

Edgar Filing: VISX INC - Form SC 13D/A

VISX INC
Form SC 13D/A
November 20, 2001

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No.8)*

VISX, Incorporated
(Name of Issuer)

Common Shares
(Title of Class of Securities)

92844S105
(CUSIP Number)

Marc Weitzen, Esq.
General Counsel,
Icahn Associates Corp. & affiliated companies
767 Fifth Avenue, 47th Floor
New York, New York 10153
(212) 702-4388

(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications)

November 20, 2000
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Section 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box / /.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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SCHEDULE 13D

CUSIP No. 928444S105

1 NAME OF REPORTING PERSON
High River Limited Partnership
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a) / /
(b) / /

3 SEC USE ONLY

4 SOURCE OF FUNDS*
WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or 2(e) //

6 CITIZENSHIP OR PLACE OF ORGANIZATION
Delaware

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:

7 SOLE VOTING POWER
3,245,505

8 SHARED VOTING POWER
0

9 SOLE DISPOSITIVE POWER
3,245,505

10 SHARED DISPOSITIVE POWER
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
3,245,505

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN
SHARES* //
//

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
5.91%

14 TYPE OF REPORTING PERSON*
PN

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SCHEDULE 13D

CUSIP No. 928444S105

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1 NAME OF REPORTING PERSON
Barberry Corp.

S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a) / /
(b) / /
3 SEC USE ONLY
4 SOURCE OF FUNDS*
WC
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or 2(e) //
6 CITIZENSHIP OR PLACE OF ORGANIZATION
Delaware

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:

7 SOLE VOTING POWER
2,774,500
8 SHARED VOTING POWER
3,245,505
9 SOLE DISPOSITIVE POWER
2,774,500
10 SHARED DISPOSITIVE POWER
3,245,505
11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
6,020,005
12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN
SHARES* //
13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
10.96%
14 TYPE OF REPORTING PERSON*
CO

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SCHEDULE 13D

CUSIP No. 928448105

1 NAME OF REPORTING PERSON
Carl C. Icahn

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S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

- 2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a) / /
(b) / /
- 3 SEC USE ONLY
- 4 SOURCE OF FUNDS*
WC
- 5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or 2(e) //
- 6 CITIZENSHIP OR PLACE OF ORGANIZATION
United States of America

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:

- 7 SOLE VOTING POWER
0
- 8 SHARED VOTING POWER
6,020,005
- 9 SOLE DISPOSITIVE POWER
0
- 10 SHARED DISPOSITIVE POWER
6,020,005
- 11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
6,020,005
- 12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN
SHARES*
//
- 13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
10.96%
- 14 TYPE OF REPORTING PERSON*
IN

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SCHEDULE 13D

CUSIP No. 92844S105

- 1 NAME OF REPORTING PERSON
Gail Golden
- S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON
- 2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*

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(a) / /
(b) / /

3 SEC USE ONLY

4 SOURCE OF FUNDS*
PF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or 2(e) //

6 CITIZENSHIP OR PLACE OF ORGANIZATION
United States of America

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH:

7 SOLE VOTING POWER
1,990

8 SHARED VOTING POWER
0

9 SOLE DISPOSITIVE POWER
1,990

10 SHARED DISPOSITIVE POWER
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
1,990

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN
SHARES*
//

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
0.0000362%

14 TYPE OF REPORTING PERSON*
IN

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SCHEDULE 13D

Item 1. Security and Issuer

The Schedule 13D filed with the U.S. Securities and Exchange Commission on October 20, 2000, relating to the common shares, \$.01 par value (the "Shares"), of VISX, Incorporated, a Delaware corporation (the "Issuer" or "VISX") and amended on November 6, 2000, December 5, 2000, December 15, 2000, April 18, 2001, April 20, 2001, April 23, 2001 and May 1, 2001 by the Registrants, is amended to furnish additional information set forth herein. All capitalized terms not otherwise defined shall have the meaning ascribed to such terms in the previously filed statement on Schedule 13D.

Item 4. Purpose of Transaction

Item 4 is hereby amended to add the following:

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On November 20, 2001, Barberry notified Issuer, in accordance with Issuer's By-laws, of its intention to propose the nomination of persons for election as directors at the forthcoming 2002 annual meeting of Issuer's stockholders. A copy of the notification letter ("the Notification Letter") is attached hereto as Exhibit 1 and incorporated in its entirety herein by reference. The Notification Letter provides Issuer with certain information required by Issuer's By-laws concerning Barberry and certain of its affiliates and concerning the nominees.

In furtherance of the possible proxy contest, High River has entered into agreements with the intended nominees (each a "Nominee Agreement") named in the Notification Letter. The form of the Nominee Agreement is attached hereto as Exhibit 2 and incorporated in its entirety by reference.

Item 6. Contracts, Arrangements, Understandings or Relationship
 with Respect to Securities of the Issuer

Except as described herein, none of the Registrants has any contracts, arrangements, understandings or relationships (legal or otherwise) with any person with respect to any securities of the Issuer, including but not limited to the transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies.

Item 7. Material to be Filed as Exhibits

1. Notification Letter from Barberry to Issuer dated
November 20, 2001.
2. Form of Nominee Agreement.

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SIGNATURE

After reasonable inquiry and to the best of the undersigned knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: November 19, 2001

BARBERRY CORP.

By: /s/ Carl C. Icahn
 Name: Carl C. Icahn
 Title: President

HIGH RIVER LIMITED PARTNERSHIP

By: BARBERRY CORP.,
 General Partner

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By: /s/ Carl C. Icahn
Name: Carl C. Icahn
Title: President

/s/ Gail Golden
GAIL GOLDEN

/s/ Carl C. Icahn
CARL C. ICAHN

[Signature Page of Amendment No. 8 of Schedule 13D with respect
to VISX, Incorporated]

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