

MARINEMAX INC
Form S-8
September 27, 2011

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As filed with the Securities and Exchange Commission on September 27, 2011

Registration No. 333-_____

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

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

MARINEMAX, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware

59-3496957

(State or Other Jurisdiction of
Incorporation or Organization)

(IRS Employer
Identification Number)

**18167 U.S. Highway 19 North, Suite 300
Clearwater, Florida 33764**

(Address of Principal Executive Offices) (Zip Code)

2011 Stock-Based Compensation Plan
(Full Title of the Plan)

William H. McGill Jr.

Chairman, President, and Chief Executive Officer

**18167 U.S. Highway 19 North, Suite 300
Clearwater, Florida 33764**

(727) 531-1700

(Name, Address, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

Robert S. Kant, Esq.

Derek J. Mirza, Esq.

Greenberg Traurig, LLP

2375 East Camelback Road, Suite 700

Phoenix, AZ 85016

(602) 445-8000

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 (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Proposed maximum

Proposed

| Title of securities to be registered | Amount to be registered (1) | offering price per share (2) | maximum aggregate offering price (2) | Amount of registration fee |
|---|------------------------------------|-------------------------------------|---|-----------------------------------|
| Common Stock, par value \$0.001 | 1,200,456 shares (3) | \$6.11 | \$7,334,787 | \$851.57 |

- (1) Pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of Common Stock that become issuable under the 2011 Stock-Based Compensation Plan by reason of any stock dividend, stock split, recapitalization, or any other similar transaction without receipt of consideration that results in an increase in the number of outstanding shares of Common Stock of MarineMax, Inc. (the Registrant).
- (2) The offering price per share was calculated solely for the purposes of this offering under Rules 457(c) and 457(h) promulgated under the Securities Act of 1933, as amended, based upon the average of the high and low sales prices for shares of Common Stock of the Registrant as quoted on the New York Stock Exchange on September 26, 2011.
- (3) Includes (a) 1,000,000 shares authorized for issuance under the 2011 Stock-Based Incentive Plan and (b) 200,456 shares of common stock remaining available for issuance under the 2007 Incentive Compensation Plan that are not subject to an award under the 2007 Incentive Compensation Plan.
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**PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

Item 1. Plan Information.

The documents containing the information specified in this Item 1 will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). In accordance with the rules and regulations of the Securities and Exchange Commission (the Commission) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The documents containing the information specified in this Item 2 will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

**PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

Item 3. Incorporation of Documents by Reference.

MarineMax, Inc. (the Registrant) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

- (a) The Registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), or the latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed;
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant document referred to in (a) above; and
- (c) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A, (No. 001-14173) as filed with the Commission on May 28, 1998 and declared effective on June 1, 1998, including any amendment or report filed for the purpose of updating such description.

In addition, all documents filed with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities 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 filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement, or in any subsequently filed document which also is or is deemed to be incorporated by reference in this Registration Statement, 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.

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Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The validity of the shares of common stock offered hereby will be passed upon for us by Greenberg Traurig, LLP, Phoenix, Arizona. Robert S. Kant, a principal shareholder of Greenberg Traurig, P.A., has served as a director of our company since August 1998 and owns 57,264 shares of our common stock and holds options to purchase 65,500 shares of our common stock at various prices.

Item 6. Indemnification of Directors and Officers.

The Restated Certificate of Incorporation and Second Amended and Restated Bylaws of the Registrant provide that the Registrant will indemnify and advance expenses, to the fullest extent permitted by the Delaware General Corporation Law, to each person who is or was a director or officer of the Registrant, or who serves or served any other enterprise or organization at the request of the Registrant (an Indemnitee).

Under Delaware law, to the extent that an Indemnitee is successful on the merits in defense of a suit or proceeding brought against him or her by reason of the fact that he or she is or was a director, officer, or agent of the Registrant, or serves or served any other enterprise or organization at the request of the Registrant, the Registrant shall indemnify him or her against expenses (including attorneys fees) actually and reasonably incurred in connection with such action.

If unsuccessful in defense of a third-party civil suit or a criminal suit, or if such a suit is settled, an Indemnitee may be indemnified under Delaware law against both (i) expenses, including attorney s fees, and (ii) judgments, fines, and amounts paid in settlement if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Registrant, and, with respect to any criminal action, had no reasonable cause to believe his or her conduct was unlawful.

If unsuccessful in defense of a suit brought by or in the right of the Registrant, where the suit is settled, an Indemnitee may be indemnified under Delaware law only against expenses (including attorneys fees) actually and reasonably incurred in the defense or settlement of the suit if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Registrant except that if the Indemnitee is adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Registrant, he or she cannot be made whole even for expenses unless a court determines that he or she is fully and reasonably entitled to indemnification for such expenses.

Also under Delaware law, expenses incurred by an officer or director in defending a civil or criminal action, suit, or proceeding may be paid by the Registrant in advance of the final disposition of the suit, action, or proceeding upon receipt of an undertaking by or on behalf of the officer or director to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the Registrant. The Registrant may also advance expenses incurred by other employees and agents of the Registrant upon such terms and conditions, if any, that the Board of Directors of the Registrant deems appropriate.

Item 7. Exemption From Registration Claimed.

Not Applicable.

Item 8. Exhibits.

| Exhibit Number | Exhibit |
|---------------------------|--|
| 5 | Opinion of Greenberg Traurig, LLP |
| 10.29(a) | MarineMax, Inc. 2011 Stock-Based Compensation Plan (1) |
| 10.29(b) | Form Stock Option Agreement for 2011 Stock-Based Compensation Plan (1) |

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**Exhibit
Number**

Exhibit

| | |
|----------|---|
| 10.29(c) | Form Restricted Stock Unit Award Agreement for 2011 Stock-Based Compensation Plan (1) |
| 23.1 | Consent of Greenberg Traurig, LLP (included in Exhibit 5) |
| 23.2 | Consent of Ernst & Young LLP, independent registered public accounting firm |
| 24 | Power of Attorney (included in the Signatures section of this Registration Statement) |

(1) Incorporated by reference to the Registrant's Form 8-K dated January 19, 2011, as filed with the Commission on January 25, 2011.

Item 9. Undertakings.

(a) 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 of 1933;

(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 hereof) 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 a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(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 (a)(1)(i) and (a)(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 Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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 the time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise,

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the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it 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 City of Clearwater, State of Florida, on September 27, 2011.

MARINEMAX, INC.

By: */s/ William H. McGill Jr.*
 William H. McGill Jr.
 Chairman of the Board and Chief Executive
 Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints jointly and severally, William H. McGill Jr. and Michael H. McLamb and each of them, as his or her true and lawful attorney-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

| Signature | Position | Date |
|---|--|-----------------------|
| <i>/s/ William H. McGill Jr.</i> William H. McGill Jr. | Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer) | September 27, 2011 |
| <i>/s/ Michael H. McLamb</i> Michael H. McLamb | Executive Vice President, Chief Financial Officer, Secretary, and Director (Principal Accounting and Financial Officer) | September 27, 2011 |
| <i>/s/ Hilliard M. Eure III</i> Hilliard M. Eure III | Director | September 27, 2011 |
| <i>/s/ John B. Furman</i> John B. Furman | Director | September 27, 2011 |
| <i>/s/ Robert S. Kant</i> Robert S. Kant | Director | September 27, 2011 |
| <i>/s/ Russell J. Knittel</i> | Director | |

| | | |
|------------------------------|----------|-----------------------|
| Russell J. Knittel | | September 27, 2011 |
| <i>/s/ Joseph A. Watters</i> | Director | September 27, 2011 |
| Joseph A. Watters | | |
| <i>/s/ Dean S. Woodman</i> | Director | September 27, 2011 |
| Dean S. Woodman | | |

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