

REPROS THERAPEUTICS INC.

Form PRE 14A

October 20, 2008

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SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934
(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to § 240.14a-11(c) or § 240.14a-12

REPROS THERAPEUTICS INC.
(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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**Repos Therapeutics Inc.
2408 Timberloch Place, Suite B-7
The Woodlands, Texas 77380**

November [__], 2008

TO OUR STOCKHOLDERS:

You are cordially invited to attend our special meeting of stockholders to be held on December 16, 2008, at 8:00 a.m., Central Standard Time, at the The Woodlands Waterway Marriott Hotel, 1601 Lake Robbins Drive, The Woodlands, Texas. A notice of the special meeting, proxy statement and form of proxy are enclosed with this letter.

We encourage you to read the notice of the special meeting and proxy statement so that you may be informed about the business to come before the meeting. Your participation in our business is important, regardless of the number of shares that you hold. To ensure your representation at the meeting, please promptly sign and return the accompanying proxy card in the postage-paid envelope. **We urge you to vote regardless of whether you expect to attend the special meeting so that we may ensure that a quorum is present.**

We look forward to seeing you on December 16, 2008.

Sincerely,

/s/ Joseph S. Podolski
Joseph S. Podolski
President and Chief Executive Officer

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**NOTICE OF SPECIAL MEETING OF
STOCKHOLDERS
TO BE HELD DECEMBER 16, 2008**

To our stockholders:

Notice is hereby given that a special meeting of stockholders of Repros Therapeutics Inc. will be held on December 16, 2008, at 8:00 a.m., Central Standard Time, at the The Woodlands Waterway Marriott Hotel, 1601 Lake Robbins Drive, The Woodlands, Texas, to consider and vote on a proposal to amend our Restated Certificate of Incorporation, as amended, to increase the number of shares of our common stock authorized for issuance from 20,000,000 shares to 30,000,000 shares.

Only stockholders of record at the close of business on October 27, 2008 will be entitled to notice of and to vote at the special meeting.

It is important that your shares be represented at the special meeting regardless of whether you plan to attend. THEREFORE, PLEASE MARK, SIGN AND DATE THE ENCLOSED PROXY AND RETURN IT IN THE ACCOMPANYING POSTAGE-PAID ENVELOPE AS PROMPTLY AS POSSIBLE. If you are present at the special meeting, and wish to do so, you may revoke the proxy and vote in person. In order to be able to have your vote counted at the special meeting, you need to have written documentation that you are a record holder or, if you own your shares through a brokerage or other type account, written documentation from the account holder that you are the beneficial owner of the shares you are voting.

By Order of the Board of Directors,

/s/ Louis Ploth, Jr.
Louis Ploth, Jr.
Secretary

The Woodlands, Texas
November [__], 2008

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**Repros Therapeutics Inc.
2408 Timberloch Place, Suite B-7
The Woodlands, Texas 77380**

**PROXY STATEMENT
FOR
SPECIAL MEETING OF STOCKHOLDERS
To Be Held December 16, 2008
SOLICITATION AND REVOCABILITY OF PROXIES**

Our board of directors is soliciting your proxy to be voted at a special meeting of stockholders to be held on December 16, 2008, at 8:00 a.m., Central Standard Time, at the The Woodlands Waterway Marriott Hotel, 1601 Lake Robbins Drive, The Woodlands, Texas, for the purposes set forth in the accompanying notice of special meeting of stockholders, and at any adjournment(s) of the special meeting. If the accompanying proxy is properly executed and returned, the shares it represents will be voted at the special meeting in accordance with the directions noted thereon or, if no direction is indicated, it will be voted in favor of the proposals described in this proxy statement. In addition, the proxy confers discretionary authority to the persons named in the proxy authorizing those persons to vote, in their discretion, on any other matters properly presented at the special meeting. Our board of directors is not currently aware of any such other matters.

Each of our stockholders has the unconditional right to revoke his or her proxy at any time prior to its exercise, either in person at the special meeting or by written notice to our Secretary at Repros Therapeutics Inc., 2408 Timberloch Place, Suite B-7, The Woodlands, Texas 77380. No revocation by written notice will be effective unless such notice has been received by our Secretary prior to the day of the special meeting or by the inspector of election at the special meeting. If you are present at the special meeting, in order to be able to have your vote counted at the special meeting and thus, to revoke your prior valid vote, you need to have written documentation that you are a record holder or, if you own your shares through a brokerage or other type account, written documentation from the holder of record that you are the beneficial owner of the shares you are voting.

Our principal executive offices are located at 2408 Timberloch Place, Suite B-7, The Woodlands, Texas 77380. This proxy statement and the accompanying notice of special meeting of stockholders and proxy are being mailed to our stockholders on or about November [___], 2008.

We have retained Morrow & Co., LLC, a proxy solicitor, to solicit proxies by mail, in person or by telephone, at a total cost of \$4,000. In addition to the solicitation of proxies by use of this proxy statement, our directors, officers and employees may solicit the return of proxies by mail, personal interview, telephone or the internet. Our officers and employees will not receive additional compensation for their solicitation efforts, but they will be reimbursed for any out-of-pocket expenses incurred. Brokerage houses and other custodians, nominees and fiduciaries will be requested, in connection with the stock registered in their names, to forward solicitation materials to the beneficial owners of such stock.

We will bear all costs of preparing, printing, assembling and mailing the notice of special meeting of stockholders, this proxy statement, the enclosed form of proxy and any additional materials, as well as the cost of forwarding solicitation materials to the beneficial owners of stock and all other costs of solicitation.

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PURPOSES OF THE MEETING

At the special meeting, our stockholders will be asked to consider and act on the following matters:

1. Amending our Restated Certificate of Incorporation, as amended, to increase the number of shares of our common stock authorized for issuance from 20,000,000 shares to 30,000,000 shares and, as a result, increase the total number of authorized shares from 25,000,000 to 35,000,000; and
2. Acting on such other business as may properly come before the special meeting or any adjournments thereof.

QUORUM AND VOTING

The close of business on October 27, 2008 has been fixed as the record date for the determination of stockholders entitled to vote at the special meeting and any adjournment(s) thereof. As of the record date, we had 15,174,904 shares of common stock issued and outstanding.

Each stockholder of record of common stock will be entitled to one vote per share on each matter that is called to vote at the special meeting. Shares of common stock may not be voted cumulatively.

The presence, either in person or by proxy, of holders of shares representing a majority of the common stock entitled to be cast at the special meeting is necessary to constitute a quorum at the special meeting. Abstentions and broker non-votes are counted for purposes of determining the presence or absence of a quorum for the transaction of business. Broker non-votes occur when a broker or other nominee does not have discretionary authority to vote the shares with respect to a particular matter and has not received voting instructions from the beneficial owner with respect to that matter.

The increase in our authorized shares will be decided by the vote of the holders of a majority of our shares outstanding. Shares represented at the meeting but that abstain with respect to these proposals will be considered in determining whether the requisite number of affirmative votes are cast on such matter. Accordingly, such abstentions will have the same effect as a vote against the proposal. Broker non-votes will not be treated as shares represented at the meeting and entitled to vote for purposes of these proposals, and therefore will have no effect.

All proxies that are properly completed, signed and returned prior to the special meeting will be voted. Any proxy given by a stockholder may be revoked at any time before it is exercised by the stockholder by (i) filing with our Secretary an instrument revoking it, (ii) executing and returning a proxy bearing a later date or (iii) attending the special meeting and expressing a desire to vote his or her shares of common stock in person. If you wish to vote in person at the meeting but hold your stock in street name (that is, in the name of a broker, bank or other institution), then you must have a proxy from the broker, bank or institution in order to vote at the meeting. Votes will be counted by Computershare Trust Company, N.A., our transfer agent and registrar.

Table of Contents**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table presents certain information regarding the beneficial ownership of our common stock as of October 27, 2008 by:

each person who is known by us to own beneficially more than 5% of the outstanding shares of common stock;

each director and nominee for director;

each executive officer named in the Summary Compensation Table under the heading Executive Compensation included in the proxy statement for our 2008 annual meeting held in May 2008; and

all directors and executive officers as a group.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership of Common Stock ⁽¹⁾	Percentage of Class ⁽²⁾
Efficacy Biotech Master Fund Ltd. 11622 El Camino Real, Suite 100 San Diego, California 92130	4,184,410 ⁽³⁾	27.6%
Vermillion Asset Management LLC. 267 Fifth Avenue, 7 th Floor New York, New York 10016	1,911,800 ⁽⁴⁾	12.6%
Visium Asset Management, LP. 950 Third Avenue New York, New York 10022	1,190,187 ⁽⁵⁾	7.8%
Daniel F. Cain	62,000 ⁽⁶⁾	*
Jean L. Fourcroy, M.D., Ph.D., M.P.H.	60,600 ⁽⁶⁾	*
Jeffrey R. Harder	61,424 ⁽⁷⁾	*
Mark Lappe	4,184,410 ⁽⁸⁾	27.6%
Nola E. Masterson	56,000 ⁽⁹⁾	*
Louis Ploth	293,882 ⁽¹⁰⁾	1.9%
Joseph S. Podolski	515,601 ⁽¹¹⁾	3.3%
David Poorvin, Ph.D.	55,000 ⁽⁹⁾	*
John C. Reed, M.D., Ph.D.	3,846	*
Andre van As, Ph.D.	48,743 ⁽¹²⁾	*
Ronald Wiehle, Ph.D.	201,508 ⁽¹³⁾	1.3%
All directors and executive officers as a group (11 persons)	5,543,014 ⁽⁶⁾⁻⁽¹³⁾	34.0%

* Does not exceed 1%.

(1) Unless otherwise noted, we

believe that all persons named in the table have sole voting and investment power with respect to all shares of common stock beneficially owned by such persons.

- (2) In accordance with SEC rules, each beneficial owner's percentage ownership assumes the exercise of all options held by such person that are exercisable within 60 days after October 27, 2008.

- (3) Based on information contained in a Schedule 13D/A dated October 6, 2008 and subsequent Section 16 filings, Efficacy Biotech Master Fund Ltd. shares voting and dispositive power with respect to all of the shares listed above with
(i) Efficacy Capital Ltd.
(Efficacy) which acts as investment adviser with

investment
discretion on
behalf of
Efficacy Biotech
Master Fund and
(ii) Mark Lappe
and Jon Faiz
Kayyem, who
are managing
partners of
Efficacy Capital.
In addition,
Efficacy Biotech
Fund, L.P. and
Efficacy Biotech
Fund Limited
each have an
indirect interest
in all of the
shares as a result
of their
ownership
interests in
Efficacy Biotech
Master Fund.

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We are parties to a standstill agreement with Efficacy, whereby Efficacy, among other things, agrees that it will not (i) acquire shares of our common stock that would result in its aggregate beneficial ownership exceeding 40% of our outstanding shares of common stock or (ii) vote shares of our common stock in any manner other than in accordance with the recommendations of a majority of our board of directors who are not also officers or employees and not the directors designated by Efficacy, or, if no such recommendation is made, in the same proportion as the votes cast by other holders of our common stock. The standstill agreement terminates upon the earlier to occur of (i) the date on which Efficacy beneficially owns

less than 15% of the then outstanding shares of our common stock, (ii) a change of control of our company, (iii) the execution of a definitive agreement by us that, if consummated, would result in a change of control, or (iv) our written consent releasing Efficacy from the standstill agreement (the Standstill Period).

During the Standstill Period, we agree to appoint two designees of Efficacy to serve on our board of directors. Our board of directors appointed Mark Lappe and John C. Reed, M.D., Ph.D. to serve as such designees effective September 29, 2008. We have amended our Rights Agreement to reflect the terms of the standstill agreement.

- (4) Based solely on information contained in a Schedule 13G/A filed October 9, 2008, Vermillion Asset

Management LLC, a registered investment advisor, has sole voting and dispositive power with respect to all of the shares listed above as a result of being the investment advisor to Cyan Opportunities Fund, Ltd. and managing certain accounts holding shares.

- (5) Based solely on information contained in a Schedule 13F for the quarter ended June 30, 2008, Visium Asset Management, LP has sole voting and dispositive power with respect to all of the shares listed above. JG Asset, LLC, which is the general partner to Visium Asset Management, LP, and Jacob Gottlieb, who is the managing member of JG Asset, may be deemed to beneficially own all of the shares as a result of their ownership interests, whether direct or indirect, in Visium Asset Management.

- (6) Includes 60,000 shares issuable upon exercise of options.
- (7) Includes
 - (i) 50,000 shares issuable upon exercise of options and
 - (ii) 1,925 shares of common stock held which are held by Mr. Harder jointly with his wife, 8,499 shares of common stock which are held by Mr. Harder in his individual retirement account and 1,000 shares of common stock which are held by Mr. Harder in his professional corporation.
- (8) Includes all of the shares listed above under the entry for Efficacy Capital, Ltd. and described in footnote (3) above, for which Mr. Lappe acts as a managing partner.
- (9) Includes 55,000 shares issuable upon exercise of options.
- (10) Includes 252,865 shares of common stock issuable upon the exercise

of options.

- (11) Includes (i) 300 shares of common stock which are held by certain of Mr. Podolski's family members and (ii) 400,320 shares of common stock issuable upon the exercise of options. Mr. Podolski disclaims beneficial ownership of the shares owned by his family members.
- (12) Includes (i) 410 shares of common stock which are held by Dr. van As's wife and (ii) 38,333 shares of common stock issuable upon the exercise of options.
- (13) Includes 179,492 shares of common stock issuable upon the exercise of options.

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**PROPOSAL NUMBER 1:
APPROVAL OF AN AMENDMENT TO OUR RESTATED CERTIFICATE OF
INCORPORATION TO INCREASE THE NUMBER OF AUTHORIZED SHARES**

Summary

We are asking our stockholders to approve the amendment of our Restated Certificate of Incorporation, as amended, to increase the number of shares of our common stock authorized for issuance from 20,000,000 shares to 30,000,000 shares, and, as a result, increase the total number of authorized shares from 25,000,000 to 35,000,000. The number of authorized shares of preferred stock will remain at 5,000,000. The Board unanimously approved the Certificate of Amendment to the Restated Certificate of Incorporation, as amended, in substantially the form attached hereto as Exhibit A (the Amendment), declared it to be advisable and hereby seeks approval of the Amendment by the Company's stockholders.

Purpose of the Amendment

The purpose of the Amendment is to increase the total number of authorized shares of our common stock from 20,000,000 shares to 30,000,000 shares. The additional authorized shares are necessary to ensure that there are sufficient authorized shares remaining for the Company's business and financial purposes.

On October 2, 2008, we completed the sale of an aggregate of 2,400,000 shares of our common stock for \$6.50 per share for an aggregate purchase price of \$15.6 million (the Equity Offering). Under the purchase agreements with certain of the investors in the Equity Offering, we granted a right to purchase up to an aggregate of \$10,000,000 of additional shares of our common stock (the Purchase Option) at a price per share equal to the greater of (i) the fair market value of a share of our common stock measured at the date of exercise or (ii) \$7.80 per share. Such right may be exercised by such investors from the time the Company has less than \$10,000,000 in cash and cash equivalents until September 29, 2009. As a result, we may issue up to 1,282,052 shares under the Purchase Option we granted. After the completion of the Equity Offering and taking into account shares of our common stock reserved for issuance under our employee incentive plans and the Purchase Options, we will have approximately 1.5 million authorized shares remaining.

We will be required to raise additional capital to continue to develop our product candidates. We believe it is essential to have enough authorized shares available to provide us with flexibility to conduct future equity offerings when the Board determines that such equity offering is necessary or appropriate. In addition to capital raising activities, we may also need additional shares for other activities, including but not limited to, stock splits, acquiring other companies, businesses or products in exchange for shares of our common stock and other transactions and corporate purposes that our Board deems are in our best interests.

The additional authorized shares would enable the Company to act quickly in response to opportunities that may arise for these types of transactions, in most cases without the necessity of obtaining further stockholder approval and holding a special stockholders meeting before such issuance(s) could proceed, except as provided under Delaware law or under Nasdaq Marketplace Rules. If these shares are not available at the optimum time determined by the Board, any potential offerings could be unduly delayed and could jeopardize the Board's ability to successfully complete such future offering, which could have a negative impact on the value of our shares.

Other than issuances pursuant to our employee incentive plans and the Purchase Option, we have no immediate plans, arrangements or understandings regarding the additional shares that would be authorized pursuant to this proposal. However, we review and evaluate potential capital raising activities, transactions and other corporate actions on an on-going basis to determine if such actions would be in our best interests and our stockholders' best interests.

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Possible Effects of the Amendment

Upon issuance, the additional shares of authorized common stock would have rights identical to the currently outstanding shares of common stock. Adoption of the Amendment would not have any immediate dilutive effect on the proportionate voting power or other rights of existing stockholders. However, to the extent that the additional authorized shares of common stock are issued in the future, they may decrease existing stockholders' percentage equity ownership and, depending on the price at which they are issued, could be dilutive to the voting rights of existing stockholders and have a negative effect on the market price of our common stock.

We have not proposed the increase in the number of authorized shares of common stock with the intention of using the additional authorized shares for anti-takeover purposes, but we would be able to use the additional shares to oppose a hostile takeover attempt or delay or prevent changes in our control or management. For example, without further stockholder approval, we could sell shares of common stock in a private transaction to purchasers who would oppose a takeover or favor the current Board. Although this proposal to increase the authorized number of shares of common stock has been prompted by business and financial considerations and not by the threat of any known or threatened hostile takeover attempt, stockholders should be aware that approval of this proposal could facilitate future efforts by us to oppose changes in control of and perpetuate management, including transactions in which the stockholders might otherwise receive a premium for their shares over then current market prices.

As previously discussed, we could also use the additional shares of common stock for potential strategic transactions including, among other things, acquisitions, spin-offs, strategic partnerships, joint ventures, restructurings, divestitures, business combinations and investments, although we have no present plans to do so. We cannot provide assurances that any such transactions will be consummated on favorable terms or at all, that they will enhance stockholder value or that they will not adversely affect our business or the trading price of our common stock. Any such transactions may require us to incur non-recurring or other charges and may pose significant integration challenges and/or management and business disruptions, any of which could materially and adversely affect our business and financial results.

If this amendment to increase the authorized number of shares of common stock is approved by the stockholders, it will become effective when we file the Certificate of Amendment to the Restated Certificate of Incorporation with the Secretary of State of the State of Delaware.

Recommendation of the Board of Directors

The board of directors recommends that stockholders vote FOR the proposal to amend our Restated Certificate of Incorporation, as amended, and proxies executed and returned will be so voted unless contrary instructions are indicated thereon.

PROPOSALS OF STOCKHOLDERS

Proposals of stockholders to be presented at our next annual meeting of stockholders to be held in 2009 must be received at the office of our Secretary no later than December 12, 2008 in order to be included in our proxy statement and form of proxy relating to that meeting.

Pursuant to our bylaws, a stockholder that intends to present business at our next annual meeting of stockholders to be held in 2009 and has not submitted such proposal by the date set forth above must notify our Secretary by March 25, 2009. If such notice is received after March 25, 2009, then the notice will be considered untimely, and we will not be required to present such business at the 2009 special meeting.

All proposals must comply with applicable SEC regulations and our bylaws as amended to date.

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By Order of the Board of Directors

/s/ Louis Ploth, Jr.

Louis Ploth, Jr.

Secretary

November [___], 2008

The Woodlands, Texas

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EXHIBIT A

**CERTIFICATE OF AMENDMENT TO
RESTATED CERTIFICATE OF INCORPORATION
OF REPROS THERAPEUTICS INC.**

The following is the text of the Certificate of Amendment as approved by the Board of Directors of Repros Therapeutics Inc.:

Article IV.A of the Restated Certificate of Incorporation is hereby amended to increase the number of shares of common stock authorized so that it shall henceforth read in its entirety as follows:

A. Classes of Stock

The total number of shares of all classes of capital stock that the Corporation shall be authorized to issue is 35,000,000 shares, divided into the following: (i) 5,000,000 shares of preferred stock, par value \$.001 per share (Preferred Stock), and (ii) 30,000,000 shares of common stock, par value \$.001 per share (Common Stock).

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