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CRAY INC
Form S-8
September 26, 2001

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Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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

CRAY INC.
(Exact Name of Registrant as Specified in its Charter)

Washington
(State or Other Jurisdiction of
Incorporation or Organization)

93-0962605
(I.R.S. Employer
Identification No.)

411 First Avenue South, Suite 600
Seattle, Washington 98104-2860
(Address of Principal Executive Offices)

2001 EMPLOYEE STOCK PURCHASE PLAN
(Full Title of Plan)

Kenneth W. Johnson
Vice President-Finance and Chief Financial Officer
CRAY INC.
411 First Avenue South, Suite 600
Seattle, WA 98104-2860
(206) 701-2000 (telephone)
(206) 701-2500 (facsimile)
(Name, address, including zip code, and telephone
and facsimile numbers, including area code, of agent for service)

With copy to:

L John Stevenson, Esq.
Stoel Rives LLP
One Union Square, 36th Floor
600 University Street
Seattle, Washington 98101-3197
(206) 624-0900 (telephone)
(206) 386-7500 (facsimile)

Calculation of Registration Fee

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Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share(1)	Propose Maximum Offerin
Common Stock, par value \$.01 per share	4,000,000 shares	\$1.83	\$7,3

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and based on the last sale price of the Common Stock of Cray Inc. as reported on September 24, 2001, on the NASDAQ National Market System.

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PART I.

INTRODUCTION

This Registration Statement on Form S-8 is filed by Cray Inc. (the "Company") relating to 4,000,000 shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), issuable upon exercise of stock purchase rights granted or to be granted pursuant to the Company's 2001 Employee Stock Purchase Plan (the "Plan").

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information. *

Item 2. Registrant Information and Employee Plan Annual Information. *

* Information required by Part I of Form S-8 to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Act and the Note to Part I of Form S-8.

PART II.

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The SEC allows us to "incorporate by reference" our publicly filed reports into this registration statement which means that information included in those reports is considered part of this registration statement. Information that we file with the SEC after the date of this registration statement will automatically update and supersede the information contained in this registration statement. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until we have sold all the shares.

The following documents filed with the SEC are incorporated by reference:

1. Our annual report on Form 10-K for the year ended December 31, 2000 and amended on September 17, 2001;

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2. Our quarterly reports on Form 10-Q for the quarters ended March 31, 2001 and June 30, 2001;
3. Our definitive proxy statement, as filed with the Securities and Exchange Commission on April 9, 2001;

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4. Our current report on Form 8-K for the event of May 10, 2001, as filed on May 14, 2001;
5. Our current report on Form 8-K for the event of April 3, 2001, as filed on April 13, 2001;
6. Our current report on Form 8-K for the event of February 7, 2001, as filed on February 15, 2001;
7. Our current report on Form 8-K for the event of December 15, 2000, as filed on January 4, 2001 and amended on July 27, 2001; and
8. The description of our common stock as described in our registration statement on Form SB-2 (registration no. 33-95460-LA), including any amendment or report filed for the purpose of updating the description, as incorporated by reference in our registration statement on Form 8-A (registration no. 0-26820), including the amendment on Form 8-A/A.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, other than exhibits to such documents. You should direct any requests for documents to Investor Relations, Cray Inc., 411 First Avenue South, Suite 600, Seattle, Washington 98104, Telephone (206) 701-2000.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

For purposes of this offering, Kenneth W. Johnson, Cray's general counsel, is giving an opinion on the validity of the common shares. As of the date of this prospectus, Mr. Johnson held 40,538 shares of Cray's common stock and options exercisable for 270,000 shares of Cray's common stock.

Item 6. Indemnification of Director and Officers.

Article XII of the Company's Articles of Incorporation and Section 11 of the Company's Restated Bylaws require indemnification of directors, officers, employees, and agents of the Company to the fullest extent permitted by the Washington Business Corporation Act (the "WBCA"). Sections 23B.08.500 through 23B.08.600 of the WBCA authorize a court to award, or a corporation's board of directors to grant,

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indemnification to directors and officers on terms sufficiently broad to permit indemnification under certain circumstances for liabilities arising under the Act.

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Section 23B.08.320 of the WBCA authorizes a corporation to limit a director's liability to the corporation or its shareholders for monetary damages for acts or omissions as a director, except in certain circumstances involving intentional misconduct, self-dealing or illegal corporate loans or distributions, or any transaction from which the director personally receives a benefit in money, property or services to which the director is not legally entitled. Article XI of the Company's Restated Articles of Incorporation contains provisions implementing, to the fullest extent permitted by Washington law, such limitations on a director's liability to the Company and its shareholders.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4 Cray Inc. 2001 Employee Stock Purchase Plan
- 5 Opinion on Legality
- 23.1 Consent of Deloitte & Touche LLP
- 23.2 Consent of General Counsel (included in Exhibit 5)
- 24 Power of Attorney (included on signature page hereof)

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Item 9. Undertakings.

1. The undersigned registrant hereby undertakes:

(a) 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, as amended;

(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 thereof) that, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

(iii) To include any additional material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to information contained herein;

provided, however, that paragraphs (1)(a)(i) and (1)(a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is incorporated by reference from periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended.

(b) That, for the purpose of determining any liability under the Securities Act of 1933, as amended, each 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.

(c) To remove from registration by means of a post-effective

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amendment any of the securities being registered that remain unsold at the termination of the offering.

2. 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 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 that time shall be deemed to be the initial bona fide offering thereof.

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

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 Seattle, State of Washington, on September 26, 2001.

CRAY INC.

By: /s/ James E. Rottsolk

James E. Rottsolk
President and Chief Executive Officer

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Each of the undersigned hereby constitutes and appoints James E. Rottsolk Burton J. Smith and Kenneth W. Johnson, and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any or all amendments or post-effective amendments to this Registration Statement, and any other instruments or documents that said attorneys-in-fact and agents may deem necessary or advisable, to enable Cray Inc. to comply with the Securities Act of 1933, as amended, and any requirements of the Securities and Exchange Commission in respect thereof, and to file the same, with all exhibits thereto, with the

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Securities and Exchange Commission, in connection with the registration under the Securities Act, of shares of Common Stock of Cray Inc., issuable pursuant to the 2001 Employee Stock Purchase Plan, 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 intents and purposes as he might or could do in person, hereby ratifying and confirming all that each such attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, the Registration Statement has been signed by the following persons in the capacities indicated below on the 26th day of September, 2001:

Signature and Title

/s/ James E. Rottsolk

James E. Rottsolk, Chairman of the Board and Chief Executive Officer

/s/ David N. Cutler

David N. Cutler, Director

/s/ Burton J. Smith

Burton J. Smith
Chief Scientist and Director

/s/ Daniel J. Evans

Daniel J. Evans, Director

/s/ Terren S. Peizer

Terren S. Peizer, Director
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/s/ Kenneth W. Kennedy

Kenneth W. Kennedy, Director

/s/ Kenneth W. Johnson

Kenneth W. Johnson
Chief Financial Officer

/s/ William A. Owens

William A. Owens, Director

/s/ Stephen C. Kiely

Stephen C. Kiely, Director

/s/ Dean D. Thornton

Dean D. Thornton, Director

/s/ Douglas C. Ralphs

Douglas C. Ralphs
Chief Accounting Officer