

# SEAWORLD ENTERTAINMENT, INC.

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 04/19/13

Address	9205 SOUTH PARK CENTER LOOP SUITE 400 ORLANDO, FL 32819
Telephone	(407) 226-5011
CIK	0001564902
Symbol	SEAS
SIC Code	7990 - Miscellaneous Amusement And Recreation
Industry	Conglomerates
Sector	Conglomerates
Fiscal Year	12/31

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

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

**SeaWorld Entertainment, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**27-1220297**  
(I.R.S. Employer  
Identification No.)

**9205 South Park Center Loop, Suite 400  
Orlando, Florida 32819  
Telephone: (407) 226-5011**  
(Address, including zip code, and telephone number, including area code, of principal executive offices)

**SeaWorld Entertainment, Inc. 2013 Omnibus Incentive Plan**  
(Full title of the plan)

**G. Anthony (Tony) Taylor, Esq.**  
**Chief Legal and Corporate Affairs Officer, General Counsel and Corporate Secretary**  
**9205 South Park Center Loop, Suite 400  
Orlando, Florida 32819  
Telephone: (407) 226-5011**  
(Name and address, including zip code, and telephone number, including area code, of agent for service)

*With copies to:*

**Igor Fert, Esq.**  
**Simpson Thacher & Bartlett LLP**  
**425 Lexington Avenue**  
**New York, New York 10017-3954**  
**Telephone: (212) 455-2000**  
**Facsimile: (212) 455-2502**

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:

Large accelerated filer

Accelerated filer

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

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered(1)	Amount to be registered(2)	Proposed maximum offering price per share(3)	Proposed maximum aggregate offering price(3)	Amount of registration fee(3)
Common Stock, par value \$.01 per share	15,000,000	\$27.00	\$405,000,000	\$55,242

- (1) The securities to be registered include shares of common stock and options and rights to acquire common stock issuable under the SeaWorld Entertainment, Inc. 2013 Omnibus Incentive Plan (the "Plan").
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers an indeterminate number of additional shares of common stock, par value \$0.01 per share ("Common Stock") of SeaWorld Entertainment, Inc. (the "Company" or the "Registrant"), which may be offered and issued to prevent dilution resulting from adjustments as a result of stock dividends, stock splits, reverse stock splits, recapitalizations, reclassifications, mergers, split-ups, reorganizations, consolidations and other capital adjustments.
- (3) Calculated pursuant to Rule 457(c) and Rule 457(h) under the Securities Act of 1933, as amended, based on the price per share of common stock in the Registrant's initial public offering pursuant to its Registration Statement on Form S-1 (File No. 333-185697) filed with the Securities and Exchange Commission relating to the initial public offering.

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## PART I

### INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The information specified in Items 1 and 2 of Part I of the Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of the Form S-8.

The documents containing the information specified in this Part I will be delivered to the participants in the SeaWorld Entertainment, Inc. 2013 Omnibus Incentive Plan (the "Plan") covered by this Registration Statement on Form S-8 (the "Registration Statement") as required by Rule 428(b)(1). Such documents are not required to be filed with the Securities and Exchange Commission (the "Commission") as part of this Registration Statement.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### **Item 3. Incorporation of Documents by Reference.**

The following documents filed with the Commission by SeaWorld Entertainment, Inc. (the "Company" or the "Registrant") pursuant to the Securities Act of 1933, as amended (the "Securities Act") and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are hereby incorporated by reference in this Registration Statement:

- (1) The Company's Prospectus filed pursuant to Rule 424(b) of the Securities Act (File No. 333-185697); and
- (2) The Company's registration statement on Form 8-A, filed on April 16, 2013 (File No. 001-35883), pursuant to Section 12(b) of the Exchange Act, including all other amendments and reports filed for the purpose of updating such description.

All documents that the Company subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement (except for any portions of the Company's Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with Commission), and prior to the filing of a post-effective amendment to this Registration Statement indicating 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 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.

#### **Item 4. Description of Securities.**

Not applicable.

#### **Item 5. Interests of Named Experts and Counsel.**

Not applicable.

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**Item 6. Indemnification of Directors and Officers.**

Section 102(b)(7) of the Delaware General Corporation Law (the “DGCL”) allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Company’s amended and restated certificate of incorporation provides for this limitation of liability.

Section 145 of the DGCL (“Section 145”) provides, among other things, that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify any persons who were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests, provided further that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses (including attorneys’ fees) which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify such person under Section 145.

The Company’s amended and restated bylaws provide that the Company must indemnify and advance expenses to its directors and officers to the full extent authorized by the DGCL.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquires under any statute, any provision of the Company’s amended and restated certificate of incorporation, its amended and restated bylaws, agreement, vote of stockholders or disinterested directors or otherwise. Notwithstanding the foregoing, the Company shall not be obligated to indemnify a director or officer in respect of a proceeding (or part thereof) instituted by such director or officer, unless such proceeding (or part thereof) has been authorized by the Company’s Board of Directors pursuant to the applicable procedure outlined in the amended and restated bylaws.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held jointly and severally liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions to be entered in the books containing the minutes of the meetings of the Board of Directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

The Company expects to maintain standard policies of insurance that provide coverage (1) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to the Company with respect to indemnification payments that it may make to such directors and officers.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

For a list of exhibits, see the Exhibit index in this registration Statement, which is incorporated herein by reference.

**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.
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the 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 the 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.
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) above 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 the 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.

(b) 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 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.

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(c) 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, 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 Orlando, Florida, on April 19, 2013.

SEAWORLD ENTERTAINMENT, INC.

By: /s/ James Atchison

Name: James Atchison

Title: Chief Executive Officer and President

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: that the undersigned directors and officers of SeaWorld Entertainment, Inc. hereby constitute and appoint G. Anthony (Tony) Taylor, James M. Heaney and Paul B. Powers and each of them, any of whom may act without joinder of the other, the individual's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the person and in his or her name, place and stead, in any and all capacities, to sign this Registration Statement and any or all amendments, including post-effective amendments to the Registration Statement, including a prospectus or an amended prospectus therein and any Registration Statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act, and all other documents in connection therewith to be filed 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 and about the premises, 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 as agents or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement and power of attorney have been signed by the following persons in the capacities indicated on April 19, 2013.

<u>Signature</u>	<u>Title</u>
<u>/s/ James Atchison</u> James Atchison	Chief Executive Officer, President and Director (Principal Executive Officer)
<u>/s/ James M. Heaney</u> James M. Heaney	Chief Financial Officer (Principal Financial Officer)
<u>/s/ Marc G. Swanson</u> Marc G. Swanson	Chief Accounting Officer (Principal Accounting Officer)
<u>/s/ David F. D'Alessandro</u> David F. D'Alessandro	Director
<u>/s/ Bruce McEvoy</u> Bruce McEvoy	Director
<u>/s/ Peter Wallace</u> Peter Wallace	Director
<u>/s/ Joseph Baratta</u> Joseph Baratta	Director
<u>/s/ Judith McHale</u> Judith A. McHale	Director

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## INDEX OF EXHIBITS

<u>Exhibit Number</u>	<u>Description of Document</u>
4.1	Form of Amended and Restated Certificate of Incorporation of SeaWorld Entertainment, Inc. (incorporated by reference to Exhibit 3.1 of the Form S-1 (File No. 333-185697)).
4.2	Form of Amended and Restated Bylaws of SeaWorld Entertainment, Inc. (incorporated by reference to Exhibit 3.2 of the Form S-1 (File No. 333-185697)).
5.1*	Opinion of Simpson Thacher & Bartlett LLP.
10.1†	SeaWorld Entertainment, Inc. 2013 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.31 of the Form S-1 (File No. 333-185697)).
23.1*	Consent of Deloitte & Touche LLP.
23.2*	Consent of Simpson Thacher & Bartlett LLP (included as part of Exhibit 5.1).
24.1*	Power of Attorney (included in the signature pages to this Registration Statement).

\* Filed herewith

† Management or compensatory arrangement

SIMPSON T HACHER & BARTLETT LLP

425 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017-3954  
(212) 455-2000

FACTSIMILE (212) 455-2502

April 19, 2013

SeaWorld Entertainment, Inc.  
9205 South Park Center Loop, Suite 400  
Orlando, Florida 32819

Ladies and Gentlemen:

We have acted as counsel to SeaWorld Entertainment, Inc., a Delaware corporation (the "Company"), in connection with the Registration Statement on Form S-8 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended, relating to up to 15,000,000 shares of common stock, par value \$0.01 per share, of the Company (the "Shares"), which may be issued by the Company pursuant to the SeaWorld Entertainment, Inc. 2013 Omnibus Incentive Plan (the "Plan").

We have examined the Registration Statement and the Plan, which has been filed with the Commission as an exhibit to the Registration Statement. We also have examined the originals, or duplicates or certified or conformed copies, of such records, agreements, documents and other instruments and have made such other investigations as we have deemed relevant and necessary in connection with the opinions hereinafter set forth. As to questions of fact material to this opinion, we have relied upon certificates or comparable documents of public officials and of officers and representatives of the Company.

In rendering the opinion set forth below, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies and the authenticity of the originals of such latter documents.

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Based upon the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that (1) when the Board of Directors of the Company (or a duly authorized committee thereof) has taken all necessary corporate action to authorize and approve the issuance of the Shares and (2) upon issuance and delivery in accordance with the Plan, the Shares will be validly issued, fully paid and nonassessable.

We do not express any opinion herein concerning any law other than the Delaware General Corporation Law.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement.

Very truly yours,

/s/ Simpson Thacher & Bartlett  
SIMPSON THACHER & BARTLETT LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 22, 2013 (Except for Note 20, as to which the date is April 17, 2013), relating to the financial statements and financial statement schedule of SeaWorld Entertainment, Inc. appearing in Registration Statement No. 333-185697 on Form S-1 of SeaWorld Entertainment, Inc.

/s/ Deloitte & Touche LLP

Tampa, Florida  
April 17, 2013