisdiction other than the existing federal laws of the United States of America, of the State of California and of the Delaware General Corporation Law, the Delaware Constitution and reported judicial decisions relating thereto.

We have assumed that the members of the Board have acted in a manner consistent with their fiduciary duties as required under applicable law in adopting the Rights Agreement filed as Exhibit 4.03 to Amendment No. 4 to the Registration Statement on Form S-1, dated March 24, 2005 (the “*Rights Agreement*”). Further, the opinion below does not address the determination a court of competent jurisdiction may make regarding whether the Board would be required to redeem or terminate, or take other action with respect to, the rights under the Rights Agreement (the “*Rights*”) at some future time based on the facts and circumstances existing at that time. It should be understood that our opinion addresses the Rights and the Rights Agreement in their entirety and not any particular provision of the Rights or the Rights Agreement and that it is not settled whether the invalidity of any particular provision of a rights agreement or of rights issued thereunder would result in invalidating in their entirety such rights.

Based upon the foregoing, it is our opinion that (a) the Stock that may be issued and sold by the Company upon the exercise of (i) stock options, restricted stock units or purchase rights to be granted under the 2005 Plan and (ii) purchase rights to be granted under the Purchase Plan, when issued, sold and delivered in accordance with the Plans and option, restricted stock unit or purchase agreements to be entered into thereunder and in the manner and for the consideration stated in the Registration Statement and the relevant Prospectus will be validly issued, fully paid and nonassessable and (b) the associated Rights have been duly authorized by all necessary corporate action on the part of the Company and, upon issuance, delivery and payment therefor in the manner contemplated by the Rights Agreement, the associated Rights will be validly issued.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the Prospectuses constituting a part thereof and any amendments thereto. This opinion is intended solely for use in connection with the issuance and sale of the Stock and is not to be relied upon for any other purpose. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify the opinions expressed herein.

Very truly yours,

/s/ Fenwick & West LLP  
FENWICK & WEST LLP

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2005 Equity Incentive Plan and the 2005 Employee Stock Purchase Plan of DexCom, Inc. of our reports dated March 3, 2011, with respect to the consolidated financial statements and schedule of DexCom, Inc. and the effectiveness of internal control over financial reporting of DexCom, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2010, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Diego, California  
March 3, 2011