

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to

Section 13 or 15(d) of

THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of Earliest Event Reported): August 23, 2002

STEMCELLS, INC.
(Exact name of registrant as specified in its charter)

DELAWARE

0-19871

94-3078125

(State or other jurisdiction
of incorporation)

(Commission File Number)

(I.R.S. Employer
Identification Number)

2155 PORTER DRIVE
PALO ALTO, CALIFORNIA 94304

(Address, of principal executive offices, including zip code)

(650) 475-3100

(Registrant's Telephone number including area code)

Item 5. OTHER EVENTS

On August 23, 2002, StemCells, Inc. (the "Company") entered into an agreement pursuant to which the Company has agreed to sell 1,028,038 shares of common stock to one institutional investor at an aggregate price of \$1,100,000, or approximately \$1.07 per share.

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.

STEMCELLS, INC.

By: /s/ George Koshy

George Koshy
Controller and Acting Chief
Financial Officer

Date: August 27, 2002

EXHIBIT INDEX

- 10.1 Purchase Agreement dated as of August 23, 2002 between StemCells, Inc. and Triton West Group, Inc.
- 10.2 Escrow Agreement dated as of August 23, 2002 between StemCells, Inc., Triton West Group, Inc. and Feldman Weinstein LLP.

COMMON STOCK PURCHASE AGREEMENT

This Common Stock Purchase Agreement (this "Agreement") is made as of August 23, 2002, by and among StemCells, Inc., a Delaware corporation (the "Company") with its principal office at 3155 Porter Drive, Palo Alto, CA 94304 and Triton West Group, Inc., a Cayman Islands corporation with its offices at the address set forth on the signature page hereto (the "Purchaser").

IN CONSIDERATION of the mutual covenants contained in this Agreement, the Company and Purchaser agree as follows:

SECTION 1.

AUTHORIZATION AND SALE OF SHARES

1.1. SALE OF SHARES. At the Closing (as defined in Section 2), the Company will sell to Purchaser, and Purchaser will buy from the Company, upon the terms and conditions hereinafter set forth, 1,028,038 shares (the "Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock") at a purchase price of \$1.07 per share, resulting in an aggregate purchase price of One Million One Hundred Thousand Dollars (\$1,100,000.00).

1.2. REGISTRATION OF SHARES. The Shares have been registered on a Form S-3, File No. 333-83992, which registration statement, together with the prospectus comprising a part thereof (the "REGISTRATION STATEMENT") has been declared effective by the Securities and Exchange Commission (the "Commission") pursuant to the provisions of the Securities Act of 1933, as amended (the "Act"), and has remained effective since such date and is effective on the date hereof.

SECTION 2.

CLOSING DATE; DELIVERY

2.1. CLOSING DATE. On the date hereof (the "Closing Date") or in any event on or before August 26, 2002, the Company shall deliver the Shares to the Buyer via the Depository Trust Company's ("DTC") Deposit Withdrawal Agent Commission ("DWAC") system via the DTC instructions set forth on the signature page hereto. The Purchase Price shall be paid to the Company as set forth in the Escrow Agreement entered into among the Purchaser, the Company and the escrow agent signatory thereto, in the form of EXHIBIT A hereto (the "ESCROW AGREEMENT"). On or before August 26, 2002, the Buyer shall have wired the Purchase Price to the Escrow Agent pursuant to the wire instructions set forth in the Escrow Agreement. The obligations of the parties hereunder shall be conditioned upon the execution and delivery by each other party of the Escrow Agreement. The Shares must be unlegended and free of any resale restrictions that may be imposed by or on behalf of the Company. Both parties hereby agree and

acknowledge that delivery of the Shares via DTC's DWAC system is a material obligation of the Company and furthermore, with respect to each party's obligations hereunder, time is of the essence.

2.2. Pursuant to Section 424(b)(2), the Company agrees to file on Form 424(b)(2) the prospectus supplement set forth in EXHIBIT B hereto regarding the sale of the Shares to Buyer.

SECTION 3.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Purchaser as follows:

(a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with full power and authority (corporate and otherwise) to own, lease and operate its properties and conduct its business as described in the Registration Statement; the Company is duly qualified to do business as a foreign corporation in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to so qualify would not subject the Company to any material liability or disability.

(b) The Company has full power and authority (corporate and otherwise) to enter into this Agreement and to perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company and is a valid and binding agreement on the part of the Company, enforceable against the Company in accordance with its terms, except as enforcement hereof may be limited to applicable bankruptcy, insolvency, reorganization or other similar laws relating to or affecting creditors' rights generally or by general equitable principles; the performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby, including without limitation, the sale of the Shares, will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, (i) any lease, contract or other agreement or instrument to which the Company is a party or by which its properties are bound, or (ii) the Certificate of Incorporation or By-laws of the Company or (iii) any law, order, rule, regulation, writ, injunction or decree of any court or governmental agency or body binding on the Company; and the Company is not required to obtain or make (as the case may be) any consent, approval, authorization, order, designation or filing by or with any court or regulatory, administrative or other governmental agency or body is required for the consummation by the Company of the transactions herein contemplated, except such as have been obtained under the Act and state securities laws.

(c) The authorized capital stock of the Company consists of 75,000,000 shares of Common Stock and 1,000,000 shares of Preferred Stock, \$.01 par value per share. As of the date hereof, the Company has outstanding 24,739,666 shares of Common Stock and 4,750 shares of Preferred Stock, all of which are validly issued, fully paid and non-assessable and which represent all of the outstanding shares of capital stock of the Company.

(d) The Shares to be purchased from the Company hereunder have been duly authorized for issuance and, when issued and delivered to the Purchaser by the Company against payment therefor in accordance with the terms of this Agreement, will be duly and validly issued and fully paid and nonassessable.

(e) Other than as otherwise disclosed publicly, subsequent to the respective dates as of which information is given in the Registration Statement there has not been (i) any material adverse change, or any development which is likely to cause a material adverse change, in the business, properties or assets described or referred to in the Registration Statement, or the results of operations, condition (financial or otherwise), business or results of operations of the Company, (ii) any transaction which is material to the Company, (iii) any obligation, direct or contingent, which is material to the Company, incurred by the Company, (iv) any change in the capital stock or any material change in the outstanding indebtedness of the Company or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company. The Registration Statement and the final prospectus included therein do not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading in light of the circumstances under which they were made.

(f) The Registration Statement has become effective and the Company has not received, and has no notice of, any written order of the Commission preventing or suspending the use of the Registration Statement or the prospectus contained therein, or proceedings instituted for that purpose.

SECTION 4.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser acknowledges that it has been given the opportunity to ask questions of, and receive answers from, the Company's officers concerning the Company, its business, results, and financial condition, and to obtain any additional information it needs in making a decision to invest in the Company. Purchaser further acknowledges that all of its questions have been answered to its satisfaction, and all information and documents pertaining to its investment that it has requested have been made available. Purchaser represents, warrants, acknowledges and agrees that:

(a) the Purchaser understands that the Company may possess material, non-public information relating to the Company and/or the Shares;

(b) the Purchaser has chosen, for its own business reasons, not to request, require or expect that the Company provide any such information, whether or not confidential, to it;

(c) the Purchaser is sophisticated and capable of understanding and appreciating, and does understand and appreciate, the significance of there being undisclosed information;

(d) the Purchaser has independently investigated and evaluated the value of the Shares and the financial condition and affairs of the Company without reliance upon any information about the Company other than publicly available information. Based upon its independent analysis of such information, obtained from sources other than the Company, the Purchaser has reached its own business decision to effect the purchase contemplated herein;

(e) Neither the Company, nor any of its affiliates, attorneys, accountants and financial advisors has furnished any information to the Purchaser, used by Purchaser in determining to make the purchase contemplated herein, with respect to the Company or the Shares, other than such information as is contained in this agreement;

(f) Except for the express representations and warranties contained in this agreement, neither the Company, nor any of its affiliates, attorneys, accountants and financial advisors, has made any representations or warranties to any Purchaser; and

SECTION 5.

MISCELLANEOUS

5.1. WAIVERS AND AMENDMENTS. The terms of this Agreement may be waived or amended only with the written consent of the Company and Purchaser. The failure by any party at any time to enforce or to require the performance of any provision of this Agreement shall in no way be construed to be a waiver of any such provision and shall not affect the rights of such party hereunder thereafter to enforce or require the performance of such provision in accordance with the terms of this Agreement.

5.2. GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of California, without regard to the conflict of laws rules thereof.

5.3. SUCCESSORS AND ASSIGNS. This Agreement may not be assigned by Purchaser without the written consent of the Company.

5.4. ENTIRE AGREEMENT. This Agreement, including Exhibit A hereto, constitutes the full and entire understanding and agreement between the parties with regard to the subjects thereof.

5.5. NOTICES, ETC. Any notice or other communication required or permitted under this Agreement shall be in writing and may be sent by personal delivery, by telecopy, overnight delivery service or U.S. mail, in which event it shall be mailed first-class, certified or registered, postage prepaid. All such notices and communications must be addressed to the Company or the Purchaser, as the case may be, at their respective addresses and telecopy number (i) in the case of the Company, as set forth at the beginning of this Agreement in the case of the Company's

address and to (650) 475-3101 in the case of a telecopy sent to the Company, and (ii) in the case of the Purchaser as set forth on the signature page hereto, or at such other address or telecopy number as the Company or Purchaser shall have furnished to the other party in writing. All notices and other communications shall be effective upon the earlier of actual receipt thereof and (A) in the case of notices and communications sent by personal delivery or telecopy, three hours following the first time during normal business hours following the time at which such notice or communication arrives at the applicable address or was successfully sent to the applicable telecopy number, (B) in the case of notices and communications sent by overnight delivery service, at noon (local time) on the first business day following the day such notice or communication was sent, and (C) in the case of notices and communications sent by U.S. mail, five days after such notice or communication shall have been deposited in the U.S. mail.

5.6. TITLES AND SUBTITLES. The titles of the paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

5.7. COUNTERPARTS. This Agreement may be executed in two counterparts, each of which shall be an original, but both of which together shall constitute one instrument.

5.8. FURTHER ASSURANCES. Each party to this Agreement shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments and documents as the other party hereto may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

5.9. EXPENSES. Except as provided in Section 5.10, the Company and Purchaser shall each bear its own expense incurred on its behalf with respect to this Agreement and the transactions contemplated hereby, including fees of legal counsel.

5.10. SURVIVABILITY. The respective representations and covenants of the parties hereto shall survive the Closing of the transactions contemplated hereby.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

STEMCELLS, INC.,
a Delaware corporation

By: /s/ IRIS BREST

Name: Iris Brest
Title: General Counsel

TRITON WEST GROUP, INC.
a Cayman Islands corporation

ADDRESS FOR NOTICE:

601 Montgomery Street, Suite 1060
San Francisco, CA 94111

By: /s/ GENE JUNG

Name: Gene Jung
Title: Board of Directors

DTC INSTRUCTIONS:

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ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "AGREEMENT") is made as of August 23, 2002, by and among StemCells, Inc. (the "SELLER"), the buyers of the Seller's securities as set forth on the signature page hereto (collectively, the "BUYERS"), and Feldman Weinstein LLP, having an address at 420 Lexington Avenue, New York, NY 10170 (the "ESCROW AGENT"). Capitalized terms used but not defined herein shall have the meanings set forth in the Subscription Agreement referred to in the first recital.

WHEREAS, the Buyers will purchase, severally and not jointly, up to \$1,100,000 of the Common Stock (the "SHARES") from the Seller pursuant to the Common Stock Purchase Agreements (the "SUBSCRIPTION Agreement") to be entered into between each Buyer and the Seller, which Shares shall be issued pursuant to the terms and conditions contained herein and in the Subscription Agreements; and

WHEREAS, the Seller and the Buyers have requested that the Escrow Agent hold in escrow the applicable purchase price pending receipt by the Buyers of the Shares issuable pursuant to the Subscription Agreement;

NOW, THEREFORE, in consideration of the covenants and mutual promises contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

TERMS OF THE ESCROW

1.1. On or prior to the date that the Seller and each Buyer enters into the Subscription Agreements, each Buyer shall send its portion of the purchase price of the Shares, as set forth on the signature pages hereto (collectively, the "PURCHASE PRICE"), to the Escrow Agent. Upon receipt of the Purchase Price, the Escrow Agent shall advise the Seller that it has received the Purchase Price. The Seller shall promptly, but no later than one (1) Trading Day after receipt of such funding notice from the Escrow Agent:

- (i) cause its transfer agent to issue the Shares applicable to each Buyer via DTC's DWAC system to the account specified by such Buyer; and
- (ii) deliver a Form 424(b)(2) supplemental prospectus (the "PROSPECTUS") disclosing said purchase to the Buyers.

1.2. Upon receipt of written confirmation from the Buyers that the Shares have been so deposited and the Prospectus has been delivered, the Escrow Agent shall, within one (1) Trading Day, wire the Purchase Price per the wiring instructions of the Seller as set forth on the signature page hereto.

1.3. In the event that, within two (2) Trading Days of the date of the Escrow Agent's notice, the applicable Shares are not in a Buyer's DTC account via the DWAC system or the supplemental prospectus is not delivered to a Buyer, then such Buyer shall have the right to demand, by notice to the Escrow Agent and the Seller, the return of the Purchase Price, and, at the election of the Buyer, the Subscription Agreement with such Buyer shall be deemed null and void.

1.4. The Seller understands and acknowledges that delivery of the Shares into the Buyers' DTC accounts via the DWAC system is a material term of the Subscription Agreements with each Buyer and this Agreement, that time is of the essence and that a delay in the delivery of the Shares into a Buyer's DTC account via the DWAC system beyond 3 business days after the dates set forth herein or in the Escrow Agreement, as may be applicable, could result in economic loss to such Buyer.

1.5 Wire transfers to the Escrow Agent shall be made as follows:

Chase Manhattan Bank, NA
510 Fifth Avenue
New York, NY 10036 USA
ABA Routing Number: []
Account Number: []
Name of Account: Feldman Weinstein LLP Master Escrow Account
Remark: STEM

ARTICLE II

MISCELLANEOUS

2.1. No waiver or any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

2.2. All notices or other communications required or permitted hereunder shall be in writing, and shall be sent by fax, overnight courier, registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon receipt thereof, as set forth in the Subscription Agreement.

2.3. This Escrow Agreement shall be binding upon and shall inure to the benefit of the permitted successors and permitted assigns of the parties hereto.

2.4. This Escrow Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior

understandings with respect thereto. This Escrow Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the parties to be charged or by their respective agents duly authorized in writing or as otherwise expressly permitted herein.

2.5. Whenever required by the context of this Escrow Agreement, the singular shall include the plural and masculine shall include the feminine. This Escrow Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to Articles are to this Escrow Agreement.

2.6. The parties hereto expressly agree that this Escrow Agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of New York. Except as expressly set forth herein, any action to enforce, arising out of, or relating in any way to, any provisions of this Escrow Agreement shall be brought in the Federal or state courts of New York, New York as is more fully set forth in the Subscription Agreement.

2.7. The Escrow Agent's duties hereunder may be altered, amended, modified or revoked only by a writing signed by the Seller, Buyers and the Escrow Agent.

2.8. The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by the Escrow Agent to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be personally liable for any act the Escrow Agent may do or omit to do hereunder as the Escrow Agent while acting in good faith, excepting only its own gross negligence or willful misconduct, and any act done or omitted by the Escrow Agent pursuant to the advice of the Escrow Agent's attorneys-at-law (other than Escrow Agent itself) shall be conclusive evidence of such good faith.

2.9. The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case the Escrow Agent obeys or complies with any such order, judgment or decree, the Escrow Agent shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

2.10. The Escrow Agent shall not be liable in any respect on account of the identity, authorization or rights of the parties executing or delivering or purporting to execute or deliver the Subscription Agreement or any documents or papers deposited or called for thereunder or hereunder.

2.11. The Escrow Agent shall be entitled to employ such legal counsel and other experts as the Escrow Agent may deem necessary properly to advise the Escrow Agent in connection with the Escrow Agent's duties hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor. The Escrow Agent acted as legal

counsel for the Buyers, and may continue to act as legal counsel for the Buyers, from time to time, notwithstanding his duties as an officer of the Escrow Agent hereunder. The Seller consents to the Escrow Agent in such capacity as legal counsel for the Buyers and waives any claim that such representation represents a conflict of interest on the part of the Escrow Agent. The Seller understands that the Buyers and the Escrow Agent are relying explicitly on the foregoing provision in entering into this Escrow Agreement.

2.12. The Escrow Agent's responsibilities as escrow agent hereunder shall terminate if the Escrow Agent shall resign by written notice to the Seller and the Buyers. In the event of any such resignation, the Buyers and the Seller shall appoint a successor Escrow Agent.

2.13. If the Escrow Agent reasonably requires other or further instruments in connection with this Escrow Agreement or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

2.14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the documents or the escrow funds held by the Escrow Agent hereunder, the Escrow Agent is authorized and directed in the Escrow Agent's sole discretion (1) to retain in the Escrow Agent's possession without liability to anyone all or any part of said documents or the escrow funds until such disputes shall have been settled either by mutual written agreement of the parties concerned by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but the Escrow Agent shall be under no duty whatsoever to institute or defend any such proceedings or (2) to deliver the escrow funds and any other property and documents held by the Escrow Agent hereunder to a state or Federal court having competent subject matter jurisdiction and located in the State and City of New York in accordance with the applicable procedure therefor.

2.15. The Seller and the Buyers agree jointly and severally to indemnify and hold harmless the Escrow Agent and its partners, employees, agents and representatives from any and all claims, liabilities, costs or expenses in any way arising from or relating to the duties or performance of the Escrow Agent hereunder or the transactions contemplated hereby or by the Subscription Agreement other than any such claim, liability, cost or expense to the extent the same shall have been determined by final, unappealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Escrow Agent.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of this 23rd day of August, 2002.

STEMCELLS, INC.

By: /s/ IRIS BREST

Name: Iris Brest
Title: General Counsel

BUYERS:

TRITON WEST GROUP, INC.
(\$1,100,000)

By: /s/ GENE JUNG

Name: Gene Jung

WIRING INSTRUCTIONS OF THE SELLER:

[]

ESCROW AGENT:

FELDMAN WEINSTEIN LLP

By:

Name:
Title: