

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**May 13, 2009**

Date of Report (Date of earliest event reported)

**Discovery Laboratories, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation)

**000-26422**

(Commission File Number)

**94-3171943**

(IRS Employer  
Identification Number)

**2600 Kelly Road, Suite 100  
Warrington, Pennsylvania 18976**  
(Address of principal executive offices)

**(215) 488-9300**

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 8.01. Other Events.**

On May 13, 2009, the Company issued a press release announcing that it has completed its previously announced registered direct offering of 14 million shares of the Company's common stock to select institutional investors for gross proceeds of approximately \$11.3 million. For each share of common stock purchased, investors also received warrants to purchase 0.5 shares of common stock at an exercise price of \$1.15 per share. The Company received approximately \$10.6 million in net proceeds after deducting the placement agent fee of approximately \$0.68 million and other fees and expenses of the offering. Lazard Capital Markets LLC acted as the exclusive placement agent for the transaction. The press release, dated May 13, 2009, is filed as Exhibit 99.1 to this report and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits:

99.1 Press Release, dated May 13, 2009.

**Cautionary Note Regarding Forward-looking Statements:**

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**Discovery Laboratories, Inc.**

By: /s/ Robert J. Capetola

Name: Robert J. Capetola, Ph.D.

Title: President and Chief Executive Officer

Date: May 15, 2009

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## Discovery Labs Announces Completion of \$11.3 Million Registered Direct Offering

**Warrington, PA — May 13, 2009 — Discovery Laboratories, Inc. (Nasdaq: DSCO)** today announced that it has completed its previously announced registered direct offering of 14 million shares of its common stock and warrants for 7 million shares of common stock. The shares were issued and sold to select institutional investors at a price of \$0.81 for each share of common stock, together with a related warrant to purchase 0.5 shares of common stock. The warrants are exercisable for a period of five years at an exercise price of \$1.15 per share of common stock. As a result of the offering, Discovery Labs has received gross proceeds of approximately \$11.3 million, before deducting placement agent's fees and other offering expenses. Lazard Capital Markets LLC acted as the exclusive placement agent for the transaction.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction. The shares of common stock, the warrants and the shares of common stock issuable upon exercise of the warrants were offered and sold pursuant to a registration statement previously declared effective by the Securities and Exchange Commission and a prospectus, forming a part of the effective registration statement. Copies of the final prospectus supplement for this offering and accompanying base prospectus may be obtained at the Securities and Exchange Commission web site at <http://www.sec.gov>, or from Lazard Capital Markets LLC, 30 Rockefeller Plaza, New York, NY 10020.

### About Discovery Labs

Discovery Laboratories, Inc. is a biotechnology company developing Surfactant Therapies for respiratory diseases. Surfactants are produced naturally in the lungs and are essential for breathing. Discovery Labs' novel proprietary KL<sub>4</sub> Surfactant Technology produces a synthetic, peptide-containing surfactant that is structurally similar to pulmonary surfactant and is being developed in liquid, aerosol or lyophilized formulations. In addition, Discovery Labs' proprietary Capillary Aerosolization Technology produces a dense aerosol, with a defined particle size that is capable of potentially delivering aerosolized KL<sub>4</sub> surfactant to the deep lung without the complications currently associated with liquid surfactant administration. Discovery Labs is focused initially on developing its KL<sub>4</sub> surfactant pipeline to build a pediatric franchise that will potentially address several respiratory conditions affecting neonates and young children, beginning with Respiratory Distress Syndrome (RDS). For more information, please visit the Company's website at [www.Discoverylabs.com](http://www.Discoverylabs.com).

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## **Forward Looking Statements**

*To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of such risks and uncertainties are: risks relating to the rigorous regulatory requirements required for approval of any drug or drug-device combination products that Discovery Labs may develop, including that: (i) Discovery Labs and the U.S. Food and Drug Administration (FDA) will not be able to agree on the matters raised by the FDA in its Complete Response letter dated April 17, 2009, or the FDA may require Discovery Labs to conduct significant additional activities to potentially gain approval of Surfaxin, if ever (ii) the FDA or other regulatory authorities may not accept or may withhold or delay consideration of any of Discovery Labs' applications, or may not approve or may limit approval of Discovery Labs' products to particular indications or impose unanticipated label limitations, and (iii) changes in the national or international political and regulatory environment may make it more difficult to gain FDA or other regulatory approval; risks relating to Discovery Labs' research and development activities, including time-consuming and expensive pre-clinical studies, clinical trials and other efforts, which may be subject to potentially significant delays or regulatory holds, or fail; risks relating to Discovery Labs' ability to develop and manufacture drug products and capillary aerosolization systems for clinical studies, and, if approved, for commercialization of drug and combination drug-device products, including risks of technology transfers to contract manufacturers and problems or delays encountered by Discovery Labs, its contract manufacturers or suppliers in manufacturing drug products, drug substances and capillary aerosolization systems on a timely basis or in an amount sufficient to support Discovery Labs' development efforts and, if approved, commercialization; risks that (a) market conditions, the competitive landscape or otherwise, may make it difficult to launch and profitably sell products, (b) Discovery Labs may be unable to identify potential strategic partners or collaborators to market its products, if approved, in a timely manner, if at all, and (c) Discovery Labs' products will not gain market acceptance by physicians, patients, healthcare payers and others in the medical community; the risk that Discovery Labs or its strategic partners or collaborators will not be able to attract or maintain qualified personnel; the risk that Discovery Labs will not be able in a changing financial market to raise additional capital or enter into strategic alliances or collaboration agreements, or that the ongoing credit crisis will adversely affect the ability of Discovery Labs to fund its activities, or that additional financings could result in substantial equity dilution; the risk that Discovery Labs will not be able to access credit from its committed equity financing facilities, or that the share price at which Discovery Labs may access the facilities from time to time will not enable Discovery Labs to access the full dollar amount potentially available under the facilities; the risk that Discovery Labs will be unable to maintain The Nasdaq Global Market listing requirements, causing the price of Discovery Labs' common stock to decline; the risk that recurring losses, negative cash flows and the inability to raise additional capital could threaten Discovery Labs' ability to continue as a going concern; the risks that Discovery Labs may be unable to maintain and protect the patents and licenses related to its products, or other companies may develop competing therapies and/or technologies, or health care reform may adversely affect Discovery Labs; risks of legal proceedings, including securities actions and product liability claims; risks relating to reimbursement and health care reform; and other risks and uncertainties described in Discovery Labs' filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.*

## **Contact Information:**

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215-488-9413

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