

Harbor BioSciences, Inc.
Form PRE 14A
August 17, 2011
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material under §240.14a-12

Harbor BioSciences, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box)

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

4. Date Filed:

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Preliminary Copy: Subject to Completion.

This information is dated August __, 2011.

HARBOR BIOSCIENCES, INC.

9191 Towne Centre Drive, Suite 409

San Diego, California 92122

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON [__], 2011

TO THE STOCKHOLDERS OF HARBOR BIOSCIENCES, INC.:

You are cordially invited to attend the Annual Meeting of Stockholders (the Annual Meeting) of Harbor BioSciences, Inc., a Delaware corporation (the Company, we, us, or our), which will be held at the offices of Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 on [__], 2011 at 10:00 a.m. Eastern time for the following purposes:

1. To consider and vote upon a proposal to approve an amendment to our Amended and Restated Certificate of Incorporation, as amended (the Restated Certificate), in order to add restrictions on the transfer of our common stock, par value \$0.01 per share (the Common Stock), to preserve our net operating losses for federal tax purposes.
2. To consider and vote upon a proposal to approve certain additional amendments to our Restated Certificate in order to, among other things, (i) remove the Board of Directors (the Board) classification provisions such that there will only be a single class of directors, (ii) remove the provision that prevents the Company s stockholders from acting by written consent, and (iii) eliminate the provision requiring the vote of two-thirds of the outstanding shares of voting stock to modify certain provisions of the Restated Certificate in the future.
3. To consider and vote upon an amendment to the Restated Certificate to authorize a 1-for-1,000 reverse stock split of the Common Stock (the Reverse Stock Split), as further described in the accompanying proxy statement.
4. To consider and vote upon an amendment to the Restated Certificate to authorize a 1,000-for-1 forward stock split of the Common Stock (the inverse ratio of the Reverse Stock Split) immediately following the Reverse Stock Split of the Common Stock (the Forward Stock Split), as further described in the accompanying proxy statement.
5. To elect three directors to serve as directors until the 2014 annual meeting of stockholders, or the 2012 annual meeting of stockholders in the event that the Company s stockholders approve the removal of the Board classification provisions from the Restated Certificate as contemplated by Proposal No. 2, or until their successors are duly elected and qualified.
6. To approve anti-dilution protections afforded to the Common Stock Purchase Warrants (the Warrants) issued in our June 2010 registered direct offering of Common Stock and Warrants.
7. To ratify the selection by the audit committee of the Board of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011.

8. To consider and vote upon a proposal to adjourn the Annual Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Annual Meeting to approve any of the foregoing proposals.

In addition, the Annual Meeting is being held to transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

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The foregoing items of business are more fully described in the proxy statement accompanying this Notice. We are not currently aware of any other matters that will come before the Annual Meeting.

The Board recommends that you vote FOR each of the proposals to be considered at the Annual Meeting.

Our Board has fixed the close of business on [____], 2011, as the record date for the determination of Company stockholders entitled to notice of and to vote at the Annual Meeting and at any adjournment or postponement thereof.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held on _____, 2011:

This Notice, along with the accompanying proxy statement, the enclosed proxy card, and our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, is available on the Internet at www.HarborBioSciences.com. Information included on our website, other than the proxy materials specifically referred to above, is not part of our proxy soliciting materials.

Your vote is important. Please take this opportunity to participate in our corporate affairs by voting on the important proposals being considered at the Annual Meeting. All of our stockholders are cordially invited to attend the Annual Meeting. Whether or not you expect to attend the Annual Meeting, please vote your shares as soon as possible in order to ensure your representation at the Annual Meeting and to minimize the cost of proxy solicitation. You may vote by mail by completing the enclosed proxy card and returning it, or you may vote over the Internet or by telephone by following the voting instructions provided in the accompanying proxy statement and the attached proxy card. Even if you have previously given your proxy, you may still attend the Annual Meeting and vote your shares in person for the matters to be acted upon at the Annual Meeting. Please note, however, that if your shares are held of record by a broker, bank, dealer or other nominee and you wish to vote at the Annual Meeting, you must obtain from the holder of record a proxy issued in your name.

By Order of the Board of Directors

SALVATORE J. ZIZZA
Chairman of the Board

San Diego, California

[____], 2011

NEITHER THE SECURITIES AND EXCHANGE COMMISSION (THE SEC) NOR ANY STATE SECURITIES COMMISSION OR AUTHORITY HAS APPROVED OR DISAPPROVED OF THE REVERSE STOCK SPLIT, THE FORWARD STOCK SPLIT OR THE OTHER TRANSACTIONS CONTEMPLATED BY THE ACCOMPANYING PROXY STATEMENT OR DETERMINED IF THE PROXY STATEMENT IS TRUTHFUL OR COMPLETE. THE SEC HAS NOT PASSED UPON THE FAIRNESS OR MERITS OF THE REVERSE STOCK SPLIT, THE FORWARD STOCK SPLIT OR THE OTHER TRANSACTIONS CONTEMPLATED BY THE ACCOMPANYING PROXY STATEMENT NOR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THE PROXY STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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ANNEXES

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<u>Annex B</u>	<u>Certificate of Amendment to Effect the Reverse Stock Split</u>
<u>Annex C</u>	<u>Certificate of Amendment to Effect the Forward Stock Split</u>

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Preliminary Copy: Subject to Completion.

This information is dated August , 2011.

HARBOR BIOSCIENCES, INC.

9191 Towne Centre Drive, Suite 409

San Diego, California 92122

PROXY STATEMENT

FOR THE 2011 ANNUAL MEETING OF STOCKHOLDERS

[], 2011

GENERAL INFORMATION

This proxy statement is furnished in connection with the solicitation of proxies by the Board of Directors (the Board) of Harbor BioSciences, Inc., a Delaware corporation (the Company, we, us, or our), for use at the Annual Meeting of Stockholders of the Company (the Annual Meeting), which will be held at the offices of Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 on [], 2011 at 10:00 a.m. Eastern time, and any adjournments or postponements of the Annual Meeting, for the purposes set forth on the attached Notice of Annual Meeting of Stockholders and in this proxy statement.

This proxy statement and the accompanying proxy card were first made available to our stockholders on or about [], 2011.

This proxy statement contains important information for you to consider when deciding how to vote on the matters brought before the Annual Meeting. Our stockholders are encouraged to carefully read this proxy statement and each of the documents referred to herein before voting.

Proposals to be Voted on at the Annual Meeting

The Annual Meeting is being held for the following purposes:

1. To consider and vote upon a proposal to approve an amendment to our Amended and Restated Certificate of Incorporation, as amended (the Restated Certificate), in order to add restrictions on the transfer of our common stock, par value \$0.01 per share (the Common Stock), to protect our net operating losses for federal tax purposes by prohibiting and declaring void any proposed transfer of securities that would result in any stockholder becoming a five percent shareholder as such term is defined in Section 382 of the Internal Revenue Code, as amended (the NOL Provision).
2. To consider and vote upon a proposal to approve certain additional amendments to our Restated Certificate in order to, among other things, (i) remove the Board of Directors (the Board) classification provisions such that there will only be a single class of directors, (ii) remove the provision that prevents the Company's stockholders from acting by written consent, and (iii) eliminate the provision requiring the vote of two-thirds of the outstanding shares of voting stock to modify certain provisions of the Restated Certificate in the future.

Each of Proposal No. 1 and Proposal No. 2, if adopted at the Annual Meeting, will result in amendments to the Restated Certificate. Attached as Annex A to this proxy statement is a proposed Second Amended and Restated Certificate of Incorporation of the Company (the New Certificate), which incorporates the various changes that would be implemented if Proposal No. 1 and Proposal No. 2 are adopted at the Annual Meeting and also consolidates the changes made as a result of several prior amendments to the Restated Certificate.

3.

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To consider and vote upon an amendment to the Restated Certificate to authorize a 1-for-1,000 reverse stock split of the Common Stock (the Reverse Stock Split), as further described in the accompanying proxy statement. Pursuant to the Reverse Stock Split, (i) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record holding fewer than

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1,000 shares will be converted into the right to receive an amount in cash based on the average closing price per share of Common Stock for the ten trading days immediately prior to the effective date of the Reverse Stock Split (subject to any applicable U.S. federal, state and local withholding tax), without interest (the Cash Out Amount), per pre-split share, and (ii) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record (as identified in our records of security holders) holding 1,000 or more shares or by beneficial owners holding in street name (through a bank, broker, dealer or other nominee), regardless of the number of shares so held, will be converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. The maximum number of shares that may be cashed out by any individual stockholder is 999 shares. Therefore, if the Reverse Stock Split had occurred on August [], 2011, the maximum amount of money that may be payable to any stockholder as a result of the Reverse Stock Split would have been approximately \$[], based on the average closing price per share of Common Stock for the ten trading days immediately prior that date of \$[]. If implemented, the Reverse Stock Split would reduce the risk that the Company will be required to file periodic reports with the Securities and Exchange Commission (the SEC) under the Securities Exchange Act of 1934, as amended (the Exchange Act), in the future and thereby potentially allow the Company to avoid the significant expenses associated with complying with SEC reporting obligations. We are also seeking to have our stockholders authorize the Reverse Stock Split and the Forward Stock Split because we may be required to effect them in order to comply with certain contractual obligations that we have to our largest investor as further described in this proxy statement.

A copy of the proposed amendment to the Restated Certificate that would be used to effect the Reverse Stock Split is attached as Annex B to this proxy statement.

4. To consider and vote upon an amendment to the Restated Certificate to authorize a 1,000-for-1 forward stock split of the Common Stock (the inverse ratio of the Reverse Stock Split) immediately following the Reverse Stock Split of the Common Stock (the Forward Stock Split), the effect of which will be that each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders that was not cashed out pursuant to the Reverse Stock Split will once again represent one share of Common Stock.

A copy of the proposed amendment to the Restated Certificate that would be used to effect the Forward Stock Split is attached as Annex C to this proxy statement.

Although Proposal No. 3 and Proposal No. 4 are being voted on separately, our Board will not effect either the Forward Stock Split or the Reverse Stock Split unless our stockholders authorize both the Forward Stock Split and the Reverse Stock Split at the Annual Meeting.

5. To elect three directors to serve as directors until the 2014 annual meeting of stockholders, or the 2012 annual meeting of stockholders in the event that the Company's stockholders approve the removal of the Board classification provisions from the Restated Certificate, or until their successors are duly elected and qualified.
6. To approve anti-dilution protections afforded to the Common Stock Purchase Warrants (the Warrants) issued in our June 2010 registered direct offering of Common Stock and Warrants.
7. To ratify the selection by the audit committee of the Board of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011.
8. To consider and vote upon a proposal to adjourn the Annual Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Annual Meeting to approve any of the foregoing proposals. In the event that a sufficient number of votes have been cast to approve some of the proposals (including Proposal No. 8), but not all of the proposals, the Company will deem those proposals approved and may implement the proposals so approved and may adjourn the Annual Meeting to continue to solicit votes for only those proposals that require more votes for approval.

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In addition, the Annual Meeting is being held to transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof. We are not currently aware of any other matters that will come before the Annual Meeting.

Special Consideration of Certain Proposals

While the Annual Meeting is being called so that our stockholders may consider and vote upon several important matters, certain of these matters are particularly important to our stockholders and require special consideration. Among the most significant matters that we are asking our stockholders to consider are the adoption of the NOL Provision (Proposal No. 1) and certain other amendments to our Restated Certificate that will, among other things, (i) remove the Board classification provisions, (ii) remove the provision that prevents stockholders from acting by written consent, and (iii) eliminate the provision requiring the vote of two-thirds of the outstanding shares of voting stock to modify certain provisions of the Restated Certificate in the future (the Governance Amendments 1) (Proposa