

STAAR SURGICAL CO

Form S-3

August 02, 2011

As filed with the Securities and Exchange Commission on August 2, 2011 Registration No. 333- _____

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

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
STAAR SURGICAL COMPANY

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

95-3797439
(I.R.S. Employer
Identification No.)

1911 Walker Avenue
Monrovia, California 91016
(626) 303-7902

(Address, including zip code, and telephone number, including area code,
of registrant's principal executive offices)

Charles Kaufman
Vice President and General Counsel
STAAR Surgical Company
1911 Walker Avenue
Monrovia, California 91016
(626) 303-7902

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to rule 462(e) under the Securities Act, check the

following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered (1)	Proposed maximum aggregate offering price(2)	Amount of registration fee(3)
Common Stock, par value \$0.01 per share	_____	_____
Preferred Stock, par value \$0.01 per share	_____	_____
Warrants	_____	_____
Debt Securities	_____	_____
Total	\$75,000,000	\$8,707.50

(1) This Registration Statement registers an indeterminate number of shares of common stock and preferred stock, an indeterminate number of warrants to purchase common stock, preferred stock or debt securities, and an indeterminate principal amount of debt securities, which in aggregate shall have an initial offering price that does not exceed \$75,000,000. If any debt securities are issued at an original issue discount, then the offering price of such debt securities will be in such greater principal amount as shall result in an aggregate initial offering price not to exceed \$75,000,000 less the aggregate dollar amount of all securities previously issued hereunder. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. The securities registered also include such indeterminate amounts and numbers of common stock, preferred stock and debt securities as may be issued upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or pursuant to the adjustment provisions of any such securities that may cause additional securities to be issuable upon a stock split or stock dividend or pursuant to any anti-dilution provisions of such securities.

(2) Pursuant to Instruction II.D. of Form S-3 under the Securities Act, the maximum aggregate offering price is provided on a combined basis for all classes of securities registered hereunder and is not specified for individual classes.

(3) Calculated pursuant to Rule 457(o) under the Securities Act.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended (the “Securities Act”) or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission (the “SEC”), acting pursuant to said Section 8(a), may determine.

The information contained in this prospectus is not complete and may change. We may not sell these securities or accept an offer to buy these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is neither an offer to sell these securities nor a solicitation of an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED AUGUST 2, 2011

PROSPECTUS

STAAR Surgical Company

\$75,000,000

Common Stock
Preferred Stock
Warrants
Debt Securities

From time to time, we may sell common stock, preferred stock, warrants or debt securities. A prospectus supplement specifying the terms of the offering will accompany this prospectus. Our common stock is traded on the Nasdaq Global Market under the trading symbol "STAA." If we offer other securities, the prospectus supplement will provide information about their listing on a securities exchange, if any.

Investing in our securities involves a high degree of risk. You should carefully read and consider the risk factors included in our periodic reports, in any prospectus supplements relating to specific offerings of securities and in other documents that we file with the Securities and Exchange Commission. See "Risk Factors" on page 7.

This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement.

We may sell the securities through underwriters or agents or directly to purchasers. The names of any underwriters or agents will appear on the accompanying prospectus supplement. For additional information on methods of sale, please see the sections entitled "Plan of Distribution" in this prospectus and the accompanying prospectus supplement. The prospectus supplement also shows the net proceeds we expect to receive from the sale.

Neither the Securities and Exchange Commission, nor any state securities commission, has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2011.

TABLE OF CONTENTS

	Page
Special Note Regarding Forward-Looking Statements	2
Prospectus Summary	4
Risk Factors	7
Securities We May Offer	7
Use of Proceeds	9
Description of Capital Stock	9
Description of Warrants	12
Description of Debt Securities	15
Legal Ownership of Securities	23
Plan of Distribution	27
Ratio of Earnings to Fixed Charges and Preferred Dividends	29
Legal Matters	29
Experts	29
Where You Can Find More Information	29
Information Incorporated by Reference	30

You should rely only on the information contained in this prospectus and information to which we have referred you. We have not authorized anyone else to provide you with different information. In particular, we have not authorized any dealer or salesperson to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell only the securities it specifically describes on the front of the document, and only under circumstances and in jurisdictions where we can lawfully do so.

Unless the context otherwise requires, the terms “we,” “our,” “us,” the “Company” and “STAAR” refer to STAAR Surgical Company and its subsidiaries.

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we have filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration process. Under this shelf registration we may sell common stock, preferred stock, warrants or debt securities in one or more offerings, up to a maximum total dollar amount of \$75,000,000. This prospectus provides you with a general description of each of those types of securities. Whenever we offer or sell securities in connection with this shelf registration we will also provide a prospectus supplement that contains a more

complete description of the securities offered and the structure of the offering. We may also use the prospectus supplement to add, update or change any of the information contained in this prospectus. This prospectus, together with the relevant prospectus supplement and other documents to which we refer you, includes all material information relating to any offering. Before purchasing our common stock please carefully read both this prospectus and the prospectus supplement together with the additional information described below under “Where You Can Find More Information” and “Incorporation of Documents by Reference.”

This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.

You should assume that the information in this prospectus is accurate only as of the date on the cover page. Any information we have incorporated by reference in this prospectus is accurate only as of the date of the document incorporated by reference, unless we indicate otherwise, regardless of the time this prospectus is delivered or the time a security is sold. Our business, financial condition, results of operations and prospects may have changed materially since that date.

This prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer or solicitation of an offer in such jurisdiction.

Representations, warranties or covenants that may appear in any agreement filed as an exhibit to a document incorporated by reference in this prospectus were made solely for the benefit of the parties to that agreement. The parties made those statements for the private purpose of allocating contractual risk, not to establish facts. Even if accurate when made, these statements may not be accurate now, and they may have been qualified by schedules or other disclosures that have not been filed or incorporated by reference into this prospectus. Only the parties to such an agreement are entitled to enforce its representations, warranties or covenants. You should not rely on those statements for any purpose.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Statements in this prospectus that are not statements of historical fact are forward-looking statements. Forward-looking statements also appear in other documents to which we refer you in this prospectus. They may be found, among other places, in the sections entitled “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our most recent report on Form 10-K, in our quarterly reports on Form 10-Q filed after our most recent Form 10-K, and any amendments to these documents filed with the SEC. These statements relate to our future plans, objectives, expectations and intentions. Among other things, forward-looking statements include statements about the following:

- our strategy;
- our business prospects including expectations for revenue or other performance of our business or of specific products;
 - the status of applications for approval of products by the FDA or regulatory agencies of other countries;

- sufficiency of our cash reserves;
- product development;
- research and development and other expenses; and
- legal risks.

You may also generally identify forward-looking statements by the use of words such as “expect,” “anticipate,” “intend,” “plan” and similar expressions.

You should not place undue reliance on our forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of numerous risks and uncertainties that are beyond our control, including those we discuss in “Risk Factors” and elsewhere in this prospectus, in the accompanying prospectus supplement, and in our other reports we file with the SEC. The forward-looking statements in this prospectus speak only as of the date of this prospectus, and you should not rely on these statements without also considering the risks and uncertainties associated with these statements and our business.

PROSPECTUS SUMMARY

STAAR Surgical Company designs, develops, manufactures and sells implantable lenses for the eye. We make lenses both for use in corrective or “refractive” surgery and for use in treating cataracts. All of the lenses we make are foldable, which permits the surgeon to insert them through a small incision during minimally invasive surgery.

Refractive surgery corrects the types of visual disorders that glasses or contact lenses have traditionally treated. The field of refractive surgery includes both lens-based procedures, using products like our Visian® ICL™, and laser-based procedures like LASIK. Successful refractive surgery can correct common vision disorders such as myopia, hyperopia and astigmatism.

Cataract surgery is a common outpatient procedure where the surgeon removes the eye’s natural lens and replaces it with an artificial lens called an intraocular lens, IOL, to restore the patient’s vision.

Visian ICL

Manufacturing lenses used in refractive surgery and selling them under our Visian brand currently produces about half of our revenue and is our fastest growing source of revenue. We make these lenses from our proprietary biocompatible Collamer material and refer to them as “implantable Collamer lenses” or ICLs. Lenses in the Visian product family treat refractive disorders such as myopia (near-sightedness), hyperopia (far-sightedness) and astigmatism. These disorders of vision affect a large proportion of the population. These products are designed to work with the patient’s natural lens to correct refractive disorders. The lenses that treat astigmatism along with myopia or hyperopia use toric optics for correction and are called “Toric ICLs” or TICLS.

The surgeon implants the foldable Visian lens through a tiny incision, under local anesthesia. STAAR began selling the Visian ICL outside the U.S. in 1996 and inside the U.S. in 2006. STAAR began selling the Visian TICL outside the U.S. in 2002. These products are sold in more than 50 countries. STAAR’s goal is to establish the position of the ICL and TICL throughout the world as one of the primary choices for refractive surgery.

Worldwide Visian ICL sales increased by approximately 16% in 2010 and have increased outside the U.S. at a double digit annual percentage rate since 2001. However, refractive surgery is an elective procedure generally not covered by health insurance. Patients must pay for the procedure, frequently through installment financing arrangements. Patients can defer the choice to have refractive surgery if they lack the disposable income to pay for it, they do not feel their income is secure, or they cannot obtain credit. As a result, conditions in the general economy may affect sales of Visian ICLs.

Intraocular lenses

We generate almost half of our revenue by manufacturing and selling foldable intraocular lenses, known as IOLs, and related products for cataract surgery. STAAR pioneered the foldable IOL, a flexible prosthetic lens used to replace a cataract patient’s natural lens after it has been extracted in minimally invasive small incision cataract extraction. STAAR makes IOLs out of silicone and out of our proprietary Collamer material. STAAR’s IOLs are available in both three-piece and one-piece designs. STAAR’s range of IOLs includes the following:

- three-piece IOLs, available in silicone or Collamer;
- single-piece IOLs, available in silicone or Collamer, including the nanoFLEX single piece Collamer aspheric lens;
 - The silicone Toric IOL, used in cataract surgery to treat preexisting astigmatism;
 - The Preloaded Injector, a silicone or acrylic IOL preloaded into a single-use disposable injector;

STAAR's IOLs sold worldwide feature aspheric optics, an advanced design intended to provide a clearer image than traditional spherical lenses, especially in low light. STAAR has developed a proprietary aspheric design (patent pending) that is optimized for the naturally curved surface of the retina and certain other anatomical features of the human eye, and that provides outstanding image quality even if accidentally moved off center.

Because the great majority of cataract patients are elderly and qualify for Medicare, most of STAAR's U.S. cataract revenue derives indirectly from reimbursement payments by the Center for Medicaid and Medicare Services, or CMS. Outside the U.S. as well, government agencies or government sponsored entities generally pay the cost of IOLs for cataract patients. As a result, STAAR believes that IOL revenues are likely to remain relatively stable even under adverse conditions in the general economy. However, efforts by governments to contain medical costs could affect reimbursement programs, lowering the prices we receive for IOLs or reducing the number of reimbursed procedures.

Other surgical products

We have historically offered a number of other products used in ophthalmic surgery that complemented our IOL and Visian ICL product lines. We have recently de-emphasized these products to focus on our core business of making implantable lenses. Other surgical products made up 5.7% of our total sales in 2010 and 7.3% of total sales in 2009. These products include STAARVISC II, a viscoelastic material that surgeons use as a protective lubricant and to maintain the shape of the eye during surgery, Cruise Control™, a single-use disposable filter used in phacoemulsification, which is the process of removing a cataract patient's cloudy lens through a small incision using ultrasound and suction. Cruise Control allows for a faster, cleaner phacoemulsification procedure and is compatible with all phacoemulsification equipment. We also make the AquaFlow Collagen Glaucoma Drainage Device, an implantable device used for the surgical treatment of glaucoma.

Operations

STAAR has significant operations both within and outside the U.S., and receives the majority of its revenue from its activities outside the U.S. STAAR's principal business units and their operations are as follows:

- **United States.** STAAR operates its global administrative headquarters and a manufacturing facility in Monrovia, California. The Monrovia manufacturing facility principally makes Collamer and silicone IOLs and injector systems for IOLs and ICLs. STAAR also manufactures the Collamer material in the U.S.
- **Switzerland.** STAAR operates an administrative and manufacturing facility in Nidau, Switzerland under its wholly owned subsidiary, STAAR Surgical AG. The Nidau manufacturing facility makes all of STAAR's ICLs and TICLS. STAAR Surgical AG handles distribution and other administrative affairs for all of our products in Europe, the Middle East and Latin America.
- **Japan.** Through its wholly owned subsidiary, STAAR Japan, Inc., STAAR maintains executive offices and distribution facilities in Shin-Urayasu, Japan and a manufacturing facility in Ichikawa City, Japan. All of STAAR's preloaded injectors are manufactured at the Ichikawa City facility. The Visian ICL has been approved for sale in Japan since 2010.

Corporate Information

Originally incorporated in California in 1982, STAAR reincorporated in Delaware in 1986. Our executive offices are located at 1911 Walker Avenue, Monrovia, California 91016, and our telephone number is (626) 303-7902. Our website address is www.staar.com. The information on our website is not a part of this prospectus.

STAAR Surgical Company, STAAR's Logo, Visian®, Collamer®, CentraFLOW™, AquaPORT™, STAARvisc™, and AquaFlow™ are trademarks of STAAR in the U.S. and other countries. Collamer® is the brand name for STAAR's proprietary collagen copolymer lens material.

RISK FACTORS

Investment in our securities involves a high degree of risk. Before deciding whether to purchase any of our securities, please read and carefully consider the “Risk Factors” sections in the prospectus supplement, in our most recent Annual Report on Form 10-K filed with the SEC, and in our most recent Quarterly Reports on Form 10-Q if we filed them after the most recent Form 10-K. These reports are incorporated by reference into this prospectus, along with any filings containing information that amends, supplements or supersedes those reports. Instructions for obtaining copies appears under the heading “Where You Can Find More Information.” Each of these risk factors describes a circumstance that has the potential to materially harm our business, operating results or financial condition and reduce the value of an investment in our securities. It is important for investors to read and consider all of them.

SECURITIES WE MAY OFFER

We may offer any of the following types of securities, with a maximum total value of up to \$75,000,000:

- common stock
- preferred stock
- warrants to purchase common or preferred stock
- debt securities

We may offer these securities from time to time under this prospectus at prices and on terms to be determined by market conditions at the time of the offering. We may offer them separately, or as units made up of any combination of securities. This prospectus provides you with a general description of the securities we may offer. In connection with each offering we will provide a prospectus supplement that contains a more complete description of the securities offered and the structure of the offering. The prospectus supplement will include the following information, to the extent applicable:

- the type of security offered, whether common or preferred equity, debt securities, warrants or a combination;
 - the amount of securities and the price range;
 - the aggregate offering price or aggregate principal amount;
 - the maturity date, if applicable;
- the rates and times of payment of interest or dividends, if any;
 - redemption, conversion or sinking fund terms, if any;
 - voting or other rights, if any;

- conversion or exercise prices, if any;
- information about any trustee or paying agent;
 - the plan of distribution;
 - the intended use of proceeds;
- information about the legal counsel who will pass on the legality of the securities offered; and
 - federal income tax considerations, if material to the securities offered.

The prospectus supplement also may add, update or change information contained in this prospectus or in documents we have incorporated by reference. However, no prospectus supplement will offer a security that is not included in the registration statement of which this prospectus is a part at the time of its effectiveness or offer a security of a type that is not described in this prospectus.

This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.

We may offer and sell the securities directly to investors or through agents, underwriters or dealers. We, and our agents or underwriters, reserve the right to accept or reject all or part of any proposed purchase of securities. If we do offer securities through agents or underwriters, we will include the following information in the prospectus supplement to the extent applicable:

- the names of the underwriters or agents;
- the fees, discounts or commissions to be paid to them;
- details regarding over-allotments, if any;
 - the net proceeds to us; and
- information about the legal counsel advising them on matters related to the offering.

USE OF PROCEEDS

Unless we describe another use in the prospectus supplement, we will use the net proceeds from the sale of the securities for general corporate purposes, including among other things working capital, capital expenditures, expansion of sales and marketing, and continuing research and development. We may also use a portion of the net proceeds to acquire or invest in businesses, assets, products and technologies that are complementary to our own, although we are not currently contemplating or negotiating any such acquisitions or investments..

DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock consists of 60 million shares of common stock, par value \$0.01 per share, and 10 million shares of preferred stock, par value \$0.01 per shares. As of July 29, 2011 we had 35,670,142 shares of common stock outstanding and no outstanding preferred stock.

Common Stock

The holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. The holders of common stock are not entitled to cumulative voting in the election of directors.

Subject to the preferences of any then outstanding shares of preferred stock, each holder of our common stock is entitled to receive a pro rata share of any dividends that may be declared by the Board of Directors out of funds legally available for that purpose. If our company is liquidated, dissolved or wound up, each holder of the common stock is entitled to a pro rata share of the net proceeds of that transaction after payment of all liabilities and the payment of the liquidation preferences of any then outstanding shares of preferred stock.

Holders of common stock have no preemptive rights and no right to convert their common stock into any other securities. No redemption or sinking fund provisions apply to any of our common stock. Except for restricted stock issued to some of our employees as incentive compensation, all outstanding shares of common stock are fully paid and non-assessable, and all shares of common stock to be issued under this prospectus will be fully paid and non-assessable.

Preferred Stock

Our certificate of incorporation gives our Board of Directors the authority, without further action by the stockholders, to issue up to 10 million shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions of this preferred stock, including dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of a series, without further vote or action by the stockholders. On the date of this prospectus we have no outstanding preferred stock.

If STAAR sells preferred stock, we will file a document called a “certificate of designation” with the state of Delaware, which becomes a part of our certificate of incorporation. The certificate of designation serves to legally create a series of preferred stock having the rights, preferences, privileges and restrictions that the board of directors has determined. Before we make any offering of preferred stock we will file the form of certificate of designation with the SEC as an exhibit to the registration statement of which this prospectus forms a part, or as an exhibit to a current report on Form 8-K. The certificate of designation, together with one or more prospectus supplements, will describe the terms of the preferred stock, including the following to the extent applicable:

- the title of the class and series;
- the number of shares designated to be in the same class and series and to share the same rights, preferences and privileges;
 - any liquidation preference per share;
 - the dividend rate, period and payment date and method of calculation for dividends;
- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;
 - the procedures for any auction and remarketing, if any;
 - the provisions for a sinking fund, if any;
- the provisions for redemption or repurchase, if applicable, and any restrictions on our ability to exercise those redemption and repurchase rights;
- whether the preferred stock will be convertible into our common stock and, if it is, the conversion price, or how it will be calculated, and the conversion period;
- whether the preferred stock will be exchangeable into debt securities and, if it is, the exchange price, or how it will be calculated, and the exchange period;
 - voting rights, if any, of the preferred stock;
 - restrictions on transfer, sale or other assignment, if any;
- whether interests in the preferred stock will be represented by depositary shares;