

BIODELIVERY SCIENCES INTERNATIONAL INC

Form DEF 14A

June 12, 2013

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## SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to

Section 14(a) of the Securities Exchange Act of 1934

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-12

**BioDelivery Sciences International, Inc.**

(Name of Registrant as Specified In Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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June 11, 2013

To the Stockholders of BioDelivery Sciences International, Inc.:

BioDelivery Sciences International, Inc. (the **Company**) is pleased to send you the enclosed notice of the 2013 Annual Meeting of Stockholders of the Company (the **Meeting**) to be held at 11:00 a.m. on Thursday, July 18, 2013 at the Renaissance Raleigh Hotel at North Hills, 4100 Main at North Hills Street, Raleigh, NC 27609.

The items of business for the Meeting are listed in the following Notice of Annual Meeting and are more fully addressed in the attached Proxy Statement. The Proxy Statement is first being mailed to stockholders of the Company on or about June 19, 2013.

**Your vote is important please date, sign and return your proxy card in the enclosed envelope or vote online as soon as possible to ensure that your shares will be represented and voted at the Meeting even if you cannot attend.** If you attend the Meeting, you may vote your shares in person even though you have previously signed and returned your proxy.

If you have any questions regarding this material, please do not hesitate to call me at (919) 582-9050.

Sincerely yours,

Mark. A. Sirgo, Pharm.D.

President and Chief Executive Officer

BioDelivery Sciences International, Inc.

**WHETHER OR NOT YOU EXPECT TO ATTEND THE MEETING, PLEASE COMPLETE THE ENCLOSED PROXY CARD AND PROMPTLY MAIL IT IN THE ENCLOSED ENVELOPE OR VOTE ONLINE IN ORDER TO ASSURE REPRESENTATION OF YOUR SHARES AT THE MEETING.**

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**BIODELIVERY SCIENCES INTERNATIONAL, INC.**

**801 Corporate Center Drive, Suite #210**

**Raleigh, North Carolina 27607**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**To be held on Thursday, July 18, 2013**

The 2013 Annual Meeting of Stockholders (the **Meeting**) of BioDelivery Sciences International, Inc. (the **Company**) will be held at 11:00 a.m. on Thursday, July 18, 2013, at the Renaissance Raleigh Hotel at North Hills, 4100 Main at North Hills Street, Raleigh, NC 27609, for the following purposes:

1. To elect Mark A. Sirgo, John J. Shea and Thomas W. D Alonzo as Class II directors to serve for a three-year term that expires at the 2016 Annual Meeting of Stockholders, or until their successors are elected and qualified or until their earlier resignation or removal;
2. To ratify the appointment by the Audit Committee of the Company's Board of Directors of Cherry Bekaert LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2013;
3. To conduct a non-binding advisory vote on our 2012 executive compensation;
4. To conduct a non-binding advisory vote recommending the frequency of advisory votes on executive compensation;
5. To approve an amendment to our 2011 Equity Incentive Plan to, among other matters described in this Notice and Proxy Statement, increase the number of shares of common stock authorized for issuance under the plan by 2,600,000 shares from 4,200,000 to 6,800,000; and
6. To transact such other business as may properly come before the Meeting or any adjournment thereof.

Stockholders are cordially invited to attend the Meeting in person. **However, to assure your representation at the Meeting, please complete and sign the enclosed proxy card and return it promptly.** Even if you have previously submitted a proxy card, you may choose to vote in person at the Meeting. Whether or not you expect to attend the Meeting, please read the attached Proxy Statement and then promptly complete, date, sign and return the enclosed proxy card in order to ensure your representation at the Meeting. If you hold your shares through a brokerage firm, you may cast your vote by visiting [www.proxyvote.com](http://www.proxyvote.com). If you are a registered stockholder, you may cast your vote by visiting [www.voteproxy.com](http://www.voteproxy.com). You may also have access to the materials for the Meeting by visiting the website <http://www.bdsiproxy.com>.

**The Board of Directors unanimously recommends a vote for the approval of each of the proposals to be submitted at the Meeting.**

BY ORDER OF THE BOARD OF DIRECTORS,

James A. McNulty, CPA

Secretary, Treasurer and Chief Financial Officer

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Raleigh, North Carolina

June 11, 2013

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**BIODELIVERY SCIENCES INTERNATIONAL, INC.**

**801 Corporate Center Drive, Suite #210**

**Raleigh, North Carolina 27607**

**919-582-9050**

**PROXY STATEMENT**

**ANNUAL MEETING OF STOCKHOLDERS**

**to be held on Thursday, July 18, 2013, 11:00 a.m.**

**Renaissance Raleigh Hotel at North Hills**

**4100 Main at North Hills Street, Raleigh, NC 27609**

**QUESTIONS AND ANSWERS ABOUT THESE PROXY MATERIALS**

**Why am I receiving this Proxy Statement?**

This Proxy Statement describes the proposals on which our Board of Directors would like you, as a stockholder, to vote at our 2013 Annual Meeting of the Stockholders, which will take place on Thursday, July 18, 2013 at 11:00 a.m. local time at the Renaissance Raleigh Hotel at North Hills, 4100 Main at North Hills Street, Raleigh, NC 27609.

This Proxy Statement also gives you information on these proposals so that you can make an informed decision. We intend to mail this Proxy Statement and accompanying proxy card on or about June 19, 2013, to all stockholders of record entitled to vote at the Meeting.

In this proxy statement, we refer to BioDelivery Sciences International, Inc. as the Company, we, us or our or similar terminology.

**Who can vote at the annual meeting of stockholders?**

Stockholders who owned shares of our common stock, par value \$.001 per share ( **Common Stock** ), on June 11, 2013 (the **Record Date** ) may attend and vote at the Meeting. Each share is entitled to one vote. There were 38,000,027 shares of Common Stock outstanding on the Record Date. All shares of Common Stock shall have one vote per share and vote together as a single class. Information about the stockholdings of our directors and executive officers is contained in the section of this Proxy Statement entitled **Beneficial Ownership of Principal Stockholders, Officers and Directors** on page 52 of this Proxy Statement.

**What is the proxy card?**

The proxy card enables you to appoint Mark A. Sirgo, our President and Chief Executive Officer, and/or James A. McNulty, our Secretary, Treasurer and Chief Financial Officer, as your representative at the Meeting. By completing and returning the proxy card or voting online as described herein, you are authorizing these persons to vote your shares at the Meeting in accordance with your instructions on the proxy card. This way, your shares will be voted whether or not you attend the Meeting. Even if you plan to attend the Meeting, we think that it is a good idea



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to complete and return your proxy card before the Meeting date just in case your plans change. If a proposal comes up for vote at the Meeting that is not on the proxy card, the proxies will vote your shares, under your proxy, according to their best judgment.

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### **What am I voting on?**

You are being asked to vote on:

1. The election of our Class II directors, Mark A. Sirgo, John J. Shea and Thomas W. D Alonzo, to terms of three (3) years;
2. The ratification of Cherry Bekaert LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013;
3. Our 2012 executive compensation as part of a non-binding advisory vote;
4. The frequency of advisory votes on executive compensation as part of a non-binding advisory vote; and
5. An amendment to our 2011 Equity Incentive Plan (the **2011 Plan** ) to: (i) increase the number of shares of Common Stock authorized for issuance under the 2011 Plan by 2,600,000 shares from 4,200,000 to 6,800,000; (ii) change the fungible ratio on restricted stock units and certain other awards from 1.5:1 to 1.15:1; and (iii) amend the definition of **Change in Control** in the 2011 Plan to provide that vesting of awards under the 2011 Plan shall only accelerate upon the consummation of certain corporate events (as opposed to upon board and stockholder approval thereof, as currently provided for).

We will also transact any other business that properly comes before the Meeting.

### **How does the Board of Directors recommend that I vote?**

Our Board of Directors unanimously recommends that the stockholders vote **FOR** all proposals being put before our stockholders at the Meeting. The Board of Directors further recommends that advisory votes on executive compensation paid should occur every three years.

### **What is the difference between holding shares as a stockholder of record and as a beneficial owner?**

Most of our stockholders hold their shares in an account at a brokerage firm, bank or other nominee holder, rather than holding share certificates in their own name. As summarized below, there are some distinctions between shares held of record and those owned beneficially.

#### *Stockholder of Record*

If, on the Record Date, your shares were registered directly in your name with our transfer agent, American Stock Transfer & Trust Company, you are a **stockholder of record** who may vote at the Meeting, and we are sending these proxy materials directly to you. As the stockholder of record, you have the right to direct the voting of your shares by returning the enclosed proxy card to us or to vote in person at the Meeting. Whether or not you plan to attend the Meeting, please complete, date and sign the enclosed proxy card to ensure that your vote is counted.

#### *Beneficial Owner*

If, on the Record Date, your shares were held in an account at a brokerage firm or at a bank or other nominee holder, you are considered the beneficial owner of shares held **in street name**, and these proxy materials are being forwarded to you by your broker or nominee who is considered the stockholder of record for purposes of voting at the Meeting. As the beneficial owner, you have the right to direct your broker on how to vote your shares and to attend the Meeting. However, since you are not the stockholder of record, you may not vote these shares in person at the Meeting unless you receive a valid proxy from your brokerage firm, bank or other nominee holder. To obtain a valid proxy, you must make a special request of your brokerage firm, bank or other nominee holder. If you do not make this request, you can still vote by using the voting instruction card enclosed with this proxy statement; however, you will not be able to vote in person at the Meeting.

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### **How do I vote?**

**(1) You may vote by mail.** You may vote by mail by completing, signing and dating your proxy card and returning it in the enclosed, postage-paid and addressed envelope. If we receive your proxy card prior to the Meeting and if you mark your voting instructions on the proxy card, your shares will be voted:

as you instruct, and

according to the best judgment of the proxies if a proposal comes up for a vote at the Meeting that is not on the proxy card. If you return a signed card, but do not provide voting instructions, your shares will be voted:

for Dr. Sirgo, Mr. Shea and Mr. D Alonzo as nominees for the three (3) Class II directors of our Board of Directors;

to ratify the appointment of Cherry Bekaert LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013;

to approve the 2012 compensation to our executive officers;

to approve the frequency of future advisory votes on executive compensation be held every three years;

to approve an amendment to our 2011 Plan to: (i) increase the number of shares of Common Stock authorized for issuance under the 2011 Plan by 2,600,000 shares from 4,200,000 to 6,800,000; (ii) change the fungible ratio on restricted stock units and certain other awards from 1.5:1 to 1.15:1; and (iii) amend the definition of "Change in Control" in the 2011 Plan to provide that vesting of awards under the 2011 Plan shall only accelerate upon the consummation of certain corporate events (as opposed to upon board and stockholder approval thereof, as currently provided for); and

according to the best judgment of either Dr. Sirgo or Mr. McNulty, if a proposal comes up for a vote at the Meeting that is not on the proxy card.

**(2) You may vote in person at the Meeting.** We will pass out written ballots to anyone who wants to vote at the Meeting. However, if you hold your shares in street name, you must bring to the Meeting a valid proxy from the broker, bank or other nominee holding your shares that confirms your beneficial ownership of the shares and gives you the right to vote your shares. Holding shares in street name means you hold them through a brokerage firm, bank or other nominee, and therefore the shares are not held in your individual name. We encourage you to examine your proxy card closely to make sure you are voting all of your shares in the Company.

**(3) You may vote online.** You may also have access to the materials for the Meeting by visiting the website <http://www.bdsiproxy.com>. You may also cast your vote by visiting [www.proxyvote.com](http://www.proxyvote.com) if you hold your shares in street name, [or www.voteproxy.com](http://www.voteproxy.com) if you are a registered stockholder.

### **What does it mean if I receive more than one proxy card?**

You may have multiple accounts at the transfer agent and/or with brokerage firms. Please sign and return all proxy cards to ensure that all of your shares are voted.

**What if I change my mind after I return my proxy?**

You may revoke your proxy and change your vote at any time before the polls close at the Meeting. You may do this by:

sending a written notice to the Secretary of the Company stating that you would like to revoke your proxy of a particular date;

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signing another proxy card with a later date and returning it before the polls close at the Meeting; or

attending the Meeting and voting in person.

Please note, however, that if your shares are held of record by a brokerage firm, bank or other nominee, you must instruct your broker, bank or other nominee that you wish to change your vote by following the procedures on the voting form provided to you by the broker, bank or other nominee. If your shares are held in street name, and you wish to attend and vote at the Meeting, you must bring to the Meeting a legal proxy from the broker, bank or other nominee holding your shares, confirming your beneficial ownership of the shares and giving you the right to vote your shares.

### **Will my shares be voted if I do not sign and return my proxy card?**

If your shares are held in street name or in your name and you do not sign and return your proxy card, your shares will not be voted unless you vote in person at the Meeting.

### **How are votes counted?**

You may vote for, against, or abstain on each of the proposals being placed before our stockholders. Abstentions and broker non-votes (*i.e.*, shares held by brokers on behalf of their customers, which may not be voted on certain matters because the brokers have not received specific voting instructions from their customers with respect to such matters) will be counted solely for the purpose of determining whether a quorum is present at the Meeting.

### **How many votes are required to elect Dr. Sirgo, Mr. Shea and Mr. D Alonzo as Class II directors?**

The affirmative vote of a majority of the votes cast at the Meeting by the holders of shares of Common Stock entitled to vote is required to elect Dr. Sirgo, Mr. Shea and Mr. D Alonzo as Class II directors. Abstentions and broker non-votes will have no direct effect on the outcome of this proposal.

### **How many votes are required to ratify the Company's independent public accountants?**

The affirmative vote of a majority of the votes cast at the Meeting by the holders of shares of Common Stock entitled to vote is required to ratify Cherry Bekaert LLP as our independent registered public accounting firm for the year ending December 31, 2013. Abstentions and broker non-votes will have no direct effect on the outcome of this proposal.

### **How many votes are required for the non-binding advisory vote on our 2012 executive compensation?**

The proposal to approve, on an advisory basis, the compensation awarded to our named executive officers for the fiscal year ending December 31, 2012 requires the affirmative vote of a majority of the votes cast at the Meeting by the holders of shares of Common Stock entitled to vote. Abstentions and broker non-votes will have no direct effect on the outcome of this proposal.

### **How many votes are required for non-binding advisory vote recommending the frequency of advisory votes on executive compensation?**

For purposes of determining the votes cast with respect to the vote to approve a non-binding advisory vote recommending the frequency of advisory votes on executive compensation, only those votes cast in favor of having the vote occur every one, two or three years are included. Abstentions and broker non-votes will have no direct effect on the outcome of this proposal.

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### **How many votes are required for the proposed amendment to our 2011 Plan?**

The proposal to approve an amendment to our 2011 Plan to: (i) increase the number of shares of Common Stock authorized for issuance under the 2011 Plan by 2,600,000 shares from 4,200,000 to 6,800,000; (ii) change the fungible ratio on restricted stock units and certain other awards from 1.5:1 to 1.15:1; and (iii) amend the definition of "Change in Control" in the 2011 Plan to provide that vesting of awards under the 2011 Plan shall only accelerate upon the consummation of certain corporate events (as opposed to upon board and stockholder approval thereof, as currently provided for) requires the affirmative vote of a majority of the votes cast at the Meeting by the holders of shares of Common Stock entitled to vote.

### **How many votes are required to approve other matters that may come before the stockholders at the Meeting?**

An affirmative vote of a majority of the votes cast at the Meeting is required for approval of all other items being submitted to the stockholders for their consideration.

### **What happens if I don't indicate how to vote my proxy?**

If you just sign your proxy card without providing further instructions, your shares will be counted as a "for" vote for all of the proposals being placed before our stockholders at the Meeting.

### **Is my vote kept confidential?**

Proxies, ballots and voting tabulations identifying stockholders are kept confidential and will not be disclosed except as may be necessary to meet legal requirements.

### **Where do I find the voting results of the Meeting?**

We will announce voting results at the Meeting and file a Current Report on Form 8-K announcing the voting results of the Meeting.

### **Who can help answer my questions?**

You can contact our Secretary, Treasurer and Chief Financial Officer, Mr. James A. McNulty, at (813) 864-2562 or by sending a letter to Mr. McNulty at offices of the Company at 324 South Hyde Park Avenue, Suite 350, Tampa, Florida 33606, with any questions about proposals described in this Proxy Statement or how to execute your vote.

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**BIODELIVERY SCIENCES INTERNATIONAL, INC.**

**801 Corporate Center Drive, Suite #210**

**Raleigh, North Carolina 27607**

**919-582-9050**

**PROXY STATEMENT**

**INTRODUCTION**

*2013 Annual Meeting of Stockholders*

This Proxy Statement is being furnished to holders of shares of common stock, \$.001 par value (the **Common Stock**) of BioDelivery Sciences International, Inc., a Delaware corporation (the **Company**), in connection with the solicitation of proxies by the Board of Directors of the Company (the **Board**) for use at the 2013 Annual Meeting of Stockholders of the Company (the **Meeting**). The Meeting is to be held at 11:00 a.m. on Thursday, July 18, 2013 at the Renaissance Raleigh Hotel at North Hills, 4100 Main at North Hills Street, Raleigh, NC 27609 and at any adjournment or adjournments thereof.

*Record Date; Mailing Date*

The Board has fixed the close of business on June 11, 2013 (the **Record Date**) as the Record Date for the determination of stockholders entitled to notice of, and to vote and act at, the Meeting. Only stockholders of record at the close of business on that date are entitled to notice of, and to vote and act at, the Meeting. The Proxy Statement is first being mailed to stockholders of the Company on or about June 19, 2013.

*Proposals to be Submitted at the Meeting*

At the Meeting, stockholders will be acting upon the following proposals:

1. To elect Mark A. Sirgo, John J. Shea and Thomas W. D. Alonzo as Class II directors to serve for a three-year term that expires at the 2016 Annual Meeting of Stockholders, or until their successors are elected and qualified or until their earlier resignation or removal;
2. To ratify the appointment by the Audit Committee of the Company's Board of Cherry Bekaert LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2013;
3. To conduct a non-binding advisory vote on our 2012 executive compensation;
4. To conduct a non-binding advisory vote recommending the frequency of advisory votes on executive compensation;
5. To approve an amendment to our 2011 Equity Incentive Plan (the **2011 Plan**) to: (i) increase the number of shares of Common Stock authorized for issuance under the 2011 Plan by 2,600,000 shares from 4,200,000 to 6,800,000; (ii) change the fungible ratio on restricted stock units and certain other awards from 1.5:1 to 1.15:1; and (iii) amend the definition of "Change in Control" in the 2011 Plan to provide that vesting of awards under the 2011 Plan shall only accelerate upon the consummation of certain corporate events (as opposed to upon board and stockholder approval thereof, as currently provided for); and

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6. To transact such other business as may properly come before the Meeting or any adjournment thereof.

*Principal Offices*

The principal executive offices of the Company are located at 801 Corporate Center Drive, Suite #210, Raleigh, North Carolina 27607. The Company's telephone number at such address is (919) 582-9050.



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### *Information Concerning Solicitation and Voting*

As of the Record Date, there were 38,000,027 outstanding shares of Common Stock, each share entitled to one vote on each matter to be voted on at the Meeting. Only holders of shares of Common Stock on the Record Date will be entitled to vote at the Meeting. The holders of Common Stock are entitled to one vote on all matters presented at the Meeting for each share held of record. The presence in person or by proxy of holders of record of a majority of the shares outstanding and entitled to vote as of the Record Date shall be required for a quorum to transact business at the Meeting. If a quorum should not be present, the Meeting may be adjourned until a quorum is obtained. To be elected, the nominees named in Proposal 1 must receive the vote of a majority of the votes of the shares of Common Stock cast in person or represented by proxy at the Meeting. For the purposes of election of such director, although abstentions will count toward the presence of a quorum, they will not be counted as votes cast and will have no effect on the result of the vote. Broker non-votes, which occur when brokers are prohibited from exercising discretionary voting authority for beneficial owners who have not provided voting instructions, will not be counted for the purpose of determining the number of shares present in person or by proxy on a voting matter and will have no effect on the outcome of the vote. Brokers who hold shares in street name may vote on behalf of beneficial owners with respect to Proposal 2. Broker non-votes may not be voted on executive compensation matters, including frequency of advisory votes on executive compensation, or in uncontested election of directors.

### *Expenses*

The expense of preparing, printing and mailing this Proxy Statement, exhibits and the proxies solicited hereby will be borne by the Company. In addition to the use of the mails, proxies may be solicited by officers, directors and regular employees of the Company, without additional remuneration, by personal interviews, telephone, email or facsimile transmission. The Company will also request brokerage firms, nominees, custodians and fiduciaries to forward proxy materials to the beneficial owners of shares of Common Stock held of record and will provide reimbursements for the cost of forwarding the material in accordance with customary charges.

### *Revocability of proxies*

Proxies given by stockholders of record for use at the Meeting may be revoked at any time prior to the exercise of the powers conferred. In addition to revocation in any other manner permitted by law, stockholders of record giving a proxy may revoke the proxy by an instrument in writing, executed by the stockholder or his attorney authorized in writing or, if the stockholder is a corporation, under its corporate seal, by an officer or attorney thereof duly authorized, and deposited either at the corporate headquarters of the Company at any time up to and including the last business day preceding the day of the Meeting, or any adjournments thereof, at which the proxy is to be used, or with the chairman of such Meeting on the day of the Meeting or adjournments thereof, and upon either of such deposits the proxy is revoked.

**ALL PROXIES RECEIVED WILL BE VOTED IN ACCORDANCE WITH THE CHOICES SPECIFIED ON SUCH PROXIES. PROXIES WILL BE VOTED IN FAVOR OF A PROPOSAL IF NO CONTRARY SPECIFICATION IS MADE. ALL VALID PROXIES OBTAINED WILL BE VOTED AT THE DISCRETION OF THE PERSONS NAMED IN THE PROXY WITH RESPECT TO ANY OTHER BUSINESS THAT MAY COME BEFORE THE MEETING.**

**THE BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF EACH OF THE PROPOSALS TO BE SUBMITTED AT THE MEETING AND FOR ADVISORY VOTES ON EXECUTIVE COMPENSATION TO OCCUR EVERY THREE YEARS.**

**Table of Contents****PROPOSAL 1****ELECTION OF CLASS II DIRECTORS***Introduction*

The Board currently consists of three classes of directors, as follows:

<b>Director(s)</b>	<b>Class</b>	<b>Term Expires</b>
Frank E. O. Donnell, Jr.	Class I	2015
Samuel P. Sears, Jr.	Class I	2015
John J. Shea	Class II	Nominee in 2013 for term ending 2016
Mark A. Sirgo	Class II	Nominee in 2013 for term ending 2016
Thomas W. D. Alonzo	Class II	Nominee in 2013 for term ending 2016
William B. Stone	Class III	2014
William S. Poole	Class III	2014

At the Meeting, stockholders will be asked to elect each of Mark A. Sirgo, John J. Shea, Thomas W. D. Alonzo and as Class II directors, each to hold office until the 2016 Annual Meeting of Stockholders or until his successor is elected and qualified or until his earlier resignation or removal.

The Board has nominated each of Mark A. Sirgo, John J. Shea and Thomas W. D. Alonzo, who each currently serve as a director, to stand for election at the Meeting. On April 24, 2013, upon the recommendation of the Nominating and Corporate Governance Committee of the Board, the Board appointed Mr. D. Alonzo to the Board as a Class II Director to fill a vacancy as a result of the increase in the size of the Board from 6 to 7 persons. Mr. D. Alonzo was also appointed as a member of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee of the Board. The enclosed proxy, if returned, and unless indicated to the contrary, will be voted for the election of each of Dr. Sirgo, Mr. Shea and Mr. D. Alonzo.

We have been advised by each of Dr. Sirgo, Mr. Shea and Mr. D. Alonzo that they are willing to be named as a nominee and each are willing to continue to serve as a director if elected. If some unexpected occurrence should make necessary, in the discretion of the Board, the substitution of some other person for the nominees, it is the intention of the persons named in the proxy to vote for the election of such other person as may be designated by the Board.

*Directors and Executive Officers*

Listed below are the names of the directors, executive officers and significant employees of the Company, their ages as of the Record Date and positions held:

<b>Name</b>	<b>Age</b>	<b>Position(s) Held</b>
Frank E. O. Donnell, Jr., M.D.	63	Executive Chairman
Mark A. Sirgo, Pharm.D.	59	President, Chief Executive Officer
James A. McNulty	62	Chief Financial Officer, Secretary and Treasurer
Andrew L. Finn, Pharm.D.	64	Executive Vice President of Product Development
William B. Stone	70	Lead Director
John J. Shea	86	Director
William S. Poole	66	Director
Samuel P. Sears, Jr.	69	Director
Thomas W. D. Alonzo	69	Director

There are no arrangements between our directors and any other person pursuant to which our directors were nominated or elected for their positions. There are no family relationships between any of our directors or executive officers.



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Except as set forth below, none of the Company's directors or executive officers have been involved, in the past ten years and in a manner material to an evaluation of such director's or officer's ability or integrity to serve as a director or executive officer, in any of those Certain Legal Proceedings more fully detailed in Item 401(f) of Regulation S-K, which include but are not limited to, bankruptcies, criminal convictions and an adjudication finding that an individual violated federal or state securities laws. Frank E. O'Donnell, Jr., M.D., our Executive Chairman, and James A. McNulty, our Chief Financial Officer, Secretary and Treasurer, serve as, respectively, Chairman and Chief Executive Officer and Secretary and Treasurer of Accentia Biopharmaceuticals, Inc., a related party ( **Accentia** ). In addition, William S. Poole serves as a director of both the Company and Accentia. Accentia's voluntary petition to reorganize under Chapter 11 of the United States Bankruptcy Code and Accentia's emergence from reorganization are described below under the section Certain Relationships and Related Transactions.

*Frank E. O'Donnell, Jr., M.D.*, age 63, has been our Chairman of the Board and a Director since March 29, 2002. He currently serves as Executive Chairman. Dr. O'Donnell has previously served as our President and Chief Executive Officer. In January 2005, he relinquished the title of President and in August 2005 he relinquished the title of Chief Executive Officer. For more than the last six years, Dr. O'Donnell has served as Manager of The Hopkins Capital Group, an affiliation of limited liability companies which engage in private equity and venture capital investing in disruptive technologies in healthcare. He serves as Executive Chairman of Accentia. Dr. O'Donnell is a graduate of The Johns Hopkins School of Medicine and received his residency training at the Wilmer Ophthalmological Institute, Johns Hopkins Hospital. Dr. O'Donnell is a former professor and Chairman of the Department of Ophthalmology, St. Louis University School of Medicine. He is a trustee of St. Louis University.

*Mark A. Sirgo, Pharm.D.*, age 59, has been our President since January 2005 and Chief Executive Officer and Director since August 2005. He joined our company in August 2004 as Senior Vice President of Commercialization and Corporate Development upon our acquisition of Arius Pharmaceuticals, of which he was a co-founder and Chief Executive Officer. He has also served as our Executive Vice President, Corporate and Commercial Development and our Chief Operating Officer. Dr. Sirgo has nearly 30 years of experience in the pharmaceutical industry, including 16 years in clinical drug development, 7 years in marketing, sales, and business development and 8 years in executive management positions. Prior to his involvement with Arius Pharmaceuticals from 2003 to 2004, he spent 16 years in a variety of positions of increasing responsibility in both clinical development and marketing at Glaxo, Glaxo Wellcome, and GlaxoSmithKline, including Vice President of International OTC Development and Vice President of New Product Marketing. Dr. Sirgo was responsible for managing the development and FDA approval of Zantac 75 while at Glaxo Wellcome, among other accomplishments. From 1996 to 1999, Dr. Sirgo was Senior Vice President of Global Sales and Marketing at Pharmaceutical Product Development, Inc. (NASDAQ:PPDI), a leading contract service provider to the pharmaceutical industry. Dr. Sirgo serves on the board of directors and as Chairman of the Compensation Committee of Salix Pharmaceuticals, Inc. (NASDAQ:SLXP), a specialty pharmaceutical company specializing in gastrointestinal products since 2008. Dr. Sirgo is qualified to serve on our board of directors because of his extensive experience in specialty biopharmaceutical companies. Dr. Sirgo received his BS in Pharmacy from The Ohio State University and his Doctorate from Philadelphia College of Pharmacy and Science.

*James A. McNulty*, age 62, has served as our Secretary, Treasurer and Chief Financial Officer since 2000. Since 2000, Mr. McNulty has also served as Chief Financial Officer of Hopkins Capital Group, an affiliation of limited liability companies which engage in venture investing activities. Hopkins Capital Group is owned and controlled by Dr. Frank E. O'Donnell, Jr. Mr. McNulty also serves part-time as the Treasurer and Corporate Secretary of Accentia, a holding company with commercialization assets in specialty pharmaceuticals and biologics, and from 2003 to 2007 as Chief Financial Officer for Biovest, a majority-owned subsidiary of Accentia. He served as CFO of Star Scientific, Inc. from 1998 - 2000. During 2000 - 2002 he served as CFO/COO of American Prescription Providers, Inc. Mr. McNulty has performed accounting and consulting services as a Certified Public Accountant since 1975. He co-founded Pender McNulty & Newkirk, which became one of Florida's largest regional CPA firms, and was a founder/principal in two other CPA firms, McNulty & Company,

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and McNulty Garcia & Ortiz. He is a Director of Quantum Technology Sciences, Inc., a private company. He is a published co-author (with Pat Summerall) of *Business Golf, the Art of Building Relationships on the Links*. Mr. McNulty is qualified to serve on our management team because of his extensive experience in public and private accounting. Mr. McNulty is a graduate of University of South Florida, a licensed Certified Public Accountant, a member of the American and Florida Institutes of CPAs and is a board member of the Tampa Bay chapter of Financial Executives International.

*Andrew L. Finn, Pharm.D.*, age 64, has been our Executive Vice President of Product Development since January 2007. He joined the company in August 2004 upon our acquisition of Arius Pharmaceuticals, of which he was a co-founder. Dr. Finn has previously served as our Senior Vice President of Product Development and Executive Vice President of Clinical Development and Regulatory Affairs. Dr. Finn has nearly 30 years experience in pharmaceutical product development. Prior to his involvement with Arius, he was, from 2000 to 2003, Executive Vice President of Product Development at POZEN Inc. with responsibilities for formulation development, non-clinical development, clinical research and regulatory affairs. He participated in the POZEN activities leading up to the initial public offering and submitted marketing applications in Europe and the U.S. for two migraine products. From 1996 to 1999, Dr. Finn was Co-Founder and Chief Executive Officer of enVision Sciences, a regulatory and clinical service company. From 1991 to 1996, he was Vice President of Clinical Research and Biometrics for Solvay Pharmaceuticals, where he oversaw NDA submissions in the areas of inflammatory bowel disease, osteoporosis prevention and treatment of obsessive-compulsive disorder. Prior to this, he spent 10 years in positions of increasing responsibility at Glaxo Inc., where he oversaw a number of NDA submissions, including Zofran for chemotherapy induced nausea and vomiting. Dr. Finn is qualified to serve on our management team because of his extensive experience in specialty biopharmaceutical companies. Dr. Finn received his BS in Pharmacy from the University of North Carolina and his Doctorate from the University of Michigan.

*William B. Stone*, age 70, has been a member of our board of directors since October 2001 and is our Lead Director and Chairman of the Audit Committee of our board of directors. For thirty years, until his retirement in October 2000, Mr. Stone was employed with Mallinckrodt Inc. For the last twenty years of his career, he held positions of Vice President and Corporate Controller and Vice President and Chief Information Officer for 16 years and 4 years, respectively. During his tenure at Mallinckrodt, Mr. Stone was responsible for global accounting and reporting, financial organization, staffing and development, and systems of internal accounting control. In this capacity, he was responsible for Mallinckrodt's SEC and other financial filings, internal management performance reports, strategic and tactical financial planning and for evaluation of capital sources and investments. Mr. Stone presented financial analyses and special projects to Mallinckrodt's board of directors and audit committee, and reported to the audit committee regarding the conduct and effectiveness of the independent accountant's quarterly reviews and annual audit. In the capacity of Chief Information Officer, Mr. Stone was responsible for Mallinckrodt's worldwide computer information systems, organization, staffing and development. Further, Mr. Stone reported to the audit committee as leader of Mallinckrodt's successful global program to address Year 2000 implications associated with computer-assisted information, laboratory control and process control computer hardware and software. He also chaired Mallinckrodt's corporate employee benefits committee for over 8 years and has been a member of Financial Executives International since 1980. Mr. Stone is qualified to serve on our board of directors because of his extensive experience in accounting and with pharmaceutical companies. Mr. Stone is a graduate of the University of Missouri-Columbia where he earned BS and MA degrees in accounting, and is a Certified Public Accountant.

*John J. Shea*, age 86, has been a member of our board of directors since March 2002 and serves as Chairman of the Nominating and Corporate Governance Committee of our board of directors. He is currently the head of his own firm J. Shea Inc. and has also been a Quality Systems Adviser with Quintiles, a private consulting firm. Mr. Shea has also served in the capacity of Director of Quality Assurance and was responsible for the implementation of quality assurance procedures in a number of public companies. From 1987-1989, he served as Director of Quality Assurance at NeoRx Corporation. Mr. Shea was also the Director of Corporate Quality Assurance at Hexcel Corporation from 1980-1987. Mr. Shea has also served as the quality assurance

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person for other companies including, Teledyne Relays, Ortho Diagnostics, Inc. and Bio Reagents & Diagnostics, Inc. He is a member of the (North Carolina) Dare County Airport Authority and Audit Committee. Mr. Shea is qualified to serve on our board of directors because of his extensive business experience in the pharmaceutical industry. Mr. Shea earned a B.S. in Chemistry at Bethany College.

*William S. Poole*, age 66, has been a member of our board of directors since April 2005 and serves as Chairman of the Compensation Committee of our board of directors. He has extensive experience in the biopharmaceutical and medical device industries for over thirty years. From 1972 to early 1996, Mr. Poole worked for Lederle Laboratories, a Division of American Cyanamid Company. During his 24-year career at Cyanamid, Mr. Poole held positions of increasing responsibility and held the position of World-Wide Division President of the Medical Device Division when Wyeth acquired Cyanamid in 1995. He later served as President, North American Pharmaceuticals, of Novo Nordisk Pharmaceuticals, and also as President of Biovail Pharmaceuticals. In both of these companies, Mr. Poole was instrumental in aggressively growing revenue, building solid management teams and dramatically improving profitability. As President of these firms, Mr. Poole had total P&L responsibility and directly managed vice presidents in charge of each business department within the organizations. In recent years, Mr. Poole has acted as a private consultant and, until his appointment to the board, Mr. Poole served as a member of the Commercial Advisory Board of our subsidiary, Arius Pharmaceuticals. Mr. Poole was Acting President/CEO of Spherics, Inc., a biotechnology company focusing on unique delivery mechanisms of certain drugs for the treatment of CNS diseases during 2007 and 2008. Mr. Poole is also a member of the board of directors of Accentia. Mr. Poole is qualified to serve on our board of directors because of his extensive business experience in the pharmaceutical industry. Mr. Poole earned a B.A. in Psychology at Boston University.

*Samuel P. Sears, Jr.*, age 69, was appointed as a member of our board of directors in October, 2011. Mr. Sears has extensive experience in the biopharmaceutical, nutraceutical and biotechnology industries. Since 2006, Mr. Sears has been a partner at the law firm of Cetrulo LLP, where he currently serves as managing partner, and from 2000 to 2006, he provided private consulting and legal advisory services to start-up and early stage development companies. Since 2000, Mr. Sears has served as Director, Chairman of the Audit Committee, Chairman of the Executive Committee, and Member of the Compensation Committee of Commonwealth Biotechnologies, Inc., a research and development support services company. From 1998 to 2000, Mr. Sears served as Vice Chairman and treasurer of American Prescription Providers, Inc., a specialty pharmacy network offering prescriptions and nutraceuticals to patients with chronic diseases. From 1994 through May 1998, Mr. Sears was Chief Executive Officer and Chairman of Star Scientific, Inc. (NASDAQ: CIGX). From 1968 to 1993, Mr. Sears was in private law practice. Mr. Sears is qualified to serve on our board of directors because of his extensive legal and business experience, including in the pharmaceutical industry. Mr. Sears is a graduate of Harvard College and Boston College Law School.

*Thomas W. D Alonzo*, age 69, has served as a member of our board since April 23, 2013. Prior to joining our company, Mr. D Alonzo served as a member of the board of directors of Salix Pharmaceuticals, Ltd. since May 2000 and has been the Chairman of the Board since June 2010. From 2005 to 2012, Mr. D Alonzo served on the board of directors of Amarillo Biosciences, Inc., a public company, and Plexigen, Inc., a private company. From March 2007 to February 2009, Mr. D Alonzo served as the Chief Executive Officer and a director of MiMedx Group, Inc. From May 2006 to April 2007, Mr. D Alonzo was Chief Executive Officer of DARA BioSciences, Inc., now known as DARA Pharmaceuticals, Inc., and he served on its board of directors from September 2005 to December 2008. From 2006 to 2008, he also served on our board of directors. From 2000 to 2007, Mr. D Alonzo acted as an independent consultant. Prior to that, from 1996 to 1999, Mr. D Alonzo served as President and Chief Operating Officer of Pharmaceutical Product Development (PPD), a global provider of discovery and development services to pharmaceutical and biotechnology companies. Before joining PPD, from 1993 to 1996, he served as President and Chief Executive Officer of GenVec, Inc., a clinical-stage, biopharmaceutical company. From 1983 to 1993, Mr. D Alonzo held positions of increasing responsibility within Glaxo, Inc., the U.S. division of GSK, including President. Mr. D Alonzo received his B.S. in Business Administration from the University of Delaware, and his J.D. from the University of Denver College of Law. Among other experience,

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qualifications, attributes and skills, Mr. D Alonzo's knowledge and experience in legal matters, in leading large organizations and serving on boards of directors in the life sciences industry demonstrates that he is qualified to serve as a director of the Company.

### *Director Independence*

We believe that William B. Stone, John J. Shea, William S. Poole, Thomas W. D Alonzo and Samuel P. Sears, Jr. qualify as independent directors for Nasdaq Stock Market purposes. This means that our Board is composed of a majority of independent directors as required by the rules of the Nasdaq Stock Market.

### *Meetings of the Board and Stockholders*

Our Board met in person and telephonically 16 times during 2012 and also acted by unanimous written consent. Each member of our Board was present at eighty-eight (88%) percent or more of the board of directors meetings held. It is our policy that all directors must attend all stockholder meetings, barring extenuating circumstances. All directors were present at the 2012 Annual Meeting of Stockholders.

### *Board Committees*

Our Board has established three standing committees-Audit, Compensation, and Nominating and Corporate Governance. All standing committees (as well as our Lead Director) operate under a charter that has been approved by the Board.

### *Audit Committee*

Our Board has an Audit Committee, composed of William B. Stone, John J. Shea, William S. Poole, Samuel P. Sears, Jr. and Thomas W. D Alonzo (as of April 24, 2013), all of whom are independent directors as defined in accordance with section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the **Exchange Act**), and the rules of the Nasdaq Stock Market. Mr. Stone serves as chairman of the committee. The Board has determined that Mr. Stone is an audit committee financial expert as defined in Item 407(d)(5)(ii) of Regulation S-K. The Audit Committee met eight times during 2012. Each member of the Audit Committee was present at one hundred (100%) percent of the Audit Committee meetings held during such director's tenure as a member of the Audit Committee.

Our Audit Committee oversees our corporate accounting, financial reporting practices and the audits of financial statements. For this purpose, the Audit Committee has a charter (which is reviewed annually) and performs several functions. The Audit Committee:

evaluates the independence and performance of, and assesses the qualifications of, our independent auditor and engages such independent auditor;

approves the plan and fees for the annual audit, quarterly reviews, tax and other audit-related services and approves in advance any non-audit service and related fee to be provided by the independent auditor;

monitors the independence of the independent auditor and the rotation of partners of the independent auditor on our engagement team as required by law;

reviews the financial statements to be included in our Annual Report on Form 10-K and Quarterly Reports on Form 10-Q and reviews with management and the independent auditor the results of the annual audit and reviews of our quarterly financial statements;

oversees all aspects of our systems of internal accounting and financial reporting control and corporate governance functions on behalf of the board; and





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provides oversight assistance in connection with legal, ethical and risk management compliance programs established by management and the board, including compliance with requirements of Sarbanes-Oxley and makes recommendations to the board of directors regarding corporate governance issues and policy decisions.

### *Nominating and Corporate Governance Committee*

Our Board has a Nominating and Corporate Governance Committee composed of William S. Poole, John J. Shea, William B. Stone, Samuel P. Sears, Jr. and Thomas W. D. Alonzo (as of April 24, 2013). Mr. Shea serves as the chairman of the committee. The Nominating and Corporate Governance Committee is charged with the responsibility of reviewing our corporate governance policies and with proposing potential director nominees to the Board for consideration. The Nominating and Corporate Governance Committee met three times in 2012 and has a charter which is reviewed annually. All members of the Nominating and Corporate Governance Committee are independent directors as defined by the rules of the NASDAQ Stock Market. The Nominating and Corporate Governance Committee will consider director nominees recommended by security holders. To recommend a nominee please write to the Nominating and Corporate Governance Committee c/o James A. McNulty, BioDelivery Sciences International, Inc, 324 South Hyde Park Avenue, Suite 350, Tampa FL 33606. The Nominating and Corporate Governance Committee has established nomination criteria by which board candidates are to be evaluated. The Nominating and Corporate Governance Committee will assess all director nominees using the same criteria. During 2012, we did not pay any fees to any third parties to assist in the identification of nominees. During 2012, we did not receive any director nominee suggestions from stockholders.

In 2010, the Nominating and Corporate Governance Committee adopted a set of criteria by which it will seek to evaluate candidates to serve on our Board. The evaluation methodology includes a scored system based on criteria including items such as experience in the biotechnology sector, experience with public companies, executive managerial experience, operations and commercial experience, fundraising experience and contacts in the investment banking industry, personal and skill set compatibility with current board members, industry reputation, knowledge of our company generally, independence and ethnic and gender diversity. While diversity is considered as a board qualification criteria, it would not be weighted any more or less in an evaluation process than any other criteria. The established criteria do not distinguish board candidates based on whether the candidate is recommended by a stockholder of our company.

In connection with his appointment to the Board in April 2013, Thomas W. D. Alonzo was evaluated in accordance with such criteria.

### *Compensation Committee*

Our Board also has a Compensation Committee, which reviews or recommends the compensation arrangements for our management and employees and also assists the board of directors in reviewing and approving matters such as company benefit and insurance plans, including monitoring the performance thereof. The Compensation Committee has a charter (which is reviewed annually) and is composed of five members: John J. Shea, William B. Stone, William S. Poole, Samuel P. Sears, Jr. and Thomas W. D. Alonzo (as of April 24, 2013). Mr. Poole serves as chairman of this committee. The Compensation Committee met eight times during 2012.

The Compensation Committee has the authority to directly engage, at our expense, any compensation consultants or other advisers as it deems necessary to carry out its responsibilities in determining the amount and form of employee, executive and director compensation. In 2012, the Compensation Committee engaged Radford, an AON Consulting Company, to obtain market data against which it has measured the competitiveness of our compensation programs. In determining the amount and form of employee, executive and director compensation, the Compensation Committee has reviewed and discussed historical salary information as well as salaries for similar positions at comparable companies. We paid consultant fees to Radford of \$28,190 in 2012.

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### *Risk Management Committee*

Our Board also has a Risk Management Committee, which was formed in August 2011. Pursuant to a charter of the Risk Management Committee approved by our Board, the purpose and mandate of the Risk Management Committee is to provide assistance to our Board and management in fulfilling the board and management's responsibilities to our stockholders, potential stockholders and investment community by: (i) identifying, assessing, monitoring and providing oversight to management relating to the identification and evaluation of major strategic, operational, regulatory and external risks inherent in our business; (ii) overseeing our company's risk management, compliance and control activities; and (iii) overseeing our company's compliance with legal and regulatory requirements, including, without limitation, with respect to the conduct of our business.

Because the Audit Committee of the board is responsible for reviewing and discussing with management and our independent auditors the major financial risk exposures (including those relating to systems of internal control, accounting and financial reporting) and the steps management has taken to monitor and control such exposures, it is the objective of the Risk Management Committee to coordinate with the Audit Committee and to maintain, as is necessary to fulfill the purposes of the Risk Management Committee, free and open means of communications among the board and its committees, the independent auditor, the internal auditors and our senior management. The Risk Management Committee does not have responsibility for matters subject to the jurisdiction of another committee of the board pursuant to that committee's charter. Moreover, the Risk Management Committee does not have the power to direct our day-to-day management and operations, such power being vested in our executive management, subject to the oversight and approval of the board of directors.

All members of our Board are also members of the Risk Management Committee, but to ensure the efficient and optimal operation of the Risk Management Committee, the Risk Management Committee established an Executive Subcommittee thereof composed of William S. Poole (who acts as Chairman of each of the Risk Management Committee and its Executive Subcommittee), Dr. Frank O. Donnell and Dr. Mark A. Sirgo. The Executive Subcommittee formally reports at least quarterly to the full board.

### *Lead Director*

On July 26, 2007, our Board created the position of Lead Director. Our Board designated William B. Stone, an existing director, as our Lead Director. Pursuant to the charter of the Lead Director, the Lead Director shall be an independent, non-employee director designated by our Board who shall serve in a lead capacity to coordinate the activities of the other non-employee directors, interface with and advise management, and perform such other duties as are specified in the charter or as our Board may determine.

### *Executive Chairman*

On January 20, 2012, our Board, upon the recommendation of the Nominating and Corporate Governance Committee of the board, created the office of Executive Chairman of the Company and appointed Dr. Frank O. Donnell, then our Chairman of the Board, as Executive Chairman of our company. In taking such action, our board was intending to formally memorialize the role that Dr. O. Donnell has played with our company over the years.

As Executive Chairman of our company, Dr. O. Donnell acts as an officer and employee and, as such, performs his duties subject in all instances to the oversight of our Board and the power of our Board to approve all applicable corporation actions (which powers shall not be vested in the office of Executive Chairman). The Executive Chairman is not an executive officer (as defined in SEC Rule 3b-7) of our company as the role of the Executive Chairman by design is not an officer who performs a policy making function for our company. Rather, the Executive Chairman serves as a conduit between our Board and our executive management team and is available to act as an advisor and consultant to our executive management team, with ultimate responsibility for development and implementation of our corporate policies being vested in our executive officers (Dr. Sirgo, Dr. Finn and Mr. McNulty) under the supervision of our Board.

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Subject to such other roles, duties and projects as may (consistent with the terms and provisions of our Amended and Restated Bylaws and the resolutions of our Board that formed the office of Executive Chairman) be assigned by our Board to the Executive Chairman, the primary responsibilities of the Executive Chairman are as follows:

1. Chair annual and special board meetings and annual stockholder meetings and, subject to availability, attend meetings of the committees of the board;
2. Provide overall board leadership and establish guiding principles for the board;
3. Manage the affairs of the board and facilitate board action in such a way that strategic and policy decisions are fully discussed, debated and decided by the board;
4. In cooperation with the President and Chief Executive Officer, ensure that our strategic orientation is defined and communicated to the board for its approval and that all material issues are dealt with by the board during the year;
5. Ensure that the board has efficient communication channels regarding all material issues concerning the business and see to it that directors are informed about these issues;
6. Act as a representative of the board and consult with board members outside the regularly scheduled meetings of the board and of board committees;
7. Meet and confer as often as required with our President and Chief Executive Officer to ensure that there is efficient communication between the Executive Chairman, the President and Chief Executive Officer and board members;
8. Offer advice and consultation to the President and Chief Executive Officer on the overall management of the business and affairs of our company as well as specific matters upon the request of the President and Chief Executive Officer;
9. In consultation and partnership with the President and Chief Executive Officer, the Executive Chairman may act as our representative with business partners of our company; and
10. At the request of the board or the President and Chief Executive Officer, and in consultation and partnership with the President and Chief Executive Officer, the Executive Chairman may be placed in charge of special corporate strategic initiatives or projects.

The compensation of the Executive Chairman shall be determined from time to time by the Compensation Committee of the board in accordance with such committee's charter and practice. In March 2012, the Compensation Committee of our Board (with input from our outside compensation consultant) determined and approved that Dr. O'Donnell would receive compensation at a level equal to 50% of the President/CEO's salary, cash bonus and options. The salary portion would begin on January 1, 2012 and the cash bonus and option portion would be determined in the first quarter of 2013, when, under normal circumstances, the Company's 2012 objectives would be evaluated. Because of the change in his compensation, Dr. O'Donnell will no longer receive cash retainers or option awards under the existing board of director remuneration program for his role as a member of our board of directors.

In 2012, Dr. O'Donnell received the following compensation for his service as Executive Chairman: \$213,826 in cash compensation, \$69,138 bonus, \$14,108 in stock option awards and \$2,093 in benefits paid in 2012. We do not have a written employment or similar agreement with Dr. O'Donnell in connection with his service as our Executive Chairman.

*Section 16(a) Beneficial Ownership Reporting Compliance*

Section 16(a) of the Exchange Act requires that our directors and executive officers and persons who beneficially own more than 10% of the Common Stock (referred to herein as the reporting persons ) file with

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the SEC various reports as to their ownership of and activities relating to the Common Stock. Such reporting persons are required by the SEC regulations to furnish us with copies of all Section 16(a) reports they file.

Based solely upon a review of copies of Section 16(a) reports and representations received by us from reporting persons, and without conducting any independent investigation of our own, in fiscal year 2012, all Forms 3, 4 and 5 were timely filed with the SEC by such reporting persons, except that employee options granted to our officers (Mark A. Sirgo, James A. McNulty and Andrew L. Finn) on February 9, 2012 were reported on Form 4s filed on March 13, 2012 and options to our Executive Chairman Frank E. O'Donnell, Jr., M.D., on February 15, 2012 was reported on Form 4 filed on March 13, 2012.

*Code of Ethics*

We have adopted a code of ethics that applies to all employees, as well as each member of our Board. Our code of ethics is posted on our website, and we intend to satisfy any disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of our code of ethics by posting such information on our website, [www.bdsi.com](http://www.bdsi.com). A copy of our code of ethics is also available in print, without charge, upon written request to 324 South Hyde Park Avenue, Suite 350, Tampa, Florida 33606 Attn: James A. McNulty.

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**Audit Committee Report\***

The Audit Committee of the Board (the **Audit Committee**) during 2012 was composed of four directors: William B. Stone, William S. Poole, John J. Shea and Samuel P. Sears, Jr., each of whom was independent as defined by the rules of the NASDAQ Stock Market. Mr. Stone serves as chairman of the Audit Committee. The Board has adopted a written Audit Committee Charter, which was filed as Appendix A to the Company's 2003 Proxy Statement, and was updated in January 2008 and July 2009.

Management is responsible for the Company's financial statements, financial reporting process and systems of internal accounting and financial reporting control. The Company's independent auditor is responsible for performing an independent audit of the Company's financial statements in accordance with auditing standards generally accepted in the United States and for issuing a report thereon. The Audit Committee's responsibility is to oversee all aspects of the financial reporting process on behalf of the Board. The responsibilities of the Audit Committee also include engaging and evaluating the performance of the accounting firm that serves as the Company's independent auditor.

The Audit Committee discussed with the Company's independent auditor, with and without management present, such auditor's judgments as to the quality, not just acceptability, of the Company's accounting principles, along with such additional matters required to be discussed under the Statement on Auditing Standards No. 61, Communication with Audit Committees. The Audit Committee has discussed with the independent auditor, the auditor's independence from the Company and its management, including the written disclosures and the letter submitted to the Audit Committee by the independent auditor as required by the Independent Standards Board Standard No. 1, Independence Discussions with Audit Committees.

In reliance on such discussions with management and the independent auditor, review of the representations of management and review of the report of the independent auditor to the Audit Committee, the Audit Committee recommended (and the Board approved) that the Company's audited financial statements be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2012. The Audit Committee and the Board have also, respectively, recommended and approved the selection of the Company's current independent auditor, which approval is subject to ratification by the Company's stockholders.

Submitted by:

Audit Committee of the Board of Directors

/s/ William B. Stone

/s/ William S. Poole

/s/ John J. Shea

/s/ Samuel P. Sears, Jr.

\* The information contained in this Audit Committee Report shall not be deemed to be soliciting material or filed or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that the Company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act of 1933, as amended (the **Securities Act**) or the Exchange Act.

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### **Compensation Committee Report\***

Our Compensation Committee has reviewed and discussed with management the Compensation Discussion and Analysis ( **CD&A** ) included in this Proxy Statement. Based on that review and discussion, the Compensation Committee has recommended to the Board that the CD&A be included in this Proxy Statement.

Submitted by:

The Compensation Committee of the Board of Directors

/s/ William S. Poole, Chairman

/s/ John J. Shea

/s/ William B. Stone

/s/ Samuel J. Sears Jr.

/s/ Thomas W. D. Alonzo

\* The information contained in this Compensation Committee Report shall not be deemed to be soliciting material or filed or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that we specifically request that the information be treated as soliciting material or specifically incorporate it by reference into a document filed under the Securities Act or the Exchange Act.

### **Compensation Discussion and Analysis**

The Compensation Committee of the Board (the **Compensation Committee** ) has the responsibility to review, determine and approve the compensation for our executive officers. Further, the Committee oversees our overall compensation strategy, including compensation policies, plans and programs that cover all employees.

We currently employ three executive officers, each of whom serves as a Named Executive Officer (or **NEO** ) for purposes of Securities and Exchange Commission ( **SEC** ) reporting: (1) Mark A. Sirgo, Pharm.D., our President and Chief Executive Officer (who we refer to in this Compensation Discussion and Analysis as our CEO); (2) James A. McNulty, our Secretary, Treasurer and Chief Financial Officer; and (3) Andrew L. Finn, Pharm.D., our Executive Vice President of Product Development.

This Compensation Discussion and Analysis ( **CD&A** ), sets forth our philosophies underlying the compensation for our executive officers and our employees generally.

### **Objectives of Our Compensation Program**

The Compensation Committee's philosophy seeks to align the interests of our stockholders, officers and employees by tying compensation to individual and company performance, both directly in the form of salary or annual cash incentive payments, and indirectly in the form of equity awards. The objectives of our compensation program enhance our ability to:

attract and retain qualified and talented individuals; and

provide reasonable and appropriate incentives and rewards to our team for building long-term value within our company, in each case in a manner comparable to companies similar to ours.

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In addition, we strive to be competitive with other similarly situated companies in our industry. The process of developing pharmaceutical products is a long-term proposition and outcomes may not be measurable for several years. Therefore, in order to build long-term value for our company and its stockholders, and in order to achieve our business objectives, we believe that we must compensate our officers and employees in a competitive and fair manner that reflects current company activities but also reflects contributions to building long-term value.



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We utilize the services of the Radford Group, an AON consulting company ( **Radford** ) to review compensation programs of peer companies in order to assist the Compensation Committee in determining the compensation levels for our NEOs, as well as for other employees of our company. Radford is a recognized independent consulting company and services clients throughout the United States.

The companies that comprise our peer group are selected and reviewed biennially as we do not believe that material differences will occur over a shorter period. However, we may review the peer group more often should circumstances warrant such action. The current peer group used to evaluate NEO compensation for the fiscal year ended December 31, 2012 includes the following companies:

<b>Company</b>	<b>Location</b>
Astrom Biosciences	Ann Arbor, MI
Achillion Pharmaceuticals	New Haven, CT
Anadys Pharmaceuticals <sup>(1)</sup>	San Diego, CA
Antigenics Inc.	New York, NY
A.P. Pharma, Inc.	Redwood City, CA
AspenBio Pharma	Castle Rock, CO
Celldex Therapeutics	Needham, MA
Columbia Laboratories	Livingston, NJ
Zalicus	Cambridge, MA
DUSA Pharmaceuticals	Wilmington, MA
Epicept Corporation	Tarrytown, NY
Idera Pharmaceutical	Cambridge, MA
Insmed Incorporated	Richmond, VA
MDRNA Inc.	Bothell, WA
Molecular Insight Pharmaceuticals <sup>(2)</sup>	Cambridge, MA
Neurogesx, Inc.	San Mateo, CA
NovaBay Pharmaceuticals	Emeryville, CA
Pozen Inc.	Chapel Hill, NC
Sunesis Pharmaceuticals	South San Francisco, CA
Telik, Inc.	Palo Alto, CA
Threshold Pharmaceuticals	Redwood City, CA
Transcept Pharmaceuticals	Pt. Richmond, CA

<sup>(1)</sup> Company noted was recently acquired and will not be used in future peer group analysis.

<sup>(2)</sup> Company noted is no longer publicly traded and will not be used in future peer group analysis.

With respect to our employees and non-senior management, we will also take into consideration local market data in determining appropriate compensation packages, and we have in the past relied on Radford to provide us with such data.

**Elements of Our Compensation Program and Why We Chose Each**

*Main Compensation Components*

Our company-wide compensation program, including for our NEOs, is broken down into three main components: base salary, performance cash bonuses and potential long-term compensation in the form of stock options or restricted stock units ( **RSUs** ). We believe these three components constitute the minimum essential elements of a competitive compensation package in our industry. We also have a Performance Long Term Incentive Plan for our NEOs and selected senior officers of our company.

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### *Salary*

Base salary is used to recognize the experience, skills, knowledge and responsibilities required of our NEOs as well as recognizing the competitive nature of the biopharmaceutical industry. This is determined partially by evaluating our peer companies as well as the degree of responsibility and experience levels of our NEOs and their overall contributions to our company.

### *Performance Bonus Plan*

We have a performance bonus plan under which bonuses are paid to our NEOs based on achievement of extraordinary company performance goals and objectives established by the Compensation Committee and/or the Board as well as on individual performance. The bonus program is discretionary and is intended to: (i) strengthen the connection between individual compensation and our company's achievements; (ii) encourage teamwork among all disciplines within our company; (iii) reinforce our pay-for-performance philosophy by awarding higher bonuses to higher performing employees; and (iv) help ensure that our cash compensation is competitive. Depending on the cash position of the company, the Compensation Committee and our Board have decided, from time to time and after consulting with the Chief Executive Officer, not to pay cash bonuses in order that we may conserve cash and support ongoing development programs. Regardless of our cash position, we consistently grant annual merit-based stock options (and, more recently, restricted stock units, known as RSUs) to continue incentivizing both our senior management and our employees. Because of the intrinsic value of an RSU, they have historically been granted by us at a ratio of 1.5 options to 1 RSU. So, for example, if an employee was eligible to receive 10,000 options and we elected instead to grant them RSUs, they would be granted 6,667 RSUs if we applied this ratio.

Based on their employment agreements, each NEO is assigned a target payout under the performance bonus plan, expressed as a percentage of base salary for the year. Actual payouts under the performance bonus plan are based on the achievement of corporate performance goals and an assessment of individual performance, each of which is separately weighted as a component of such officer's target payout. For the NEOs, the corporate goals receive the highest weighting in order to ensure that the bonus system for our management team is closely tied to our corporate performance. Each employee also has specific individual goals and objectives as well that are tied to the overall corporate goals. For employees, mid-year and end of year progress is reviewed with the employees' managers.

### *Equity Incentive Compensation*

We view long-term compensation, currently in the form of stock options and RSUs, generally vesting in annual increments over three years, as a tool to align the interests of our NEOs and employees generally with the creation of stockholder value, to motivate our employees to achieve and exceed corporate and individual objectives and to encourage them to remain employed by the company. While cash compensation is a significant component of employees overall compensation, the Compensation Committee and the Board (as well as our NEOs) believe that the driving force of any employee working in a small biotechnology company should be strong equity participation. We believe that this not only creates the potential for substantial longer term corporate value but also serves to motivate employees and retain their loyalty and commitment with appropriate personal compensation.

### *Performance Long Term Incentive Plan*

In December 2012, by unanimous written consent following significant planning and discussion (as well as discussion with our outside compensation consultant Radford), the Compensation Committee approved the Performance Long Term Incentive Plan (which we refer to as the LTIP). The LTIP is designed as an incentive for our senior management (including our NEOs) to generate revenue for our company.

The LTIP consists of Restricted Stock Units (as defined under our 2011 Plan, and which we refer to as Performance RSUs) which are rights to acquire shares of Common Stock. All Performance RSUs granted under

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the LTIP will be granted under our 2011 Plan (as the same may be amended, supplemented or superseded from time to time) as Performance Compensation Awards under such plan. The participants in the LTIP are either NEOs or senior officers of our company.

The term of the LTIP began with our fiscal year ended December 31, 2012 and lasts through our fiscal year ended December 31, 2019. The total number of Performance RSUs covered by the LTIP is 1,078,000, of which 978,000 were awarded in 2012 (with 100,000 Performance RSUs being reserved for future hires). The Performance RSUs under the LTIP did not vest upon granting, but instead are subject to potential vesting each year over the 8 year term of the LTIP depending on the achievement of revenue by our company, as reported in our Annual Report on Form 10-K. Performance RSUs will be valued on the day of issuance and will vest annually on the last day preceding the first open window after filing our Annual Report on Form 10-K based on the revenue achieved during the prior fiscal year as a proportion of the total cumulative revenue target for the entire term of the LTIP (which we call the Predefined Cumulative Revenue). Predefined Cumulative Revenue is a predefined aggregate revenue target for the entire term of the LTIP that was determined by the Compensation Committee in conjunction with our executive management. The Predefined Cumulative Revenue may be adjusted by the Compensation Committee upon the occurrence of extraordinary corporate events during the term of the LTIP (such as acquisitions by our company of revenue generating businesses or assets).

### *Other Compensation*

In addition to the main components of compensation outlined above, we also provide contractual severance and/or change in control benefits to the NEOs as well as Dr. Niraj Vasisht, our Senior Vice President Product Development and CTO, to Albert J. Medwar, our Vice President of Marketing and to George Ng, our Senior Vice President and General Counsel. We believe these severance or change in control benefits are important elements of our compensation program that assist us in retaining talented individuals at the executive and senior managerial levels and that these arrangements help to promote stability and continuity of our executives and senior management team. Further, we believe that the interests of our stockholders will be best served if the interests of these members of our management are aligned with theirs. We believe that providing change in control benefits lessens or eliminates any potential reluctance of members of our management to pursue potential change in control transactions that may be in the best interests of the stockholders. We also believe that it is important to provide severance benefits to members of our management, to promote stability and focus on the job at hand.

We also provide benefits to the executive officers that are generally available to all regular full-time employees of the company, including our medical and dental insurance, life insurance and a 401(k) match for all individuals who participate in the 401(k) plan. At this time, we do not provide any perquisites to any of our NEOs. Further, we do not have deferred compensation plans, pension arrangements or post-retirement health coverage for our executive officers or employees. All of our employees not specifically under contract are at-will employees, which mean that their employment can be terminated at any time for any reason by either us or the employee. Our NEOs (as well as certain of our senior managers) have employment contracts that provide lump sum compensation in the event of their termination without cause or, under certain circumstances, upon a change of control.

### *Determination of Compensation Amounts*

A number of factors impact the determination of compensation amounts for our NEOs, including the individual's role in the company and individual performance, competition for talent, each NEO's total compensation package, assessments of internal pay equity and industry data. Stock price performance has generally not been a factor in determining annual compensation because the price of the Common Stock is subject to a variety of factors outside of our control.

### *Industry Survey Data*

In collaboration with Radford, we previously determined to establish and maintain a list of peer companies to best assure ourselves that we are compensating our executives on a fair and reasonable basis. We have

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established two peer group reviews with Radford. The first group is for NEOs, which is based on a national review and was set forth above under the heading Objectives of our Compensation Program. The second is intended for non-NEOs and focuses on similar sized companies located on the East Coast. The availability of peer data is used by the Compensation Committee strictly as a guide in determining compensation levels with regards to salaries, cash bonuses and performance related annual stock option grants to all employees. However, the availability of this data does not imply that the Compensation Committee is under any obligation to exactly follow peer companies in compensation matters.

### *Determination of Base Salaries*

As a guideline for NEO base salary, we perform formal benchmarks against respective comparable positions in our established peer group. Our guideline is to set targeted NEO salary ranges between the 25th and 50th percentile for comparable positions within our peer group. We then adjust salaries based on our assessment of our NEOs' levels of responsibility, experience, overall compensation structure and individual performance. In the event that a particular NEO salary meets the 50th percentile, the Compensation Committee has the authority, should it desire, or if it is deemed warranted, to go above that level but not to exceed the 75th percentile of the peer group. The Compensation Committee has the flexibility to raise this level in the event it becomes necessary; however the Compensation Committee is not obliged to raise salaries purely on the availability of data. Merit-based increases to salaries of executive officers are based on our assessment of individual performance and the relationship to applicable salary ranges. Cost of living adjustments may also be a part of that assessment.

### *Performance Bonus Plan*

Concurrently with the beginning of each calendar year, preliminary corporate goals that reflect our business priorities for the coming year are prepared by the CEO with input from the other executive officers. These goals are weighted by relative importance. The draft goals and proposed weightings are presented to the Compensation Committee and the Board and discussed, revised as necessary, and then approved by the Board in January of each year. The Compensation Committee then reviews the final goals and their weightings to determine and confirm their appropriateness for use as performance measurements for purposes of the bonus program. The goals and/or weightings may be re-visited during the year and potentially restated in the event of significant changes in corporate strategy or the occurrence of significant corporate events. Following the agreement with the Board on the corporate objectives, the goals are then shared with all employees in a formal meeting(s), and are reviewed periodically throughout the year at monthly staff meetings and quarterly Board meetings.

The performance bonus plan for our executive officers in 2012 was adopted by the Compensation Committee in January 2009. The plan sets forth target bonus opportunities, as a percentage of salary, based on the level of responsibility of the position, ranging up to 60% of salary for our Chief Executive Officer, and up to 40% of salary for our NEOs and up to 30% of salary for certain other officers. In setting these percentages, the Compensation Committee determined that the above percentages were reasonable and in line with other companies at our stage of development. Each employee has the opportunity to achieve up to 100% of his targeted amount, depending on how corporate goals and objectives are achieved.

### *Determination of Equity Incentive Compensation*

To assist us in assessing the reasonableness of our equity grant amounts, historically we have reviewed Radford supplied information and, prior to Radford, we used information supplied by Equilar. Such information included stock option data from a cross-section of the companies in the above-mentioned surveys. Initial, on-hire stock option grant amounts have generally been targeted at the 25th to 50th percentile for that position or similar industry position, adjusted for internal equity, experience level of the individual and the individual's total mix of compensation and benefits provided in his or her offer package. Initial on-hire grants typically vest over three years. The Compensation Committee agreed at the July 2012 Board meeting that NEO's and our other officers above the Director level would be able to achieve on an annual basis, a target equity grant up to the 50th

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percentile as determined by the peer group. Depending on the performance of the company, the NEOs and other officers were able to receive beyond 100% of their targeted annual equity grant, but not in an amount to exceed the 75<sup>th</sup> percentile of the peer group. With respect to Director level and below, a certain percent of salary has been determined, based on peer data, and ranges from 5% up to 30% depending on the individuals' position level. However, the availability of this data does not imply that the Compensation Committee is under any obligation to exactly follow its peer companies and has the flexibility to make annual adjustments. It is generally expected that the target amount would be granted if 100% performance is achieved. These new percent of salary ranges will be introduced in 2013 and implemented during the 2014 evaluation period.

*Equity Grant Practices*

All stock options or RSUs granted to the NEOs are approved by the Compensation Committee. Exercise prices for options are set using a 30-day volume weighted average price method which we define as the closing price of the Common Stock on the Nasdaq Capital Market on the trading day of the date of grant and the 30 trading days preceding that date. RSU grants are valued on the day of issuance and are vested on the last day preceding an open window after filing our annual report for equity trading. These RSUs will vest annually in one-third increments on the last day preceding an open window after filing our annual report for equity trading for company employees. Grants are generally made: (i) on the employee's start date and (ii) at Board meetings held each January and following annual performance reviews. However, grants have been made at other times during the year. The size of year-end grants for each NEO is assessed against our internal equity guidelines. Current market conditions for grants for comparable positions and internal equity may also be assessed. Also, grants may be made in connection with promotions or job related changes in responsibilities. In addition, on occasion, the Compensation Committee may make additional special awards for extraordinary individual or company performance. Because of the intrinsic value of an RSU, they have historically been granted by us at a ratio of 1.5 options to 1 RSU. So, for example, if an employee was eligible to receive 10,000 options and we elected instead to grant them RSUs, they would be granted 6,667 RSUs if we applied this ratio.

*Compensation Setting Process*

Near the end of the year and at an in person meeting held each January, the Board and Compensation Committee assess our overall corporate performance and discuss the relative achievement of the corporate goals. The relative achievement of each goal is assessed and quantified and the summation of the individual components results in the corporate goal rating. The independent directors of the Board (who also comprise the Compensation Committee) meet in executive session or confer privately to further discuss and approve the final corporate goal rating, expressed as a percentage. A majority vote of the committee is sufficient to approve the final disbursement of salary increases, cash bonuses and option or RSU grants.

Also near the end of the year, the CEO evaluates the individual performance of each NEO (other than himself) and provides the Compensation Committee with an assessment of the performance of each other NEO. In determining the individual performance ratings of the NEOs, we assess performance against a number of factors, including each NEO's relative contributions to our corporate goals, demonstrated career growth, level of performance in the face of available resources and other challenges, and the respective officer's department's overall performance. This assessment is conducted in a holistic fashion, in contrast to the summation of individual components as is done to arrive at the corporate goal rating.

Following a qualitative assessment of individual NEO's performance, our policies provide guidelines for translating this performance assessment into a numerical rating. Both the initial qualitative assessment and the translation into a numerical rating are made by the Compensation Committee on a discretionary basis. We believe that conducting a discretionary assessment for the individual component of the NEOs performance provides for flexibility in the evaluation of our NEOs and their adaptability to addressing potential changes in company priorities throughout the year.

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The Compensation Committee looks to the CEO's performance assessments of the other NEOs and his recommendations regarding a performance rating for each, as well as input from the other members of the Board. These recommendations may be adjusted by the Compensation Committee prior to finalization. For the CEO, the Compensation Committee evaluates his or her performance, taking into consideration input from the other members of the Board, and considers the achievement of overall corporate objectives by both the CEO specifically and the company generally. The CEO is not present during the Compensation Committee's deliberations regarding his compensation.

The CEO also presents any recommended changes to base salary and recommendations for an annual equity grant amount, referencing the equity guidelines, for each of the NEOs (other than himself).

The Compensation Committee has the authority to directly engage, at our company's expense, any compensation consultants or other advisors (such as Radford) that it deems necessary to determine the amount and form of employee, executive and director compensation. In determining the amount and form of employee, executive and director compensation, the Compensation Committee has reviewed and discussed historical salary information as well as salaries for similar positions at comparable companies. However the availability of this data does not imply that the Committee is under any obligation to exactly follow peer companies' compensation practices.

We paid consultant fees to Radford of \$28,190 in 2012. NEOs may have indirect input in the compensation results for other executive officers by virtue of their participation in the performance review and feedback process for the other executive officers.

### **2012 Compensation Decisions**

#### *General Assessment of Management Performance in 2012*

The Compensation Committee and the Board conducted the performance and compensation review for 2012 during November and December of 2012 and January and February of 2013. In assessing our performance towards the achievement of stated corporate goals for the year, the Compensation Committee and the Board agreed that the results, when compared to the objectives, were substantially achieved. There were many critical goals that needed to be addressed and followed with critical attention to detail throughout the year, and our company was able to achieve those goals.

A significant amount of time and attention was required by our management and employees in order to initiate, negotiate and finalize two large clinical programs with Endo Health Solutions Inc. ( **Endo** ) around our BEMABuprenorphine chronic pain program. This implementation and anticipated positive outcomes relied heavily upon these early detailed discussions. These programs are currently well underway and we believe that our planned completion milestones will be achieved within the agreed upon timetable. The Board was very pleased with the positive collaboration between both our company and Endo as both sides worked closely to ensure that goals were achieved.

Additionally, our internal product development team moved our BUNAVAIL program forward through the positive completion of several key clinical studies. This team also expanded our product pipeline reviews to determine other product candidates in order to maximize use of our BEMA<sup>®</sup> technology. The Board was very pleased with this program as it expands our foundation for further growth using our novel technology.

In December 2012, we closed a \$40 million registered direct offering with large, fundamental institutional investors, which offering was priced at market and with no warrant coverage, which was deemed by the Board to be very good terms for our company. The proceeds from this offering will provide funding for our future activities.

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### *2012 Performance Assessments and Bonus Calculations*

For 2012, our performance bonus plan set the following target payouts, expressed as a percentage of base salary. For our CEO, the target bonus opportunity was 60% of base salary and for our Chief Financial Officer and Executive Vice President, Product Development the target bonus opportunity was 40% of base salary.

The elements that the Compensation Committee and the Board established as our overall corporate goals for 2012 included a variety of development and operational objectives. The 2012 goals were established in January 2012. The objectives were development/clinical, commercial, financial and operational in nature.

During January and February 2013, the Compensation Committee and the Board considered year-end compensation for 2012 performance. Specifically, the Compensation Committee and the Board observed and recognized that the following key Corporate Objectives were substantially met:

initiated, proposed and mutually agreed upon a development plan with Endo for our BEMA<sup>®</sup> Buprenorphine chronic pain program;

finalized a clinical development plan, based on FDA input for BUNAVAIL and have moved this program and its elements forward with positive results, meeting all agreed upon timelines;

concluded a Strategic Development Plan for the company;

advanced our product pipeline activities to maximize future company growth opportunities; and

closed a \$40 million registered direct offering on positive terms and with quality investors.

These and other accomplishments reflected the efforts of all our employees, including the NEOs, and were taken into account by the Compensation Committee in providing our NEOs and employees with equity grants, performance cash bonus awards and salary increases.

During the July 2012 Board meeting, a majority of the Compensation Committee and Board agreed to make immediate salary adjustments for many employees and approved the issuance of 50% of each employee's annual cash bonus target. This action was taken to recognize the positive completion of company objectives at mid-year. Additionally, this was done to recognize all of our employees' efforts and to further motivate our employees to continue their efforts for the remainder of the year and to ensure positive completion of all of our 2012 corporate objectives. The cost associated with this action amounted to a total increase in salaries of approximately \$0.264 million, and the cost of providing for the issuance of 50% of cash bonuses was approximately \$0.543 million in the aggregate. The majority of the Compensation Committee agreed that each employee would receive 100% of the target cash bonuses which is approximately \$1.12 million in the aggregate. All non-executive management employees were granted options based on 25% of their base salary, using Black-Scholes valuation. The total options for this award amounted to 119,938 options, have a value of approximately \$0.335 million and vest annually in one-third increments. The NEOs were granted RSUs which were based on the 75th percentile of our peer group. The total RSUs for this award amounted to 1.1 million, have an approximate value of \$4.5 million and vest annually in one-third increments. The award under our performance cash bonus program was 100% of target for the corporate performance portion of the awards. The total cash bonuses amounted to \$1.12 million, of which the 50% was paid in August 2012 and the remaining 50% was paid in March 2013.

As a special recognition award to our Executive Chairman Dr. O'Donnell for his active participation in the Risk Management Committee of the Board and the Executive Risk Management Subcommittee thereof for the latter half of 2011, Dr. O'Donnell was granted 10,000 options in February 2012, which have an approximate value of \$0.014 million and vest immediately.

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### **Individual Performance and Compensation of the President and CEO**

The majority of the Compensation Committee approved an increase in Dr. Sirgo's base salary for the remainder of 2012 at our July 2012 Board meeting. As a result, Dr. Sirgo's base salary increased from \$413,920 to \$460,920, based on the Compensation Committee's review of peer companies and the strong company performance up to that point of our corporate objectives.

In evaluating Dr. Sirgo's individual performance for 2012, the majority of the Compensation Committee, with input from the other Board members, concluded that the following salient factors warranted his salary increase: Dr. Sirgo's positive planning and implementation of our agreement with Endo for BEMA® Buprenorphine for chronic pain; the positive advancement in our efforts with the BUNAVAIL clinical programs; the positive efforts in our company's dealings with the USPTO with regard to our various patents; the positive completion of our company-wide strategic planning efforts and expansion of our product pipeline opportunities; and the closing of a \$40 million registered direct offering. In addition, the majority of the Compensation Committee therefore approved that Dr. Sirgo should receive 100% of his cash bonus target, which is 60% of his 2012 salary. The majority of the Compensation Committee further approved that Dr. Sirgo should receive 100% of his targeted annual option award at the 75<sup>th</sup> percentile of our company's peer group. This award, which was granted and priced on February 20, 2013, was comprised of a one-time issuance of 420,000 RSUs rather than stock options. The one-time issuance of RSUs to Dr. Sirgo was to more closely align his overall equity percentage participation in our company to those of the NEOs of our peers. These RSUs (valued at \$1.74 million) will vest annually in one-third increments on the last day preceding the first open window for equity trading for company employees after the filing of our Annual Report on Form 10-K. In addition, in December 2012, Dr. Sirgo was awarded 375,000 RSUs pursuant to our LTIP, valued at \$1.58 million, which will vest upon the achievement of revenue milestones as provided for in the LTIP. Dr. Sirgo was also awarded a cash bonus in the amount of \$0.276 million, or 60% of base salary, of which half was paid in August 2012 and half was paid in March 2013.

### **Compensation Highlights for the other Executive Officers**

#### *Chief Financial Officer*

The majority of the Compensation Committee approved an increase in Mr. McNulty's base salary for the remainder of 2012 at our July 2012 Board meeting. As a result, Mr. McNulty's salary increased from \$300,118 to \$307,318, based on the Compensation Committee's review of peer companies and the strong company performance up to that point of our corporate objectives.

In evaluating Mr. McNulty's individual performance for 2012, the Compensation Committee, with input from the other Board, concluded that Mr. McNulty led the finance team in achieving its objectives and supported the company overall by providing timely information on our financial condition and maintained sound internal and financial reporting controls. The majority of the Compensation Committee therefore approved that Mr. McNulty should receive 100% of his targeted annual option award at the 75<sup>th</sup> percentile of the company peer group. This award, which was granted and priced on February 20, 2013, was comprised of a one-time issuance of 154,700 RSUs rather than stock options. These RSUs (valued at \$0.64 million) will vest annually in one-third increments on the last day preceding an open window for equity trading for company employees after the filing of our Annual Report on Form 10-K. In addition, in December 2012, Mr. McNulty was awarded 135,000 RSUs pursuant to our LTIP, valued at \$0.56 million, which will vest upon the achievement of revenue milestones as provided for in the LTIP. Mr. McNulty was also awarded a cash bonus of \$0.127 million, or 40% of base of base pay, of which half was paid in August 2012 and half was paid in March 2013.

#### *Executive Vice President Product Development*

The majority of the Compensation Committee approved an increase in Dr. Finn's base salary for the remainder of 2012 at our July 2012 Board meeting. As a result, Dr. Finn's salary increased from \$284,000 to \$311,700, based on the Compensation Committee's review of peer companies and the strong company performance up to that point of our corporate objectives.



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In evaluating Dr. Finn's individual performance for 2012, the Compensation Committee, with input from the other Board members, concluded that Dr. Finn was instrumental in initiating, proposing and implementing the critical activities required for the positive implementation of the BEMA® Buprenorphine chronic pain studies. Dr. Finn and his team finalized and implemented our BUNAVAIL program and ensured the start and ongoing studies associated with this program. He and his team were actively involved in our product pipeline program and were important participants in determining potential product candidates. The majority of the Compensation Committee therefore approved that Dr. Finn should receive 100% of his targeted annual option award at the 75<sup>th</sup> percentile of the company peer group. This award, which was granted on February 20, 2013, was comprised of a one-time issuance of 160,601 RSUs rather than stock options. These RSUs (valued at \$0.66 million) will vest annually in one-third increments on the last day preceding an open window for equity trading for company employees after the filing of our Annual Report on Form 10-K. In addition, in December 2012, Dr. Finn was awarded 135,000 RSUs pursuant to our LTIP, valued at \$0.569 million, which will vest upon the achievement of revenue milestones as provided for in the LTIP. Dr. Finn was also awarded a cash bonus of \$0.124 million, or 40% of base salary, of which half was paid in August 2012 and half was paid in March 2013.

*Severance and Change in Control Benefits*

The change in control benefits for all applicable persons have a double trigger. A double-trigger means that the executive officers will receive the change in control benefits described in the agreements only if there is both (1) a Change in Control of the Company (as defined in the agreements) and (2) a termination by us of the applicable person's employment without cause or a resignation by the applicable persons for good reason (as defined in the agreements) within a specified time period prior to or following the Change in Control. We believe this double trigger requirement creates the potential to maximize stockholder value because it prevents an unintended windfall to management as no benefits are triggered solely in the event of a Change in Control while providing appropriate incentives to act in furtherance of a change in control that may be in the best interests of the stockholders.

*Accounting and Tax Considerations*

*ASC 718.* On January 1, 2006, we began accounting for share-based payments in accordance with the requirements of Accounting Standards Codification 718 (ASC 718), Share-Based Payments. To date, the adoption of ASC 718 has not impacted our stock option granting practices.

*Internal Revenue Code Section 162(m).* At this time, we do not have a policy to factor in 162(m) limitations into the determination of base salary or bonus amounts since the aggregate salary and bonus payments for each individual are substantially below the \$1,000,000 deductibility limitation.

*Section 409A.* Section 409A of the Internal Revenue Code of 1986, as amended generally changes the tax rules that affect most forms of deferred compensation that were not earned and vested prior to 2005. Under Section 409(A), deferred compensation is defined broadly and may potentially cover compensation arrangements such as severance or change in control pay outs and the extension of the post-termination exercise periods of stock options. We take Code Section 409A into account, where applicable, in determining the timing of compensation paid to our executive officers.

*Code Sections 280G and 4999.* Sections 280G and 4999 of the Internal Revenue Code of 1986, as amended (Code Sections 280G and 4999) limit our ability to take a tax deduction for certain excess parachute payments (as defined in Code Sections 280G and 4999) and impose excise taxes on each NEO who receives excess parachute payments in connection with his or her severance from our company in connection with a change in control. We consider the adverse tax liabilities imposed by Code Sections 280G and 4999, as well as other competitive factors, when structuring post-termination compensation payable to our executive officers and generally provide a mechanism for a better after tax result for the NEO, which we believe is a reasonable balance between our interests, on the one hand, and the executive's compensation on the other.

**Table of Contents***Compensation Risk Assessment*

In reviewing our compensation policy and practices for its NEOs as well as for other employees, the Compensation Committee evaluated whether any unnecessary risk-taking was associated with our compensation policies. The Compensation Committee did not identify any risks arising from our compensation policies and practices reasonably likely to have a material adverse effect on our company.

*Compensation Committee Independence*

All members of the Compensation Committee are independent directors and do not have any formal ties or relationship with any members of management or their relatives.

**Executive Compensation****Summary Compensation Table**

The following table sets forth all compensation paid to our named executive officers at the end of the fiscal years ended December 31, 2012, 2011 and 2010. Individuals we refer to as our named executive officers include our Chief Executive Officer and our most highly compensated executive officers whose salary and bonus for services rendered in all capacities exceeded \$100,000 during the fiscal year ended December 31, 2012.

Name and principal position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$) <sup>(15)</sup>	Nonqualified Deferred Compensation		All Other Compensation (\$)	Total (\$)
						Non-Equity Incentive Plan Compensation (\$)	Earnings (\$)		
Mark A. Sirgo, Pharm.D. President, Chief Executive Officer and Director	2012	\$ 435,612	\$ 184,842 <sup>(1)</sup>		\$ 116,709			\$ 48,940 <sup>(2)</sup>	\$ 786,103
	2011	\$ 413,920	\$ 124,176		\$ 107,382 <sup>(3)</sup>			\$ 22,176 <sup>(4)</sup>	\$ 667,654
	2010	\$ 413,920	\$ 170,699		\$ 186,041 <sup>(5)</sup>			\$ 20,367 <sup>(6)</sup>	\$ 791,027
James A. McNulty, CPA Chief Financial Officer, Secretary and Treasurer	2012	\$ 303,441	\$ 88,475 <sup>(7)</sup>		\$ 77,864			\$ 29,255 <sup>(8)</sup>	\$ 499,035
	2011	\$ 300,118	\$ 73,720		\$ 36,269			\$ 29,529 <sup>(9)</sup>	\$ 439,636
	2010	\$ 300,118	\$ 87,413		\$ 110,300			\$ 24,127 <sup>(10)</sup>	\$ 521,958
Andrew L. Finn, Pharm.D. Executive VP of Product Development	2012	\$ 296,785	\$ 87,900 <sup>(11)</sup>		\$ 73,684			\$ 36,755 <sup>(12)</sup>	\$ 495,124
	2011	\$ 283,387	\$ 60,515		\$ 34,321			\$ 18,222 <sup>(13)</sup>	\$ 396,445
	2010	\$ 252,144	\$ 73,440		\$ 92,668			\$ 17,449 <sup>(14)</sup>	\$ 435,701

(1) The bonus disclosed in this item of \$184,842 includes \$46,566 related to 2011, but was contingent upon Board approval, which occurred January 2012.

(2) Includes: Vacation payout of \$26,618, \$9,822 of health insurance premiums paid and 401(k) matching of \$12,500 paid in 2012.

(3) The compensation disclosed in this item included 25,000 stock options granted as compensation for serving as a director.

(4) Includes: \$9,926 of health insurance premiums paid and 401(k) matching of \$12,250 paid in 2011.

(5) The compensation disclosed in this item included 25,000 stock options granted as compensation for serving as a director.

(6) Includes: \$11,086 of health insurance premiums paid and 401(k) matching of \$9,281 paid in 2010.

(7) The bonus disclosed in this item of \$88,475 includes \$27,011 related to 2011, but was contingent upon Board approval, which occurred January 2012.

(8) Includes: \$16,755 of health insurance premiums paid and 401(k) matching of \$12,500 paid in 2012.

(9) Includes: \$17,279 of health insurance premiums paid and 401(k) matching of \$12,250 paid in 2011.

(10) Includes: \$16,658 of health insurance premiums paid and 401(k) matching of \$7,469 paid in 2010.

(11) The bonus disclosed in this item of \$87,900 includes \$25,560 related to 2011, but was contingent upon Board approval, which occurred January 2012.

(12) Includes: Vacation payout of \$13,894, \$10,361 of health insurance premiums paid and 401(k) matching of \$12,500 paid in 2012.

(13) Includes: \$10,411 of health insurance premiums paid and 401(k) matching of \$7,811 paid in 2011.

(14) Includes: \$9,239 of health insurance premiums paid and 401(k) matching of \$8,210 paid in 2010.

(15) Aggregate grant date fair value according to ASC 718.



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**Narrative Disclosure to Summary Compensation Table**

*Employment Agreements*

Except as set forth below, we currently have no written employment agreements with any of our officers, directors, or key employees. All directors and officers have executed confidentiality and non-compete agreements with us.

The following is a description of our current executive employment agreements:

*Mark A. Sirgo, Pharm.D., President and Chief Executive Officer* Dr. Sirgo's current employment agreement, dated February 22, 2007, as amended, is subject to successive, automatic one-year extensions unless either party gives notice of non-extension to the other party at least 30 days prior to the end of the applicable term. The agreement includes a base salary, target bonus of up to 50% of his base salary (which is subject to modification by our Compensation Committee), and other employee benefits. Under the terms of his agreement, Dr. Sirgo received base salary in 2012 of \$431,997 per year and a bonus of \$184,842, which bonus was composed of \$46,566 related to 2011 and \$138,276 related to 2012 performance.

We may terminate Dr. Sirgo's employment agreement without cause and Dr. Sirgo may resign upon 30 days advance written notice. We may immediately terminate Dr. Sirgo's employment agreement for Good Cause (as defined in the agreement). Upon the termination of Dr. Sirgo's employment for any reason, Dr. Sirgo will continue to receive payment of any base salary earned but unpaid through the date of termination and any other payment or benefit to which he is entitled under the applicable terms of any applicable company arrangements. If Dr. Sirgo is terminated during the term of the employment agreement other than for Good Cause (as defined in the employment agreement), or if Dr. Sirgo terminates his employment for Good Reason (as defined in the employment agreement), Dr. Sirgo is entitled to a lump sum severance payment equal to 1 times the sum of his annual base salary plus a pro-rata annual bonus based on his target annual bonus. In the event that such termination is within six months following a Change of Control (as defined in the employment agreement), the lump sum paid to Dr. Sirgo will equal the sum of his then current annual base salary plus an amount equal to fifty percent (50%) of his then current annual base salary, multiplied by 2. In addition, Dr. Sirgo's employment agreement will terminate prior to its scheduled expiration date in the event of Dr. Sirgo's death or disability.

Dr. Sirgo's employment agreement also includes a 2 year non-competition and non-solicitation and confidentiality covenants on terms identical to the existing employment agreement. Under the terms of this agreement, he is also entitled to the following benefits: medical, dental and disability and 401(k).

*James A. McNulty, CPA, Chief Financial Officer, Secretary and Treasurer* Through December 31, 2007 Mr. McNulty served as part-time CFO, devoting approximately 50% of his time to our company. Beginning January 1, 2008, Mr. McNulty devotes substantially all of his time to our company. Mr. McNulty's current employment agreement, dated February 22, 2007, is subject to successive, automatic one-year extensions unless either party gives notice of non-extension to the other party at least 30 days prior to the end of the applicable term. The agreement includes a base salary, target bonus of up to 50% of his base salary (which is subject to modification by our Compensation Committee), and other employee benefits. Under the terms of his agreement, Mr. McNulty received base salary in 2012 of \$302,887 per year and a bonus of \$88,475, which bonus composed of \$27,011 related to 2011 and \$61,464 related to 2012 performance. Mr. McNulty is also employed part-time as Secretary/Treasurer of Accentia.

We may terminate Mr. McNulty's employment agreement without cause and Mr. McNulty may resign upon 30 days advance written notice. We may immediately terminate Mr. McNulty's employment agreement for Good Cause (as defined in the employment agreement). Upon the termination of Mr. McNulty's employment for any reason, Mr. McNulty will continue to receive payment of any base salary earned but unpaid through the date of termination and any other payment or benefit to which he is entitled under the applicable terms of any applicable company arrangements. If Mr. McNulty is terminated during the term of his employment agreement other than

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for Good Cause (as defined in the employment agreement), or if Mr. McNulty terminates his employment for Good Reason (as defined in the employment agreement), Mr. McNulty is entitled to a lump sum severance payment equal to 1 times the sum of his annual base salary plus a pro-rata annual bonus based on his target annual bonus. In the event that such termination is within six months following a Change of Control (as defined in the employment agreement), the lump sum paid to Mr. McNulty will equal the sum of his then current annual base salary plus an amount equal to fifty percent (50%) of his then current annual base salary, multiplied by 1.5. In addition, the employment agreement will terminate prior to its scheduled expiration date in the event of Mr. McNulty's death or disability.

The employment agreement also includes a 2 year non-competition, non-solicitation and confidentiality covenants on terms identical to his former employment agreement with us, except that if Mr. McNulty's employment is terminated upon a Change of Control, the non-competition period will be 18 months. Under the terms of this agreement, he is also entitled to the following benefits: medical, dental and disability and 401(k).

*Andrew L. Finn, Pharm.D., Executive Vice President of Product Development* Dr. Finn's current employment agreement, dated February 22, 2007, as amended, is subject to successive, automatic one-year extensions unless either party gives notice of non-extension to the other party at least 30 days prior to the end of the applicable term. The agreement includes a base salary, target bonus of up to 50% of his base salary (which is subject to modification by our Compensation Committee), and other employee benefits. Under the terms of his agreement, Dr. Finn received base salary in 2012 of \$294,654 per year and a bonus of \$87,900, which bonus composed of \$25,560 related to 2011 and \$62,340 related to 2012 performance.

We may terminate Dr. Finn's employment agreement without cause and Dr. Finn may resign upon 30 days advance written notice. We may immediately terminate Dr. Finn's employment agreement for Good Cause (as defined in the agreement). Upon the termination of Dr. Finn's employment for any reason, Dr. Finn will continue to receive payment of any base salary earned but unpaid through the date of termination and any other payment or benefit to which he is entitled under the applicable terms of any applicable company arrangements. If Dr. Finn is terminated during the term of the employment agreement other than for Good Cause (as defined in the employment agreement), or if Dr. Finn terminates his employment for Good Reason (as defined in the employment agreement), Dr. Finn is entitled to a lump sum severance payment equal to 1 times the sum of his annual base salary plus a pro-rata annual bonus based on his target annual bonus. In the event that such termination is within six months following a Change of Control (as defined in the employment agreement), the lump sum paid to Dr. Finn will equal the sum of his then current annual base salary plus an amount equal to fifty percent (50%) of his then current annual base salary, multiplied by 1.5. In addition, Dr. Finn's employment agreement will terminate prior to its scheduled expiration date in the event of Dr. Finn's death or disability.

Dr. Finn's employment agreement also includes a 2 year non-competition and non-solicitation and confidentiality covenants on terms identical to the existing employment agreement, except that if Dr. Finn's employment is terminated upon a Change of Control, the non-competition period will be 18 months. Under the terms of this agreement, he is also entitled to the following benefits: medical, dental and disability and 401(k).

**Table of Contents****Outstanding Equity Awards**

The following table summarizes outstanding unexercised options, unvested stocks and equity incentive plan awards held by each of our name executive officers, as of December 31, 2012.

**OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END**

	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)		Option Exercise Prices (\$)	Option Expiration Date	STOCK AWARDS			
			Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Options			Market Value of Shares or Units of Stock That Have Not Vested	Market Value of Shares or Units of Stock That Have Not Vested	Unearned Shares, or Other Rights That Have Not Vested	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, or Other Rights That Have Not Vested (#)
Mark A. Sirgo, Pharm.D <sup>(5)</sup>	33,026				\$ 1.96	2/15/22				
		45,421 <sup>(1)</sup>			\$ 1.78	2/9/22				
	25,000				\$ 3.47	7/20/21				
	7,546	14,913 <sup>(2)</sup>			\$ 3.55	2/25/21				
	25,000				\$ 2.26	7/21/20				
	22,843	11,422 <sup>(3)</sup>			\$ 2.43	7/21/20				
	24,899	12,449 <sup>(4)</sup>			\$ 3.90	1/21/20				
	25,000				\$ 5.40	7/22/19				
	100,000				\$ 4.83	4/30/19				
	9,175				\$ 3.05	1/22/19				
	70,985				\$ 2.01	7/24/18				
	48,448				\$ 2.85	1/31/18				
	20,000				\$ 4.13	7/25/17				
	434,000				\$ 6.63	4/13/17				
	45,891				\$ 2.42	1/26/17				
	49,000				\$ 3.03	12/1/15				
	20,000				\$ 2.94	8/22/15				
	5,147				\$ 3.40	10/21/14				
James A. McNulty, CPA <sup>(6)</sup>		32,933 <sup>(1)</sup>			\$ 1.78	2/9/22				
	5,406	10,813 <sup>(2)</sup>			\$ 3.55	2/25/21				
	16,562	8,282 <sup>(3)</sup>			\$ 2.43	7/21/20				
	18,054	9,026 <sup>(4)</sup>			\$ 3.90	1/21/20				
	100,000				\$ 4.83	4/30/19				
	12,275				\$ 3.05	1/22/19				
	100,000				\$ 6.63	4/13/17				
	3,235				\$ 3.40	10/21/14				
Andrew L. Finn, Pharm.D <sup>(7)</sup>	18,128				\$ 1.96	2/15/22				
		31,165 <sup>(1)</sup>			\$ 1.78	2/9/22				
	5,116	10,232 <sup>(2)</sup>			\$ 3.55	2/25/21				
	13,915	6,958 <sup>(3)</sup>			\$ 2.43	7/21/20				
	15,168	7,583 <sup>(4)</sup>			\$ 3.90	1/21/20				
	7,439				\$ 3.05	1/22/19				
	33,231				\$ 2.01	7/24/18				
	39,282				\$ 2.85	1/31/18				
	100,000				\$ 6.63	4/13/17				

37,209	\$ 2.42	1/26/17
10,603	\$ 2.05	7/27/16
49,000	\$ 3.03	12/1/15
8,929	\$ 2.94	7/28/15
5,147	\$ 3.40	10/21/14

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- (1) Of the unvested stock options, one third of the unvested stock options will vest on February 9, 2013, another third will vest on February 9, 2014 and the remaining third will vest on February 9, 2015.
- (2) Of the unvested stock options, half of the unvested stock options will vest on February 25, 2013, and another half will vest on February 25, 2014.
- (3) These unvested stock options will vest on July 21, 2013.
- (4) These unvested stock options will vest on January 21, 2013.
- (5) Does not include 375,000 unvested RSUs to be issued under our LTIP upon the achievement of certain performance criteria.
- (6) Does not include 135,000 unvested RSUs to be issued under our LTIP upon the achievement of certain performance criteria.
- (7) Does not include 135,000 unvested RSUs to be issued under our LTIP upon the achievement of certain performance criteria.

**Outstanding Equity Awards Narrative Disclosure**

*Amended and Restated 2001 Incentive Plan*

In July 2011, our original Amended and Restated 2001 Incentive Plan expired. Options to purchase 3,447,484 shares of Common Stock were outstanding as of December 31, 2012 under the Amended and Restated 2001 Incentive Plan. Although the Amended and Restated 2001 Incentive Plan expired, the 3,447,484 options still outstanding under such plan are still exercisable. In April 2011, the Board approved, and in July 2011, our stockholders approved the new 2011 Plan, which is discussed below.

*2011 Plan*

Our 2011 Plan is composed of 4,200,000 shares of Common Stock. The purpose of the 2011 Plan is: (i) to align our interests and recipients of awards under the 2011 Plan by increasing the proprietary interest of such recipients in our growth and success, and (ii) to advance our interests by providing additional incentives to officers, key employees and well-qualified non-employee directors and consultants who provide services to us, who are responsible for our management and growth, or otherwise contribute to the conduct and direction of our business, operations and affairs. The Compensation Committee of our Board administers the 2011 Plan, selects the persons to whom awards are granted and fixes the terms of such awards.

Awards may be made during the ten-year term of the 2011 Plan to our employees (including employees who are directors), or consultants who are not employees and our other affiliates. Our plan provides for the grant of options that qualify as incentive stock options, or Incentive Stock Options, under Section 422A of the Internal Revenue Code of 1986, as amended, and options which are not Incentive Stock Options, or Non-Statutory Stock Options, as well as restricted stock and other awards. Only our employees or employees of our subsidiaries may be granted Incentive Stock Options. Our affiliates or consultants or others as may be permitted by the Board, may be granted Non-Statutory Stock Options. Restricted stock units (or RSUs), restricted stock, performance shares or performance units may also be awarded under the 2011 Plan.

Directors are eligible to participate in our 2011 Plan. The 2011 Plan provides for an initial grant of an option to purchase up to 25,000 shares (prorated based on months to be served in the fiscal year in which they join) of Common Stock to each director upon first joining the Board and subsequent annual grants of options to purchase 12,500 shares upon each anniversary of such director's appointment, an additional annual 7,500 option grant for serving as Lead Director, an annual restricted stock grant of 12,500 shares and an additional annual 7,500 restricted stock grant for serving as Lead Director. Options are granted at an exercise price equal to a 30-day volume weighted average of the fair market value of the Common Stock on the grant date and immediately vest. Beginning in 2012, the Company began migrating to the use of RSUs which vest in the first open trading window following the grant.

Options and RSUs to purchase an aggregate of 6,354,892 shares of Common Stock were outstanding at June 11, 2013, with the options having exercise prices ranging from \$1.38 to \$6.63. There were no options granted during 2012 whose exercise price was lower than the estimated market price of the stock at the grant date. This number is inclusive of options outstanding and still exercisable under the 2011 Plan and the now expired Amended and Restated 2001 Incentive Plan of the Company.



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Options issued during 2012 to employees under the 2011 Plan totaled 455,540 shares, at exercise prices ranging from \$1.78 and \$4.72. Options issued during 2012 to directors and officers under the 2011 Plan totaled 281,174 shares, at exercise prices ranging from \$1.78 and \$4.31. Options issued during 2012 to a consultant under the 2011 Plan totaled 30,000 shares, at an exercise price of \$2.29.

**Option Exercises and Stock Vested**

The following information sets forth stock options exercised by the executive officers during the year ended December 31, 2012:

Name	OPTION AWARDS		STOCK AWARDS	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
Mark A. Sirgo, Pharm.D.				
James A. McNulty, CPA	174,358	\$ 400,420		
Andrew L. Finn, Pharm.D.				
<i>Pension Benefits</i>				

None of our employees participate in or have account balances in qualified or non-qualified defined benefit plans sponsored by us. Our Compensation Committee may elect to adopt qualified or non-qualified benefit plans in the future if it determines that doing so is in our company's best interests.

*Nonqualified Deferred Compensation*

None of our employees participate in or have account balances in nonqualified defined contribution plans or other nonqualified deferred compensation plans maintained by us. Our Compensation Committee may elect to provide our officers and other employees with non-qualified defined contribution or other nonqualified deferred compensation benefits in the future if it determines that doing so is in our company's best interests.

**Grants of Plan-Based Awards**

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stocks or Units (#)	All Other Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Awards (\$/Sh)	Closing stock price on Award date (\$/Sh)	Grant Date Fair Value of Stock and Option Awards
		Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#) <sup>(1)</sup>	Maximum (#)					
Mark A. Sirgo, Pharm.D.	2/9/12					45,421				\$ 1.78	\$ 2.12	\$ 70,116
	2/15/12					33,026				\$ 1.96	\$ 2.00	\$ 46,593
James A. McNulty, CPA	2/9/12					32,933				\$ 1.78	\$ 2.12	\$ 50,839

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	2/15/12	19,156	\$ 1.96	\$ 2.00	\$ 27,025
Andrew L. Finn, Pharm.D	2/9/12	31,165	\$ 1.78	\$ 2.12	\$ 48,109
	2/15/12	18,128	\$ 1.96	\$ 2.00	\$ 25,575

(1) Employee stock options granted as award.

**Table of Contents****Narrative to Grants of Plan Based Awards Table**

See Compensation Discussion and Analysis above for complete description of the targets for payment of annual incentives, as well as performance criteria on which such payments were based.

Options granted to employees vest over 36 months beginning on the first anniversary of the grant date at which time 33% of such options vest. These options expire in 10 years and are outstanding for as long as the individual is an active employee. Employee options qualify as Incentive Stock Options.

*Potential Payments Under Severance/Change in Control Arrangements*

The table below sets forth potential payments payable to our current executive officers in the event of a termination of employment under various circumstances. For purposes of calculating the potential payments set forth in the table below, we have assumed that (i) the date of termination was December 31, 2012 and (ii) the stock price was \$4.31, which was the closing market price of the Common Stock on December 31, 2012, the last business day of the 2012 fiscal year.

Name	If Company Terminates Executive Without Cause or Executive Resigns with Good Reason (\$)	Termination Following a Change in Control without Cause or Executive Resigns with Good Reason (\$)
<b>Mark A. Sirgo, Pharm.D.</b>		
Cash Payment	\$ 714,213 <sup>(1)</sup>	\$ 1,405,593 <sup>(1)</sup>
Acceleration of Options		792,205 <sup>(2)</sup>
<b>Total Cash and Benefits</b>	<b>\$ 714,213</b>	<b>\$ 2,197,798</b>
<b>James A. McNulty, CPA</b>		
Cash Payment	\$ 475,743 <sup>(1)</sup>	\$ 706,231 <sup>(1)</sup>
Acceleration of Options		171,867 <sup>(2)</sup>
<b>Total Cash and Benefits</b>	<b>\$ 475,743</b>	<b>\$ 878,098</b>
<b>Andrew L. Finn, Pharm.D.</b>		
Cash Payment	\$ 480,728 <sup>(1)</sup>	\$ 714,503 <sup>(1)</sup>
Acceleration of Options		498,762 <sup>(2)</sup>
<b>Total Cash and Benefits</b>	<b>\$ 480,728</b>	<b>\$ 1,213,266</b>

<sup>(1)</sup> Includes severance payment and accrued and unused vacation time as of December 31, 2012.

<sup>(2)</sup> Determined by taking excess of the fair market value of the Common Stock on December 31, 2012, less the exercise price of each accelerated option.

For each of our executive officers, in their employment agreements the term "change of control" means the occurrence of any one or more of the following events (it being agreed that, with respect to paragraphs (i) and (iii) of this definition below, a "change of control" shall not be deemed to have occurred if the applicable third party acquiring party is an "affiliate" of our company within the meaning of Rule 405 promulgated under the Securities Act):

(i) An acquisition (whether directly from our company or otherwise) of any voting securities of our company by any person or entity, immediately after which such person or entity has beneficial ownership of forty percent (40%) or more of the combined voting power of our

then outstanding voting securities.

(ii) The individuals who, as of the date hereof, are members of the Board cease, by reason of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction affecting our company, to constitute at least fifty-one percent (51%) of the members of our board of directors; or

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(iii) Approval by the Board and, if required, our stockholders of, or our execution of any definitive agreement with respect to, or the consummation of (it being understood that the mere execution of a term sheet, memorandum of understanding or other non-binding document shall not constitute a change of control):

(A) A merger, consolidation or reorganization involving our company, where either or both of the events described in clauses (i) or (ii) above would be the result;

(B) A liquidation or dissolution of or appointment of a receiver, rehabilitator, conservator or similar person for, or the filing by a third party of an involuntary bankruptcy against, our company; or

(C) An agreement for the sale or other disposition of all or substantially all of the assets of our company to any person or entity (other than a transfer to a subsidiary of our company).

The cash component (as opposed to option accelerations) of any change of control payment would be structured as a one-time cash severance payment.

**Compensation of Directors Summary Table\***

Name (a)	Fees Earned or Paid in Cash (\$)	Stock Awards (\$) <sup>(9)</sup>	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Non-Qualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
Frank E. O. Donnell, Jr.	\$ 282,964 <sup>(1)</sup>		\$ 14,108 <sup>(2)</sup>			\$ 2,093 <sup>(3)</sup>	\$ 299,165
William B. Stone	\$ 64,000	\$ 99,200	\$ 68,042 <sup>(4)</sup>				\$ 231,242
John J. Shea	\$ 50,000	\$ 62,000	\$ 42,526 <sup>(5)</sup>				\$ 154,526
William S. Poole	\$ 75,663 <sup>(6)</sup>	\$ 62,000	\$ 42,526 <sup>(7)</sup>				\$ 180,189
Samuel P. Sears, Jr.	\$ 46,500	\$ 62,000	\$ 42,526 <sup>(8)</sup>				\$ 151,026

\* Thomas W. D. Alonzo joined the Board in April 2013 and thus did not receive director compensation for 2012.

(1) Compensation for serving as Executive Chairman, which includes \$69,138 as bonus.

(2) As of December 31, 2012, the outstanding stock options held by Dr. O. Donnell total 290,000, all of which have vested.

(3) Includes \$2,093 in health benefits paid in 2012.

(4) As of December 31, 2012, the outstanding stock options held by Mr. Stone total 350,000, all of which have vested.

(5) As of December 31, 2012, the outstanding stock options held by Mr. Shea total 142,500, all of which have vested.

(6) Includes compensation of \$24,163 for serving as Chairman of the Board-level Risk Management Committee and associated sub-committee.

(7) As of December 31, 2012, the outstanding stock options held by Mr. Poole total 257,500, all of which have vested.

(8) As of December 31, 2012, the outstanding stock options held by Mr. Sears total 17,363, all of which have vested.

(9) RSU stock awards were granted under the 2011 Plan.

**Narrative to Director Compensation**

The Compensation Committee of our Board reviews the Director Remuneration Policy, which establishes the compensation our directors earn for serving on our Board and individual committees. The policy follows (all annual cash retainers are paid quarterly in advance):

\$30,000 annual cash retainer to each Board member.

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\$10,000 annual cash retainer to the Lead Director.

\$15,000 annual cash retainer to the Chairman of the Audit Committee.

\$10,000 annual cash retainer to the Chairman of the Compensation Committee.

\$7,500 annual cash retainer to the Chairman of the Nominating & Corporate Governance Committee.

\$7,500 annual cash retainer to each non-Chairman Audit Committee member.

\$5,000 annual cash retainer to each non-Chairman Compensation Committee member.

\$4,000 annual cash retainer to each non-Chairman Nominating & Corporate Governance Committee member.

12,500 options to purchase shares of our Common Stock per year, to each director.

7,500 additional options to purchase shares of our Common Stock per year to the Lead Director.

12,500 restricted stock units of our Common Stock per year, to each director.

7,500 additional restricted stock units of our Common Stock per year to the Lead Director.

New directors will earn a pro-rated portion (based on months to be served in the fiscal year in which they join) of cash, option awards and restricted stock units.

Options granted to directors vest immediately. These options expire in 10 years and are outstanding for the life of the option. Director options qualify as Non-Statutory Stock Options.

In July 2012, pursuant to our Director Remuneration Policy, the Compensation Committee of the Board approved the issuance of restricted stock units (the Director RSUs ) to purchase shares of Common Stock under our 2011 Plan, with such RSUs to be allocated among the independent directors. The total number of RSUs granted during the year ended December 31, 2012 was 57,500 and vested upon the announcement of the results of the our pivotal pharmacokinetic study of for BUNAVAIL versus Suboxone®.

**Performance Long Term Incentive Plan**

In December 2012, by unanimous written consent following significant planning and discussion (as well as discussion with our outside compensation consultant Radford), the Compensation Committee approved the LTIP. The LTIP is designed as an incentive for our senior management (including our NEOs) to generate revenue for our company.

The LTIP consists of RSUs (as defined under our 2011 Plan) which are rights to acquire shares of Common Stock. All Performance RSUs granted under the LTIP will be granted under our 2011 Plan (as the same may be amended, supplemented or superseded from time to time) as Performance Compensation Awards under such plan. The participants in the LTIP are either NEOs or senior officers of our company.

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The term of the LTIP began with our fiscal year ended December 31, 2012 and lasts through our fiscal year ended December 31, 2019. The total number of Performance RSUs covered by the LTIP is 1,078,000, of which 978,000 were awarded in 2012 (with 100,000 Performance RSUs being reserved for future hires). The Performance RSUs under the LTIP did not vest upon granting, but instead are subject to potential vesting each year over the 7 year term of the LTIP depending on the achievement of revenue by our company, as reported in our Annual Report on Form 10-K). Performance RSUs will be valued on the day of issuance and will vest annually on the last day preceding the first open window after filing our Annual Report on Form 10-K based on the revenue achieved during the prior fiscal year as a proportion of the total cumulative revenue target for the entire term of the LTIP (which we call the Predefined Cumulative Revenue). Predefined Cumulative Revenue is a predefined aggregate revenue target for the entire term of the LTIP that was determined by the Committee in

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conjunction with our executive management. The Predefined Cumulative Revenue may be adjusted by the Committee upon the occurrence of extraordinary corporate events during the term of the LTIP (such as acquisitions by our company of revenue generating businesses or assets).

**THE BOARD RECOMMENDS A VOTE FOR THE ELECTION OF MARK A. SIRGO, JOHN J. SHEA AND THOMAS W. D ALONZO TO SERVE AS CLASS II DIRECTORS ON THE COMPANY S BOARD, TO HOLD OFFICE UNTIL THE 2016 ANNUAL MEETING OF STOCKHOLDERS OR UNTIL THEIR SUCCESSORS ARE ELECTED AND QUALIFIED OR UNTIL THEIR EARLIER RESIGNATION OR REMOVAL.**



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**PROPOSAL 2**

**RATIFICATION OF THE APPOINTMENT OF THE**

**COMPANY S INDEPENDENT AUDITORS FOR FISCAL 2013**

On January 31, 2013, the Audit Committee of the Board appointed the firm of Cherry Bekaert LLP ( **CB** ) to serve as our independent auditors for our fiscal year ended December 31, 2013. The independent accountant s report of CB on our consolidated financial statements for the year ended December 31, 2012 contained no adverse opinion or disclaimer of opinion and was not qualified or modified as to uncertainty, audit scope or accounting principles.

**Audit Fees.** The aggregate fees billed by CB for professional services rendered for the audit of our annual financial statements, review of the financial information included in our Forms 10-Q for the respective periods and other required filings with the SEC for the year ended December 31, 2012 and 2011 totaled \$135,850 and \$135,850, respectively. The above amounts include interim procedures and audit fees, as well as attendance at audit committee meetings.

**Audit-Related Fees.** The aggregate fees billed by CB for audit-related fees for the years ended December 31, 2012 and 2011 were \$45,711 and \$14,956, respectively.

**Tax Fees.** The aggregate fees billed by CB for professional services rendered for tax compliance, for the years ended December 31, 2012 and 2011 were \$18,600 and \$18,600, respectively.

**All Other Fees.** None

The Audit Committee of our Board has established pre-approval policies and procedures pursuant to which the Audit Committee approved the foregoing audit, tax and non-audit services provided by CB in 2012. Consistent with the Audit Committee s responsibility for engaging our independent auditors, all audit and permitted non-audit services require pre-approval by the Audit Committee. The full Audit Committee approves proposed services and fee estimates for these services based on information provided by our management. The Audit Committee chairperson has been designated by the Audit Committee to approve any audit-related services arising during the year that were not pre-approved by the Audit Committee. Any non-audit service must be approved by the full Audit Committee. Services approved by the Audit Committee chairperson are communicated to the full Audit Committee at its next regular meeting and the Audit Committee reviews services and fees for the fiscal year at each such meeting. Pursuant to these procedures, the Audit Committee approved the foregoing audit services provided by CB.

**Changes In and Disagreements with Accountants on Accounting and Financial Disclosure.** None.

A representative of CB is expected to attend the Meeting, will have the opportunity to make a statement should they desire to do so and to respond to appropriate questions.

**THE BOARD RECOMMENDS A VOTE FOR THE RATIFICATION OF THE AUDIT COMMITTEE S APPROVAL OF THE APPOINTMENT OF CHERRY BEKAERT LLP AS THE COMPANY S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDED DECEMBER 31, 2013.**

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**PROPOSAL 3**

**TO CONDUCT AN ADVISORY VOTE ON OUR 2012 EXECUTIVE COMPENSATION**

The SEC has adopted final rules requiring public companies to provide stockholders with periodic advisory (non-binding votes) on executive compensation, also referred to as "say-on-pay" proposals. We are presenting the following proposal, which gives you as a stockholder the opportunity to endorse or not endorse our 2012 equity compensation program for the named executive officers as described in "Compensation Discussion and Analysis" in this Proxy Statement by voting for or against the following resolution.

**RESOLVED, that the compensation paid to the Company's named executive officers for the fiscal year ended December 31, 2012, as disclosed pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, compensation tables and narrative discussion, is hereby approved.**

Pursuant to the Exchange Act and the rules promulgated thereunder, this vote will not be binding on the Board or the Compensation Committee and may not be construed as overruling a decision by the Board or the Compensation Committee, creating or implying any change to the fiduciary duties of the Board or the Compensation Committee or any additional fiduciary duty by the Board or the Compensation Committee or restricting or limiting the ability of stockholders to make proposals for inclusion in proxy materials related to executive compensation. The Board and the Compensation Committee, however, may in their discretion take into account the outcome of the vote when considering future executive compensation arrangements.

**Required Vote**

In voting to approve the above resolution, stockholders may vote for the resolution, against the resolution or abstain from voting. This matter will be decided by the affirmative vote of a majority of the votes cast at the Meeting. Abstentions and broker non-votes will have no direct effect on the outcome of this proposal.

**THE BOARD RECOMMENDS A VOTE FOR APPROVAL OF THE COMPENSATION OF THE COMPANY'S NAMED EXECUTIVE OFFICERS AS DISCLOSED IN THIS PROXY STATEMENT.**

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**PROPOSAL 4**

**TO CONDUCT AN ADVISORY VOTE ON THE FREQUENCY OF FUTURE ADVISORY**

**VOTES ON EXECUTIVE COMPENSATION**

The SEC has also adopted final rules requiring public companies to hold an advisory (non-binding) vote on the frequency of holding say-on-pay votes. Accordingly, as required by the SEC's rules, we are including this proposal to give our stockholders the opportunity to inform us as to how often they wish the Company to include a say-on-pay proposal, similar to Proposal 3, in our proxy statements.

We are presenting the following proposal, which gives you, as a stockholder, the opportunity to inform us as to whether you wish us to hold an advisory (non-binding) vote on executive compensation once every (1) one year, (2) two years, or (3) three years, or you may abstain from voting on the proposal set forth in the following resolution.

**RESOLVED, that the stockholders determine, on an advisory basis, whether the preferred frequency of an advisory vote on the executive compensation of the Company's named executive officers as set forth in the Company's Proxy Statement for the 2013 Annual Meeting of Stockholders should be every year, every two years, or every three years.**

The Board recommends that you vote for every three (3) years as the desired frequency for the Company to hold a non-binding, advisory vote of the stockholders on executive compensation. We believe this frequency is appropriate for the reasons set forth below:

1. Our equity compensation program for the named executive officers is designed to support long-term value creation, and a vote every three years will allow the stockholders to better judge the equity compensation program in relation to our long-term performance. We strive to ensure management's interests are aligned with stockholders' interests to support long-term value creation through our equity compensation program. To that end, we grant equity awards to vest over multi-year periods of service to encourage our named executive officers to focus on long-term performance, and recommend a vote every three years, which would allow the equity compensation to be evaluated over a similar time-frame and in relation to long-term performance.
2. A vote every three (3) years will provide the Board and the Compensation Committee with the time to thoughtfully consider and thoroughly respond to stockholders' sentiments and to implement any necessary changes in light of the timing required therefor. The Board and the compensation committee will carefully review changes to the executive compensation to maintain the effectiveness and credibility of the program, which is important for aligning interests and for motivating and retaining our named executive officers.
3. We are open to input from stockholders regarding Board and governance matters, as well as the equity compensation program. We believe that the stockholders' ability to contact us and the Board at any time to express specific views on executive compensation holds us accountable to stockholders and reduces the need for and value of more frequent advisory votes on executive compensation.

Pursuant to the Exchange Act and the rules promulgated thereunder, this vote on the frequency of future advisory votes on named executive officer compensation is non-binding on the Board and its committees. This vote may not be construed as overruling a decision by the Board or its committees, creating or implying any change to the fiduciary duties of the Board or its committees or any additional fiduciary duty by the Board or its committees or restricting or limiting the ability of stockholders to make proposals for inclusion in proxy materials related to executive compensation. Notwithstanding the Board's recommendation and the outcome of the vote on this matter, the Board may, in the future, decide to conduct advisory votes on a more or less frequent basis and may vary its practice based on factors such as discussions with stockholders and the adoption of material changes to compensation programs.

**THE BOARD RECOMMENDS THAT STOCKHOLDERS VOTE TO HAVE THE NON-BINDING VOTE ON EXECUTIVE COMPENSATION OCCUR EVERY THREE YEARS.**

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**PROPOSAL 5**

**TO APPROVE AN AMENDMENT TO THE 2011 EQUITY INCENTIVE PLAN TO, AMONG  
OTHER MATTERS, INCREASE THE NUMBER OF SHARES OF COMMON STOCK  
AUTHORIZED FOR ISSUANCE UNDER THE PLAN BY 2,600,000 SHARES  
FROM 4,200,000 TO 6,800,000**

**Description of Proposed Amendment**

On June 7, 2013, the Board (with the recommendation of the Compensation Committee) unanimously approved an amendment (the **Plan Amendment**) to the Company's 2011 Equity Incentive Plan (the **2011 Plan**), subject to stockholder approval, to:

1. Increase the number of shares of Common Stock authorized for issuance under the 2011 Plan by 2,600,000 shares from 4,200,000 to 6,800,000;
2. Change the fungible ratio on restricted stock units and certain other awards from 1.5:1 to 1.15:1; and
3. Amend the definition of "Change in Control" in the 2011 Plan to provide that vesting of awards under the 2011 Plan shall only accelerate upon the consummation of certain corporate events (as opposed to upon Board and stockholder approval thereof, as currently provided for).

The full text of the proposed Plan Amendment is set out in Annex A to this Proxy Statement. The text of the proposed Plan Amendment is subject to modification to include such changes as the Board deems necessary and advisable to affect the increase in the number of shares of Common Stock reserved and available for issuance under the 2011 Plan. Stockholders are being asked to approve the Plan Amendment.

**Vote Required and Recommendation**

The approval of the Plan Amendment will be made upon the affirmative vote of the majority of shares cast on the proposal. Abstentions and broker non-votes will have no direct effect on the outcome of this proposal. If the proposal is not approved by the stockholders, the Plan Amendment will not be effective and the proposal will not be implemented.

**Reasons for the Plan Amendment**

*2011 Plan Generally*

Our 2011 Plan is currently composed of 4,200,000 shares of Common Stock. In addition, 3,323,990 shares of Common Stock underlying options available for issuance under the Company's Amended and Restated 2001 Incentive Plan despite the fact that such plan expired in July 2011.

The purpose of the 2011 Plan is: (i) to align our interests and recipients of awards under the plan by increasing the proprietary interest of such recipients in our growth and success, and (ii) to advance our interests by providing additional incentives to officers, key employees and well-qualified non-employee directors and consultants who provide services to us, who are responsible for our management and growth, or otherwise contribute to the conduct and direction of our business, operations and affairs. The Compensation Committee of the Board administers the 2011 Plan, selects the persons to whom awards are granted and fixes the terms of such awards.

*Increase in Size of 2011 Plan*

Currently, awards (consisting of options to purchase shares of Common Stock and restricted stock units) issued under the 2011 Plan total 4,348,514 shares of Common Stock. Therefore, there are no shares of Common Stock reserved and available for issuance under the 2011 Plan. All proposed issuances of options heretofore



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made which are in excess 4,200,000 shares (totaling 148,514 shares) were issued to the holders thereof conditioned upon approval by our stockholders of the Plan Amendment and such issuances will be revoked if this proposal is not approved. In addition, 3,323,990 shares of Common Stock underlying options available for issuance under the Company's Amended and Restated 2001 Incentive Plan despite the fact that such plan expired in July 2011.

The Board (with recommendation of the Compensation Committee) determined to increase the number of shares of Common Stock reserved and available for issuance under the 2011 Plan by 2,600,000 shares because it believes that the current number is insufficient for the purposes of the 2011 Plan as stated above. The market for quality personnel is competitive, and the ability to obtain and retain competent personnel is of great importance to the Company's business operations. In addition, the Board is seeking to satisfy grants made subject to stockholder approval as stated above and to address the Company's forecasted needs for equity compensation. Also, because of our significant institutional stockholder base, the Compensation Committee and the Board also considered the relevant guidelines from a proxy advisory firm. We believe that the 2,600,000 share increase is within such guidelines.

### *Change in Fungible Ratio*

In addition to an increase in the shares reserved for issuance under the 2011 Plan, the Board (with recommendation of the Compensation Committee) determined to reduce the fungible ratio from 1.5 shares to 1.15 shares for every one (1) share subject to an award of restricted stock units, restricted stock, performance shares or performance units (referred to as "full value awards"). If stockholders approve the Plan Amendment, grants of full value awards would reduce the number of shares issuable under the 2011 Plan at a lesser rate than if the fungible ratio had remained the same. As a result, the adjustment in the fungible ratio would enable us to grant more shares pursuant to full value awards even if, for example, the number of shares authorized for issuance under the 2011 Plan remained constant.

### *Amendment to Definition of Change in Control*

Upon a "Change in Control" of the Company as defined in the 2011 Plan, unvested awards under the 2011 Plan become subject to immediate vesting and exercise. The purpose of this feature is so the Company's employees and directors can obtain the benefit via equity participation in a liquidity event involving the Company such as a merger of the Company with another company or the acquisition of the Company by a third party.

Currently, Section 2(g) of the 2011 Plan provides, in relevant part, that a "Change in Control" of the Company shall be deemed to occur upon (pertinent language shown in bold and italicized text):

***(iii) Approval by the Board and, if required, stockholders of the Company of, or execution by the Company of any definitive agreement with respect to, or the consummation of (it being understood that the mere execution of a term sheet, memorandum of understanding or other non-binding document shall not constitute a Change of Control):***

(A) A merger, consolidation or reorganization involving the Company, where either or both of the events described in clauses (i) or (ii) above would be the result;

(B) A liquidation or dissolution of or appointment of a receiver, rehabilitator, conservator or similar person for, or the filing by a third party of an involuntary bankruptcy against, the Company; provided, however, that to the extent necessary to comply with Section 409A of the Code, the occurrence of an event described in this subsection (B) shall not permit the settlement of Restricted Stock Units granted under this Plan; or

(C) An agreement for the sale or other disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a subsidiary of the Company).

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When the 2011 Plan was initially adopted, a proxy advisory firm noted that its guidelines recommended that change in control features be triggered not upon Board or stockholder approval of the noted change in control events, but rather only upon actual consummation of such events. In light of these guidelines, the Board (with recommendation of the Compensation Committee) determined on June 7, 2013 to amend the Change in Control definition in the 2011 Plan so that accelerated vesting will only occur upon actual consummation of the noted events. As such, the Plan Amendment proposes to amend and replace Section 2(g)(iii) as set forth above to read as follows:

(iii) The consummation of any of the following events:

**Effects of the Plan Amendment**

As a result of the Plan Amendment, there will be an increase in the total number of shares of Common Stock reserved for issuance under the 2011 Plan. This will provide the Company with the ability to grant more awards than are currently available under the 2011 Plan to eligible recipients including employees, directors, consultants and advisors. The issuance in the future of awards under the 2011 Plan consisting of full value awards and options to purchase shares of Common Stock may have the effect of diluting the earnings per share and book value per share, as well as the stock ownership and voting rights, of the holders of the currently outstanding shares of Common Stock. The effective increase in the number of authorized but unissued shares of Common Stock which may be issued as awards under the 2011 Plan may be construed as having an anti-takeover effect by permitting the issuance of shares to purchasers who might oppose a hostile takeover bid or oppose any efforts to amend or repeal certain provisions of the Company's Certificate of Incorporation or Amended and Restated Bylaws. Holders of the Common Stock have no preemptive or other subscription rights.

In addition, if stockholders approve the Plan Amendment, the maximum number of shares reserved for issuance under the 2011 Plan will be reduced by 1.5 shares for every one share subject to a full value award granted prior to June 7, 2013, and 1.15 shares for every one share subject to a full value award granted on or after June 7, 2013. Additionally, if stockholders approve the Plan Amendment, with respect to full value awards that are forfeited and that otherwise would return to the 2011 Plan, the unvested or cancelled shares under the forfeited full value award generally will be returned to the available pool of shares reserved for issuance under the 2011 Plan as follows: (1) for every share subject to a full value award granted prior to June 7, 2013, that is cancelled, terminated, expired or lapsed, 1.5 shares will return to the available pool; (2) for every share subject to a full value award granted on or after June 7, 2013, that is cancelled, terminated, expired or lapsed, 1.15 shares will return to the available pool; and (3) for every stock option that is cancelled, terminated, expired or lapsed, one share will return to the available pool.

In addition, if stockholders approve the Plan Amendment, we believe that the definition of "Change in Control" as set forth in the 2011 Plan will be consistent with proxy advisory firm guidelines.

**Securities Authorized for Issuance Under Equity Compensation Plans As of June 11, 2013**

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights <sup>(3)</sup> (b)	Number of securities remaining available for future issuance (c)
Equity compensation plans approved by security holders <sup>(1)</sup>	6,791,563	\$ 3.78	
Equity compensation plans not approved by security holders <sup>(2)</sup>	637,004		
<b>Total</b>	<b>7,428,567</b>	<b>\$ 3.78</b>	

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- (1) Includes: (i) 2,584,021 restricted stock units ( RSUs ), of which 1,722,681 RSUs are subject to potential future vesting and issuance during the period 2013-2019 under our Performance Long Term Incentive Plan (which is included as part of our 2011 Plan) and (ii) 3,323,990 shares of Common Stock underlying options previously granted under our Amended and Restated 2001 Incentive Plan, which are still exercisable despite the fact that such plan expired July 2011.
- (2) Composed of 637,004 RSUs, of which 424,669 RSUs are to be issued subject to vesting during 2014-2016.
- (3) Weighted-average exercise price does not include RSUs.

**Recommendation of the Board of Directors**

**THE BOARD RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR TO APPROVE AN AMENDMENT TO THE 2011 EQUITY INCENTIVE PLAN TO INCREASE THE NUMBER OF SHARES OF COMMON STOCK AUTHORIZED FOR ISSUANCE UNDER THE 2011 PLAN FROM 4,200,000 TO 6,800,000.**



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**OTHER INFORMATION**

**Proxy Solicitation**

All costs of solicitation of proxies will be borne by the Company. In addition to solicitation by mail, the Company's officers and regular employees may solicit proxies personally or by telephone. The Company does not intend to utilize a paid solicitation agent.

**Proxies**

A stockholder may revoke his, her or its proxy at any time prior to its use by giving written notice to the Secretary of the Company, by executing a revised proxy at a later date or by attending the Meeting and voting in person. Proxies in the form enclosed, unless previously revoked, will be voted at the Meeting in accordance with the specifications made thereon or, in the absence of such specifications in accordance with the recommendations of the Company's Board.

**Securities Outstanding; Votes Required**

As of the close of business on the Record Date there were 38,000,027 shares of Common Stock outstanding. As of the Record Date, no shares of preferred stock were issued or outstanding. Stockholders are entitled to one vote for each share of Common Stock owned. The affirmative vote of a majority of the shares of Common Stock present at the Meeting, in person or by proxy, is required for approval of the proposals. Shares of the Common Stock represented by executed proxies received by the Company will be counted for purposes of establishing a quorum at the Meeting, regardless of how or whether such shares are voted on any specific proposal.

**Other Business**

Our Board knows of no other matter to be presented at the Meeting. If any additional matter should properly come before the Meeting, it is the intention of the persons named in the enclosed proxy to vote such proxy in accordance with their judgment on any such matters.

**Table of Contents****Beneficial Ownership of Principal Stockholders, Officers and Directors**

The following table sets forth, as of June 11, 2013, by: (i) each of our directors, (ii) all persons who, to our knowledge, are the beneficial owners of more than 5% of the outstanding shares of Common Stock, (iii) each of the executive officers, and (iv) all of our directors and executive officers, as a group. Each person named in this table has sole investment power and sole voting power with respect to the shares of Common Stock set forth opposite such person's name, except as otherwise indicated. Unless otherwise indicated, the address for each person listed below is in care of BioDelivery Sciences International, Inc., 801 Corporate Center Drive, Suite #210, Raleigh, NC 27607.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percentage of Class as of June 11, 2013 <sup>(1)</sup>
FMR LLC <sup>(2)</sup>	5,205,495	13.70%
Baker Brothers Life Sciences, L.P. <sup>(3)</sup>	3,792,091	9.98%
Hopkins Capital Group II, LLC <sup>(4)</sup>	3,075,490	8.09%
Frank E. O'Donnell, Jr., M.D. <sup>(5)</sup>	3,524,906	9.21%
Deerfield Mgmt, L.P. <sup>(6)</sup>	2,504,914	6.59%
Adage Capital Partners GP LLC <sup>(7)</sup>	2,300,000	6.05%
Broadfin Capital, LLC <sup>(8)</sup>	2,017,000	5.31%
Mark A. Sirgo, Pharm.D. <sup>(9)</sup>	1,875,679	4.81%
James A. McNulty <sup>(10)</sup>	333,622	*
Andrew L. Finn, Pharm.D. <sup>(11)</sup>	1,143,965	2.98%
William B. Stone <sup>(12)</sup>	405,000	1.06%
John J. Shea <sup>(13)</sup>	148,805	*
William S. Poole <sup>(14)</sup>	266,190	*
Samuel P. Sears, Jr. <sup>(15)</sup>	31,863	*
Thomas W. D'Alonzo <sup>(6)</sup>	80,625	*
All Directors and Officers as a group (9 persons)	7,805,655	19.15%

\* Less than 1%

(1) Based on 38,000,027 shares of Common Stock outstanding as of June 11, 2013 and shares beneficially owned by the referenced parties as described below.

(2) FMR is an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 and has the sole dispositive rights on the shares owned by various investment companies registered under Section 8 of the Investment Company Act of 1940, including Fidelity Series Small Cap Opportunities Fund, which owns 5,205,495 shares or 13.70% and included of which 112,353 shares are controlled by Pyramis Global Advisors Trust Company. The several investment companies each have the sole voting power to vote the shares owned by them.

(3) Based on a Schedule 13G filed with the SEC on February 1, 2013 (which was updated via Form 13F on March 31, 2013), Felix J. Baker and Julian C. Baker have voting and investment power over the shares held by Baker Brothers Life Sciences, L.P. Includes 1,714,505 shares of Common Stock and up to a maximum potential of 2,139,000 shares of Series A Preferred stock, of which 184,686 shares are owned by 667, L.P. and 45,845 shares owned by 14159, L.P. The Series A Preferred is only exercisable to the extent that the holders thereof together with their affiliates would beneficially own, for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, no more than 9.98% of the outstanding shares of Common Stock after exercise. As a result of this restriction, the number of shares that may be issued upon conversion of the Series A Preferred by the above holders may change depending upon changes in the outstanding shares.

(4) Includes 400,402 shares of Common Stock which were converted from Series B Convertible Preferred Stock in January 2007. The address for Hopkins Capital Group II, LLC is 324 S Hyde Park, Suite 350, Tampa, FL. 33606.

(5) Dr. O'Donnell is our Executive Chairman of the Board and a Director. Includes the shares owned by Hopkins Capital Group II, LLC, as to which Dr. O'Donnell disclaims beneficial interest (see note 3).

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- Excludes 167,500 shares owned by The Francis E. O' Donnell, Jr. Irrevocable Trust #1, of which Dr. O' Donnell's sister, Kathleen O' Donnell, is trustee, and as to which Dr. O' Donnell disclaims beneficial interest. Also excludes 4,577 shares of Common Stock owned by Dr. O' Donnell's sister. In addition, this number includes 157,689 shares owned personally by Dr. O' Donnell and options to purchase 290,000 shares of Common Stock, all of which is currently exercisable. Does not include 210,000 shares of unvested RSUs which will begin vesting February 2014 in thirds. Also does not include 186,273 shares if unvested RSUs potentially issuable under our LTIP if certain pre-determined company revenue targets are achieved. Dr. O' Donnell's address is 865 Longboat Club Road, Longboat Key FL. 34228.
- (6) Based on a Schedule 13G filed with the SEC on December 10, 2012 (which was updated via Form 13F on March 31, 2013) by Deerfield Mgmt, L.P who has shared voting and investment power over the shares held. Includes 1,934,614 shares of Common Stock and 570,300 shares of Series A Preferred stock, which shares are owned by Deerfield Special Situations Funds, L.P. and Deerfield Special Situations International Master Fund, L.P.
- (7) Based on a Schedule 13G filed with the SEC on December 6, 2012, Adage Capital Partners GP, LLC who has shared voting and investment power over the shares held.
- (8) Based on a Schedule 13G filed with the SEC on March 11, 2013 by Broadfin Capital, LLC who has shared voting and investment power over the shares held.
- (9) Includes 863,342 shares owned by Dr. Sirgo, our President and Chief Executive Officer. Includes options to purchase 1,012,337 shares of Common Stock, all of which are currently exercisable. Excludes options to purchase 37,738 shares of Common Stock which are not currently exercisable. Does not include 420,000 shares of unvested RSUs which will begin vesting February 2014 in thirds. Also does not include 371,554 unvested RSUs potentially issuable under our LTIP if certain pre-determined company revenue targets are achieved. Dr. Sirgo's address is 606 Wayne Drive, Raleigh, NC. 27609.
- (10) Mr. McNulty is our Chief Financial Officer, Secretary and Treasurer. Includes 44,399 shares owned by Mr. McNulty. Includes options to purchase 289,223 shares of Common Stock, all of which are currently exercisable. Includes 2,288 shares owned by his wife, as to which he disclaims beneficial interest of. Excludes options to purchase 27,363 shares of Common Stock which are not currently exercisable. Does not include 154,735 shares of unvested RSUs which will begin vesting February 2014 in thirds. Also does not include 133,760 unvested RSUs potentially issuable under our LTIP if certain pre-determined company revenue targets are achieved. Mr. McNulty's address is 4419 W. Sevilla Street, Tampa, FL. 33629.
- (11) Dr. Finn is our Executive Vice President of Clinical Development and Regulatory Affairs. Includes 770,653 shares owned by Dr. Finn. Includes options to purchase 373,312 shares of Common Stock, all of which are currently exercisable. Excludes options to purchase 25,893 shares of Common Stock which are not currently exercisable. Does not include 160,601 shares of unvested RSUs which will begin vesting February 2014 in thirds. Also does not include 133,760 unvested RSUs potentially issuable under our LTIP if certain pre-determined company revenue targets are achieved. Dr. Finn's address is 3104 Raymond Street, Raleigh, NC. 27607.
- (12) Mr. Stone is a Director. Includes 55,000 shares owned and options to purchase 350,000 shares of Common Stock, all of which are currently exercisable. Mr. Stone's address is 11120 Geyer Downs Lane, Frontenac MO. 63131.
- (13) Mr. Shea is a Director. Includes 6,305 shares owned and options to purchase 142,500 shares of Common Stock, all of which are currently exercisable. Mr. Shea's address is 290 Wax Myrtle Trail, Southern Shores, NC. 27949.
- (14) Mr. Poole is a Director. Includes 8,690 shares owned and options to purchase 257,500 shares of Common Stock, all of which are currently exercisable. Mr. Poole's address is 7813 Hardwick Drive, Raleigh, NC. 27615.
- (15) Mr. Sears is a Director. Includes 14,500 shares owned and options to purchase 17,363 shares of Common Stock, all of which are currently exercisable. Mr. Sears' address is 1 Fieldstone Drive, Winchester, MA. 01890.
- (16) Mr. D'Alonzo is a Director. Includes 15,625 shares owned and options to purchase 65,000 shares of Common Stock, all of which are currently exercisable. Mr. D'Alonzo's address is 908 Vance Street, Raleigh, NC. 27608.

**Table of Contents****Certain Relationships and Related Transactions**

As of December 31, 2001, the Board appointed an audit committee consisting of independent directors. This committee, among other duties, is charged to review, and if appropriate, ratify all agreements and transactions which had been entered into with related parties, as well as review and ratify all future related party transactions. The audit committee and/or our independent directors independently reviewed, ratified and/or approved, as the case may be, the agreements described below. From time to time, after compliance with our internal policies and procedures, we have entered into related party contracts, some of which were amended subsequently in accordance with the same policies and procedures.

The following is a listing of our related party transactions:

*HCG II, Accentia and affiliates*

We also have several business relationships with Accentia and its affiliates. Hopkins Capital Group II, LLC, or HCG II, which is controlled by Dr. Frank O. Donnell, Jr., our Executive Chairman of the Board and which owns a significant percentage of Common Stock, is a significant stockholder of Accentia. In addition, Dr. O. Donnell is also the Executive Chairman of Accentia. In addition, William S. Poole, a director of our company, is also a director of Accentia. Also, James A. McNulty, our Secretary, Treasurer and CFO, is also Secretary and Treasurer of Accentia and Chief Financial Officer of HCG II.

On November 10, 2008, Accentia and its subsidiaries, including Biovest filed voluntary petitions to reorganize under Chapter 11 of the United States Bankruptcy Code. On November 17, 2010, both companies emerged from Chapter 11. We do not have any projects with Accentia at this time, nor did we in any part of 2012.

*Arius/TEAMM Distribution Agreement.* On March 12, 2004, our Arius subsidiary (then a separate company) entered into a Distribution Agreement pursuant to which it granted exclusive marketing and sales rights in the United States to TEAMM Pharmaceuticals, Inc. with respect to the Emezine product for the treatment of nausea and vomiting. TEAMM was renamed Accentia Pharmaceuticals, Inc. in 2007 and is a wholly-owned subsidiary of Accentia. As part of this agreement, TEAMM agreed to pay for the development costs of Emezine. We received development cost reimbursements of \$1.0 million in 2004 from Accentia in connection with this agreement and an additional \$300,000 in 2005 upon the acceptance of the Emezine NDA for filing. On December 17, 2008, in conjunction with the Reckitt Benckiser Healthcare (UK) Limited (Reckitt) termination of the Emezine agreement, the Arius TEAMM Distribution Agreement was terminated.

*Emezine Settlement Agreement.* On December 30, 2009, we entered into a Settlement Agreement with Accentia, Arius and TEAMM. The purpose of such agreement was to memorialize the terms and conditions of a settlement between us and Accentia of claims by TEAMM relating to the Distribution Agreement between Arius and TEAMM. At the time the Distribution Agreement was entered into, Arius was not affiliated with us. Arius was acquired by us in August 2004. We did not believe that Accentia's claims had merit, but we also believed that the alternative of a protracted dispute would be distracting, time consuming and costly at a time when we were focusing our efforts on the commercial launch of ONSOLIS®, our first approved product, and on the development of our product pipeline including BEMA® Buprenorphine. As such, we elected to enter into the Agreement.

The Agreement provides that we and Accentia mutually release all claims that either may have against each other and, in connection therewith, we will (a) pay \$2.5 million to Accentia (paid to escrow in February 2010) and (b) grant the following royalty rights (the Product Rights) to Accentia with respect to our BEMA® Granisetron product candidate (BEMA® Granisetron) (or in the event it is not BEMA® Granisetron, our third product candidate utilizing our BEMA® technology (excluding BEMA® Buprenorphine) as to which we file an NDA, which, together with BEMA® Granisetron, shall be referred to hereinafter as the Product): (i) 70/30 split between our company and Accentia, respectively) of royalty received if a third party sells the Product and 85/15 split on net sales if we sell the Product; and (ii) we will, from the sale of the Product, fully recover amounts equal to (1) all internal and external worldwide development costs of the Product (Costs) plus interest (measured on

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weighted average prime interest rate from first dollar spent until Product launch) and (2) the \$2.5 Million Payment plus interest (measured on weighted average prime interest rate from the time of payment until Product launch) before Accentia begins to receive its split as described in (b) (i) above. In addition, pursuant to the Agreement, we have received a warrant to purchase 2 million shares of Accentia's majority-owned subsidiary, Biovest, from Accentia, with a strike price equal to 120% of the closing bid price of Biovest's common stock as of the date the Bankruptcy Court enters a final order authorizing Accentia to carry out the Agreement, with the issuance of the Warrant to occur upon the \$2.5 Million Payment by us. The Warrant will be exercisable immediately and for a period of seven 7 years from the date of issuance. During the initial two 2 year exercise period, any exercise of the Warrant by us will be subject to approval by Biovest.

On November 30, 2000, we entered into an agreement with Biotech Specialty Partners, LLC, or BSP, an emerging alliance of early stage biotechnology and specialty pharmaceutical companies. BSP to date has not distributed any pharmaceutical products. Under this agreement, BSP will serve as a nonexclusive distributor of our products in consideration of a ten (10%) percent discount to the wholesale price, which the Board has determined to be commercially reasonable. BSP has waived its rights under this agreement with respect to Arius' products which include the BEMA<sup>®</sup> technology. Hopkins Capital Group, which is affiliated with Dr. Frank E. O'Donnell, Jr., our Executive Chairman of the Board and a director, are affiliated as stockholders, and Dr. O'Donnell is a member of the management of BSP.

### *Other*

As a matter of corporate governance policy, we have not and will not make loans to officers or loan guarantees available to promoters as that term is commonly understood by the SEC and state securities authorities.

We believe that the terms of the above transactions with affiliates were as favorable to us or our affiliates as those generally available from unaffiliated third parties. At the time of certain of the above referenced transactions, we did not have sufficient disinterested directors to ratify or approve the transactions; however, the present Board includes five independent directors which constitute a majority as required by NASDAQ Stock Market rules. We believe that William B. Stone, John J. Shea, William S. Poole, Samuel P. Sears, Jr. and Thomas W. D. Alonzo qualify as independent directors for NASDAQ Stock Market purposes.

All future transactions between us and our officers, directors or five percent stockholders, and respective affiliates will be on terms no less favorable than could be obtained from unaffiliated third parties and will be approved by a majority of our independent directors who do not have an interest in the transactions and who had access, at our expense, to our legal counsel or independent legal counsel.

To the best of our knowledge, other than as set forth above, there were no material transactions, or series of similar transactions, or any currently proposed transactions, or series of similar transactions, to which we were or are to be a party, in which the amount involved exceeds \$120,000, and in which any director or executive officer, or any security holder who is known by us to own of record or beneficially more than 5% of any class of Common Stock, or any member of the immediate family of any of the foregoing persons, has an interest.

### **Deadline for Submission of Stockholder Proposals for 2014 Annual Meeting of Stockholders**

Stockholders may present proposals intended for inclusion in our proxy statement for our 2014 Annual Meeting of Stockholders provided that such proposals are received by the Secretary of the Company in accordance with the time schedules set forth in, and otherwise in compliance with, applicable SEC regulations, and the Company's Amended and Restated Bylaws, as applicable. Proposals submitted not in accordance with such regulations will be deemed untimely or otherwise deficient; however, the Company will have discretionary authority to include such proposals in the 2014 Proxy Statement.

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**Stockholder Communications**

Stockholders wishing to communicate with the Board may direct such communications to the Board c/o the Company, Attn: James A. McNulty. Mr. McNulty will present a summary of all stockholder communications to the Board at subsequent Board meetings. The directors will have the opportunity to review the actual communications at their discretion.

**Additional Information**

Accompanying this Proxy Statement is a copy of the Company's Annual Report on Form 10-K for the year ended December 31, 2012. Such Report constitutes the Company's Annual Report to its Stockholders for purposes of Rule 14a-3 under the Exchange Act. Such Report includes the Company's audited financial statements for the 2012 fiscal year and certain other financial information, which is incorporated by reference herein. The Company is subject to the informational requirements of the Exchange Act and in accordance therewith files reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information are available on the SEC's website at [www.sec.gov](http://www.sec.gov). Stockholders who have questions in regard to any aspect of the matters discussed in this Proxy Statement should contact James McNulty, Chief Financial Officer of the Company, at (813) 864-2562.

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**ANNEX A**

**AMENDMENT NO. 1**

**TO**

**BIODELIVERY SCIENCES INTERNATIONAL, INC.**

**2011 EQUITY INCENTIVE PLAN**

Pursuant to Section 14 of the 2011 Equity Incentive Plan (the **Plan**) of BioDelivery Sciences International, Inc. (the **Company**), the Board of Directors of the Company has duly adopted a resolution, conditioned upon approval by the stockholders of the Company, approving this Amendment No. 1 to the Plan to increase the total number of shares of common stock, par value \$.001 per share, of the Company (the **Common Stock**) reserved and available for issuance under the Plan as follows:

1. Section 5(b) of the Plan is hereby amended to read in its entirety as follows:

(b) Subject to Sections 3, 11 and 12 of this Plan, the Committee is authorized to deliver under this Plan an aggregate of Six Million Eight Hundred Thousand (6,800,000) Common Shares. Each Common Share subject to an Option or a Stock Appreciation Right will reduce the number of Common Shares available for issuance by one share, and each Common Share underlying an Award of Restricted Stock, Restricted Stock Units, Stock Bonus Awards and Performance Compensation Awards will reduce the number of Common Shares available for issuance by 1.15 shares.

2. Section 2(g)(iii) of the Plan is hereby amended to read in its entirety as follows:

(iii) The consummation of any of the following events:

(A) A merger, consolidation or reorganization involving the Company, where either or both of the events described in clauses (i) or (ii) above would be the result;

(B) A liquidation or dissolution of or appointment of a receiver, rehabilitator, conservator or similar person for, or the filing by a third party of an involuntary bankruptcy against, the Company; provided, however, that to the extent necessary to comply with Section 409A of the Code, the occurrence of an event described in this subsection (B) shall not permit the settlement of Restricted Stock Units granted under this Plan; or

(C) An agreement for the sale or other disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a subsidiary of the Company).

3. All other terms and provisions of the Plan shall remain unchanged and in full force and effect as written.

4. A majority in voting interest of the stockholders present in person or by proxy and entitled to vote at the meeting of stockholders at which this Amendment No. 1 was considered, has duly approved this Amendment No. 1 to the Plan.

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IN WITNESS WHEREOF, this Amendment No. 1 to the Plan is made effective this      day of                      , 2013.

BIODELIVERY SCIENCES INTERNATIONAL, INC.

By:

Name:

Title:



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**PROXY**

**BioDelivery Sciences International, Inc.**

**801 Corporate Center Drive, Suite #210**

**Raleigh, North Carolina 27607**

**THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS**

THE UNDERSIGNED HEREBY APPOINTS MARK A. SIRGO AND JAMES A. MCNULTY, AND EACH OF THEM, AS PROXIES OF THE UNDERSIGNED, WITH FULL POWER OF SUBSTITUTION, TO VOTE ALL THE SHARES OF COMMON STOCK OF BIODELIVERY SCIENCES INTERNATIONAL, INC. HELD OF RECORD BY THE UNDERSIGNED ON JUNE 11, 2013, AT THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON THURSDAY, JULY 18, 2013, OR ANY ADJOURNMENT THEREOF.

1. Election of Mark A. Sirgo, John J. Shea and Thomas W. D. Alonzo as Class II directors, to hold office until the 2016 Annual Meeting of Stockholders or their successors are elected and qualified or until their earlier resignation or removal.

FOR THE NOMINEES

WITHHOLD AUTHORITY FOR THE NOMINEES

FOR ALL EXCEPT (see instructions)

Mark A. Sirgo                       John J. Shea                       Thomas W. D. Alonzo

**Instructions:** to withhold authority for any individual nominee, mark  FOR ALL EXCEPT and fill in the circle next to the nominee you wish to withhold for.

2. To ratify the appointment by the Audit Committee of the Company's Board of Directors of Cherry Bekaert LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2013;

FOR                                       AGAINST                                       ABSTAIN

3. To approve, by a non-binding vote, the Company's 2012 executive compensation.

FOR                                       AGAINST                                       ABSTAIN

4. To approve, by a non-binding vote, the frequency of future stockholder advisory votes relating to the Company's executive compensation.

3 YEARS                       2 YEARS                       1 YEAR                       ABSTAIN

5. To approve an amendment to the 2011 Equity Incentive Plan to, among other matters, increase the number of shares of Common Stock authorized for issuance under the 2011 Plan from 4,200,000 to 6,800,000.

FOR                                       AGAINST                                       ABSTAIN

6. In their discretion, upon the transaction of any other matters which may properly come before the meeting or any adjournment thereof.

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**The shares represented by this proxy, when properly executed, will be voted as specified by the undersigned stockholder(s). If this card contains no specific voting instructions, the shares will be voted FOR each of the proposals described on this card.**

**Signature of Stockholder(s)**

**Date**

Please sign exactly as the name appears below. When shares are held by joint tenants, both should sign. When signing as attorney, executor, administrator, trustee or guardian, please give full title as such. If a corporation, please sign the corporate name by the president or other authorized officer. If a partnership, please sign in the partnership name by an authorized person.

**VOTE BY INTERNET [www.proxyvote.com](http://www.proxyvote.com)**

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 P.M. Eastern Time the day before the meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.