

Diamondback Energy, Inc.  
Form S-8  
May 13, 2013

As filed with the Securities and Exchange Commission on May 10, 2013  
Registration No. 333-

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

Diamondback Energy, Inc.  
(Exact Name of Registrant As Specified in Its Charter)  
Delaware  
(State or other jurisdiction of  
incorporation or organization)

45-4502447  
(I.R.S. Employer  
Identification Number)

500 West Texas  
Suite 1225  
Midland, Texas 79701  
(432) 221-7400  
(Address, including zip code and telephone number, including area code, of registrant's principal executive offices)

Diamondback Energy, Inc. 2012 Equity Incentive Plan  
(Full title of the plan)

Teresa L. Dick  
Chief Financial Officer  
Diamondback Energy, Inc.  
14301 Caliber Drive  
Suite 300  
Oklahoma City, Oklahoma 73134  
(405) 463-6900  
(Telephone number, including area code, of agent for service)

Copies to:  
Seth R. Molay, P.C.  
Akin Gump Strauss Hauer & Feld LLP  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
(214) 969-4780

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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

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, par value \$0.01 per share	2,500,000	\$27.41	\$68,525,000	\$9,346.81

Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration (1) Statement on Form S-8 shall also cover any additional shares of Common Stock as may become issuable pursuant to the adjustment provisions of the Diamondback Energy, Inc. 2012 Equity Incentive Plan.

(2) Estimated solely for the purpose of calculating the registration fee and computed pursuant to Rule 457(c) and 457(h) under the Securities Act. The price for the 2,500,000 shares of Common Stock being registered hereby is based on a price of \$27.41, which is the average of the high and low trading prices per share of Common Stock of Diamondback Energy, Inc. as reported by the NASDAQ Global Select Market on May 3, 2013.

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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Diamondback Energy, Inc. (the "Registrant") will provide all participants in the Diamondback Energy, Inc. 2012 Equity Incentive Plan (the "Plan") with the document(s) containing information required by Part I of Form S-8, as specified in Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the note to Part I of Form S-8 and Rule 428 of the Securities Act, the Registrant is not filing such document(s) with the Commission, but such documents (along with the documents incorporated by reference into this Registration Statement on Form S-8 (this "Registration Statement") pursuant to Item 3 of Part II hereof) shall constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Except to the extent that information is deemed furnished and not filed pursuant to securities laws and regulations, the Registrant hereby incorporates by reference into this Registration Statement the following documents:

- (a) The Current Report on Form 8-K (File No. 001-35700) filed with the Commission on February 1, 2013;
- (b) The Registrant's Annual Report on Form 10-K (File No. 001-35700) filed with the Commission on March 1, 2013;
- (c) The Registrant's Amendment No. 1 to its Annual Report on Form 10-K/A (File No. 001-35700) filed with the Commission on April 11, 2013;
- (d) The Registrant's Current Report on Form 8-K (File No. 001-35700) filed with the Commission on April 11, 2013;
- (e) The Registrant's Quarterly Report on Form 10-Q (File No. 001-35700) filed with the Commission on May 9, 2013; and

- (f) The description of the common stock, par value \$0.01 per share, of the Registrant ("Common Stock") contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on October 11, 2012 pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any subsequently filed amendments and reports updating such description.

Except to the extent that information is deemed furnished and not filed pursuant to securities laws and regulations, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall also be deemed to be incorporated by reference herein and to be a part hereof from the dates 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 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.



Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the “DGCL”) permits a corporation, under specified circumstances, to indemnify its directors, officers, employees or agents against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties by reason of the fact that they were or are directors, officers, employees or agents of the corporation, if such directors, officers, employees or agents acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reason to believe their conduct was unlawful. In a derivative action, i.e., one by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors, officers, employees or agents in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made if such person shall have been adjudged liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine upon application that the defendant directors, officers, employees or agents are fairly and reasonably entitled to be indemnified for such expenses despite such adjudication of liability.

The certificate of incorporation of the Registrant provides that the Registrant will, to the fullest extent authorized or permitted by applicable law, indemnify its current and former directors and officers, as well as those persons who, while directors or officers of the Registrant, are or were serving as directors, officers, employees or agents of another entity, trust or other enterprise, including service with respect to an employee benefit plan, in connection with any threatened, pending or completed proceeding, whether civil, criminal, administrative or investigative, against all expense, liability and loss (including, without limitation, attorney’s fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by any such person in connection with any such proceeding. Notwithstanding the foregoing, a person eligible for indemnification pursuant to the Registrant’s certificate of incorporation will be indemnified by the Registrant in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the Registrant, except for proceedings to enforce rights to indemnification.

The right to indemnification conferred by the Registrant’s certificate of incorporation is a contract right that includes the right to be paid by the Registrant the expenses incurred in defending or otherwise participating in any proceeding referenced above in advance of its final disposition, provided, however, that if the DGCL requires, an advancement of expenses incurred by an officer or director of the Registrant (solely in the capacity as an officer or director of the Registrant) will be made only upon delivery to the Registrant of an undertaking, by or on behalf of such officer or director, to repay all amounts so advanced if it is ultimately determined that such person is not entitled to be indemnified for such expenses under the Registrant’s certificate of incorporation or otherwise.

The rights to indemnification and advancement of expenses will not be deemed exclusive of any other rights which any person covered by the Registrant’s certificate of incorporation may have or hereafter acquire under law, the Registrant’s certificate of incorporation or bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise.

Any repeal or amendment of provisions of the Registrant’s certificate of incorporation affecting indemnification rights, whether by the Registrant’s stockholders or by changes in law, or the adoption of any other provisions inconsistent therewith, will (unless otherwise required by law) be prospective only, except to the extent such amendment or change in law permits the Registrant to provide broader indemnification rights on a retroactive basis, and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision. The Registrant’s certificate of incorporation also permits it, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than those specifically covered by the Registrant’s certificate of incorporation.

The bylaws of the Registrant include provisions relating to advancement of expenses and indemnification rights consistent with those set forth in the Registrant’s certificate of incorporation. In addition, the Registrant’s bylaws

provide for a right of indemnitee to bring a suit in the event a claim for indemnification or advancement of expenses is not paid in full by the Registrant within a specified period of time. The Registrant's bylaws also permit the Registrant to purchase and maintain insurance, at its expense, to protect the Registrant and/or any director, officer, employee or agent of the Registrant or another entity, trust or other enterprise against any expense, liability or loss, whether or not the Registrant would have the power to indemnify such person against such expense, liability or loss under the DGCL. Any repeal or amendment of provisions of the Registrant's bylaws affecting indemnification rights, whether by the Registrant's board of directors, stockholders or by changes in applicable law, or the adoption of any other provisions

inconsistent therewith, will (unless otherwise required by law) be prospective only, except to the extent such amendment or change in law permits the Registrant to provide broader indemnification rights on a retroactive basis, and will not in any way diminish or adversely affect any right or protection existing thereunder with respect to any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

The Registrant has entered into indemnification agreements with each of its current directors and executive officers. These agreements require the Registrant to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Registrant, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The Registrant also intends to enter into indemnification agreements with its future directors and executive officers. The above description of the indemnification agreements is subject to, and is qualified in its entirety by reference to, the form of director and officer indemnification agreement, filed with the Commission on August 20, 2012 as Exhibit 10.15 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1.

In addition, Section 102(b)(7) of the DGCL permits a corporation, in its certificate of incorporation, to limit or eliminate, subject to certain statutory limitations, the liability of directors to the corporation or its stockholders for monetary damages for breaches of fiduciary duty, except for liability:

- for any breach of the director's duty of loyalty to the company or its stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- in respect of certain unlawful dividend payments or stock redemptions or repurchases; and
- for any transaction from which the director derives an improper personal benefit.

In accordance with Section 102(b)(7) of the DGCL, Section 9.1 of the certificate of incorporation of the Registrant provides that that no director shall be personally liable to the Registrant or any of its stockholders for monetary damages resulting from breaches of their fiduciary duty as directors, except to the extent such limitation on or exemption from liability is not permitted under the DGCL. The effect of this provision of the Registrant's certificate of incorporation is to eliminate the Registrant's rights and those of its stockholders (through stockholders' derivative suits on the Registrant's behalf) to recover monetary damages against a director for breach of the fiduciary duty of care as a director, including breaches resulting from negligent or grossly negligent behavior, except, as restricted by Section 102(b)(7) of the DGCL. However, this provision does not limit or eliminate the Registrant's rights or the rights of its stockholders to seek non-monetary relief, such as an injunction or rescission, in the event of a breach of a director's duty of care.

If the DGCL is amended to authorize corporate action further limiting or eliminating the liability of directors, then, in accordance with the Registrant's certificate of incorporation, the liability of its directors to the Registrant or the Registrant's stockholders will be further limited or eliminated to the fullest extent authorized by the DGCL, as so amended. Any repeal or amendment of provisions of the Registrant's certificate of incorporation further limiting or eliminating the liability of directors, whether by the Registrant's stockholders or by changes in law, or the adoption of any other provisions inconsistent therewith, will (unless otherwise required by law) be prospective only, except to the extent such amendment or change in law permits the Registrant to further limit or eliminate the liability of directors on a retroactive basis.

#### Item 7. Exemption from Registration Claimed.

Not applicable.

#### Item 8. Exhibits.

Unless otherwise indicated below as being incorporated by reference to another filing of the Registrant with the Commission, each of the following exhibits is filed herewith:



EXHIBIT INDEX

ExhibitNumber	Description of Exhibit
4.1	Amended and Restated Certificate of Incorporation of Diamondback Energy, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-35700), filed with the Commission on November 16, 2012).
4.2	Amended and Restated Bylaws of Diamondback Energy, Inc. (incorporated by reference to Exhibit 3.2 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-35700), filed with the Commission on November 16, 2012).
4.3	Specimen certificate for shares of common stock, par value \$0.01 per share, of the Registrant (incorporated by reference to Exhibit 4.1 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 (File No. 333-179502), filed with the Commission on August 20, 2012).
4.4#	Diamondback Energy, Inc. 2012 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-35700), filed with the Commission on November 16, 2012).
4.5#	Form of Stock Option Agreement (incorporated by reference to Exhibit 10.13 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 (File No. 001-179502), filed with the Commission on August 20, 2012).
4.6#	Form of Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.14 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 (File No. 001-179502), filed with the Commission on August 20, 2012).
4.7#	Form of Amendment to Restricted Stock Unit Certificate (incorporated by reference to Exhibit 10.38 to the Form 10-K/A (File No. 001-357000), filed with the Commission on April 10, 2013).
5.1*	Opinion of Akin Gump Strauss Hauer & Feld LLP.
23.1*	Consent of Grant Thornton LLP.
23.2*	Consent of Pinnacle Energy Services, LLC.
23.3*	Consent of Ryder Scott Company, L.P.
23.4*	Consent of Akin Gump Strauss Hauer & Feld LLP (contained in Exhibit 5.1 filed herewith).
24.1*	Powers of Attorney (included on the signature page of this Registration Statement).

\*Filed herewith.

#Compensatory plan, contract or arrangement.

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;

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; and

(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) do not apply if 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.

That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment (2) shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) (b) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (c) (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 Midland, State of Texas on May 10, 2013.

DIAMONDBACK ENERGY, INC.

By: /s/ Travis D. Stice  
 Travis D. Stice  
 Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Travis D. Stice, Teresa L. Dick, Randall J. Holder and Steven E. West, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, from such person and in each person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission and to sign and file any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act 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, as fully to all said attorneys-in-fact and agents, or any of them, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date presented. This Power of Attorney may be executed in multiple counterparts, each of which shall be deemed an original, but which taken together shall constitute one instrument.

Signature	Title	Date
/s/ Travis D. Stice Travis D. Stice	Chief Executive Officer, Director (Principal Executive Officer)	May 10, 2013
/s/ Teresa L. Dick Teresa L. Dick	Chief Financial Officer (Principal Financial and Accounting Officer)	May 10, 2013
/s/ Michael P. Cross Michael P. Cross	Director	May 10, 2013
/s/ David L. Houston David L. Houston	Director	May 10, 2013
/s/ Mark L. Plaumann Mark L. Plaumann	Director	May 10, 2013
/s/ Steven E. West Steven E. West	Director	May 10, 2013



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