

MARLIN BUSINESS SERVICES CORP
Form S-8
June 13, 2012

As filed with the Securities and Exchange Commission on June 13, 2012

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT

UNDER
THE SECURITIES ACT OF 1933

Marlin Business Services Corp.

(Exact name of Registrant as specified in its charter)

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(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification No.)

300 Fellowship Road

Mount Laurel, NJ
(Address of Principal Executive Offices)

08054
(Zip Code)

Amendment 2012-1 to the Marlin Business Services Corp. 2003

Equity Compensation Plan, As Amended

Marlin Business Services Corp. 2012 Employee Stock Purchase Plan

(Full title of the plan)

Edward R. Dietz

Marlin Business Services Corp.

General Counsel

300 Fellowship Road

Mount Laurel, New Jersey 08054

(Name and address of agent for service)

(888) 479-9111

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

With a copy to:

James W. McKenzie, Jr.

Morgan, Lewis & Bockius LLP

1701 Market Street

Philadelphia, Pennsylvania 19103-2921

(215) 963-5000

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 definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act:

Large accelerated filer "
Non-accelerated filer "

Accelerated filer x
Smaller reporting company "

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed	Proposed	Amount of Registration Fee ⁽²⁾
		Maximum Offering Price Per Share ⁽²⁾	Maximum Aggregate Offering Price	
Common Stock, par value \$0.01 per share	140,000 shares ⁽³⁾	\$14.305	\$2,002,700	\$230
Common Stock, par value \$0.01 per share	850,000 shares ⁽⁴⁾	\$14.305	\$12,159,250	\$1,394
Total:	990,000 shares		\$14,161,950	\$1,624

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this registration statement covers any additional securities as may hereinafter be offered or issued to prevent dilution resulting from stock splits, stock dividends, recapitalizations, other capital adjustments or similar transactions.
- (2) Estimated pursuant to Rule 457(c) and 457(h) under the Securities Act solely for purposes of calculating the registration fee and based on the average of the high and low sales prices of the Registrant's common stock as reported on the NASDAQ Global Select Market on June 8, 2012.
- (3) Represents 140,000 shares of Common Stock, par value \$0.01 per share, available for future issuance under the Marlin Business Services Corp. 2012 Employee Stock Purchase Plan.
- (4) Represents 850,000 shares of Common Stock, par value \$0.01 per share, available for future issuance under the Amendment 2012-1 to the Marlin Business Services Corp. 2003 Equity Compensation Plan, As Amended.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The information required by Item 1 is included in documents sent or given to participants in the plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act).

Item 2. Registrant Information and Employee Plan Annual Information.

The written statement required by Item 2 is included in documents sent or given to participants in the plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by Marlin Business Services Corp. (the Registrant or the Company) with the Securities and Exchange Commission (the Commission) are incorporated by reference into this registration statement:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the Commission on March 8, 2012;
- (2) The Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012, filed with the Commission on May 4, 2012;
- (3) The Registrant's Current Report on Form 8-K filed on May 30, 2012; and
- (4) The description of the Registrant's shares of common stock, par value \$0.01 per share (Common Stock), contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on October 28, 2003, under Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and any amendment or report filed with the Commission for purposes of updating such description.

All reports and other 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 to this registration statement that indicates that all of the shares of Common Stock offered have been sold or that deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of the filing of such reports and documents. Unless expressly incorporated into this registration statement, a report furnished but not filed on Form 8-K shall not be incorporated by reference into this registration statement to the extent furnished but not filed.

Any statement contained herein or in a document all or a portion of which is incorporated

or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein (or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein) modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Experts: The financial statements as of December 31, 2011 and 2010, and for each of the three years in the period ended December 31, 2011, incorporated by reference in this registration statement, and the effectiveness of the Registrant's internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated by reference herein. Such financial statements have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

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 1741 of the Pennsylvania Business Corporation Law provides the power to indemnify any officer or director acting in his capacity as the Registrant's representative who was or is threatened to be made a party to any action or proceeding for expenses, judgments, penalties, fines and amounts paid in settlement in connection with such action or proceeding. The indemnity provisions apply whether the action was instituted by a third party or arose by or in the Registrant's right. Generally, the only limitation on the Registrant's ability to indemnify its officers and directors is if the act violates a criminal statute or if the act or failure to act is finally determined by a court to have constituted willful misconduct or recklessness.

The Registrant's bylaws provide a right to indemnification to the fullest extent permitted by law for damages, judgments, amounts paid in settlement, fines, penalties, punitive damages, excise tax assessed with respect to any employee benefit plan, or cost or expense of any nature (including, without limitation, attorneys' fees and disbursements) actually and reasonably incurred by any director or officer whether or not the indemnified liability arises or arose from any threatened, pending or completed proceeding by or in the Registrant's right by reason of the fact that such director or officer is or was serving as the Registrant's director, officer or employee or, at Registrant's request, as a director, officer, manager, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, unless the act or failure to act giving rise to the claim for indemnification is (i) finally determined by a court to have constituted willful misconduct or recklessness; or (ii) based upon or attributable to the receipt by the indemnified representative from the corporation of a personal

benefit to which such indemnified party is not legally entitled. The Registrant's bylaws provide for the advancement of expenses to an indemnified party upon receipt of an undertaking by the party to repay those amounts if it is finally determined that the indemnified party is not entitled to indemnification. The Registrant's bylaws authorize the Registrant to take steps to ensure that all persons entitled to the indemnification are properly indemnified, including, if the board of directors so determines, purchasing and maintaining insurance.

The Registrant's amended and restated articles of incorporation provide that none of its directors shall be personally liable to the Registrant or its shareholders for monetary damages (including, without limitation, any judgment, amount paid in settlement, penalty, punitive damages or expense of any nature (including, without limitation, attorneys' fees and disbursements)) for any action taken or any failure to take any action, except for liability for (i) any breach or failure to perform the such person's duties under the amended and restated articles of incorporation; (ii) any breach or failure to perform such person's duties under the bylaws; (iii) any act or failure to act that violates applicable law; and (iv) any breach or failure to perform that constitutes self-dealing, willful misconduct or recklessness.

The Registrant maintains directors and officers' liability insurance to provide directors and officers with insurance coverage for losses arising from claims based on breaches of duty, negligence, error and other wrongful acts.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

A list of exhibits filed herewith or incorporated by reference is contained in the Exhibit Index immediately following the signature pages and is incorporated herein by reference.

Item 9. Undertakings.

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;
 - (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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 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 this registration statement or any material change to such information in this registration statement; *provided, however*, that Paragraphs (1)(i) and (1)(ii) of this section 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 this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 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 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.

Insofar as indemnification for liabilities arising under the Securities Act 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 Commission such indemnification is against public policy as expressed in the Securities 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, 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 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant 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 township of Mt. Laurel, State of New Jersey on June 13, 2012.

MARLIN BUSINESS SERVICES CORP.

By: /s/ Daniel P. Dyer

Daniel P. Dyer

Chief Executive Officer

POWER OF ATTORNEY

That the undersigned officers and directors of Marlin Business Services Corp., a Pennsylvania corporation, do hereby constitute and appoint Daniel P. Dyer, Chief Executive Officer, and George D. Pelose, Executive Vice President and Chief Operating Officer, or any one of them, the lawful attorney-in-fact and agent, each with full power and authority to do any and all acts and things and to execute any and all instruments which said attorney and agent determines may be necessary or advisable or required to enable said corporation to comply with the Securities Act, and any rules or regulation or requirements of the Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
/s/ Daniel P. Dyer	Chief Executive Officer and President	June 13, 2012
Daniel P. Dyer	(Principal Executive Officer)	
/s/ Lynne C. Wilson	Chief Financial Officer and Senior Vice President	June 13, 2012
Lynne C. Wilson	(Principal Financial and Accounting Officer)	

<i>/s/ John J. Calamari</i>		
John J. Calamari	Director	June 13, 2012
<i>/s/ Lawrence J. DeAngelo</i>		
Lawrence J. DeAngelo	Director	June 13, 2012
<i>/s/ Edward Grzedzinski</i>		
Edward Grzedzinski	Director	June 13, 2012
<i>/s/ Kevin J. McGinty</i>		
Kevin J. McGinty	Director	June 13, 2012
<i>/s/ Matthew J. Sullivan</i>		
Matthew J. Sullivan	Director	June 13, 2012
<i>/s/ J. Christopher Teets</i>		
J. Christopher Teets	Director	June 13, 2012
<i>/s/ James W. Wert</i>		
James W. Wert	Director	June 13, 2012

EXHIBIT INDEX

Exhibit No.	Description
4.1	Amended and Restated Articles of Incorporation of Registrant (filed as an exhibit to Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 on March 5, 2008, and incorporated by reference herein).
4.2	Amended and Restated Bylaws of Registrant, as amended (filed as an exhibit to Registrant's Amendment No. 1 to Registration Statement on Form S-1 (File No. 333-108530) on October 14, 2003, and incorporated by reference herein).
5.1	Opinion of Morgan, Lewis & Bockius LLP.
23.1	Consent of Deloitte & Touche LLP.
23.2	Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5.1 filed herewith).
24.1	Power of Attorney (included on signature pages hereto).
99.1	Marlin Business Services Corp. Employee Stock Purchase Plan (filed as Appendix C to Registrant's Proxy Statement on Schedule 14A on April 23, 2012, and incorporated by reference herein).
99.2	Amendment 2012-1 to the Marlin Business Services Corp. 2003 Equity Compensation Plan, As Amended (filed as Appendix A to Registrant's Proxy Statement on Schedule 14A on April 23, 2012, and incorporated by reference herein).