

BIODELIVERY SCIENCES INTERNATIONAL INC
Form PRE 14A
June 05, 2009
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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)

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

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

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

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June [], 2009

To the Stockholders of BioDelivery Sciences International, Inc.:

BioDelivery Sciences International, Inc. (the **Company**) is pleased to send you the enclosed notice of the 2009 Annual Meeting of Stockholders of the Company (the **Meeting**) to be held at 11 a.m. on Thursday, July 23, 2009 at the Hilton Garden Inn, Raleigh-Durham Airport, 1500 RDU Center Drive, Morrisville, NC 27560.

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 [], 2009.

Your vote is important please date, sign and return your proxy card in the enclosed envelope (or vote online per the enclosed instructions) 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,

Francis E. O'Donnell, Jr., M.D.

Chairman of the Board of Directors

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 PER THE ENCLOSED DIRECTIONS) 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 23, 2009

The 2009 Annual Meeting of Stockholders (the **Meeting**) of BioDelivery Sciences International, Inc. (the **Company**) will be held at 11 a.m. on Thursday, July 23, 2009, at the Hilton Garden Inn, Raleigh-Durham Airport, 1500 RDU Center Drive, Morrisville, NC 27560, for the following purposes:

1. To approve an amendment to the Company's Amended and Restated 2001 Incentive Plan to increase the number of shares of Company common stock reserved for issuance under such plan from 3,500,000 to 6,000,000 (Proposal 1);
2. To elect Francis E. O'Donnell, Jr., M.D. as a Class I director to serve for a three-year term that expires at the 2012 Annual Meeting of Stockholders, or until his successor has been duly elected and qualified (Proposal 2);
3. To ratify the appointment by the Audit Committee of the Company's Board of Directors of Cherry, Bekaert & Holland, L.L.P. as the Company's independent auditors for the fiscal year ending December 31, 2009 (Proposal 3); and
4. 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. If you are a registered stockholder, you may cast your vote by visiting www.voteproxy.com. You may also have access to the materials for the Meeting by visiting the website <http://proxy.bdsinternational.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

Raleigh, North Carolina

June [], 2009

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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 23, 2009, 11 a.m.

Hilton Garden Inn

Raleigh-Durham Airport, 1500 RDU Center Drive, Morrisville, NC 27560

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 annual meeting of the stockholders, which will take place on Thursday, July 23, 2009 at 11 a.m. local time at the Hilton Garden Inn, Raleigh-Durham Airport, 1500 RDU Center Drive, Morrisville, NC 27560.

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 [], 2008 to all stockholders of record entitled to vote at the annual meeting.

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

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 17, 2009 (the **Record Date**) may attend and vote at the Meeting. Each share is entitled to one vote. There were _____ shares of Common Stock outstanding on the Record Date. All shares of Common Stock shall 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 30 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, you are authorizing these persons to vote your shares at the annual meeting in accordance with your instructions on the proxy card. This way, your shares will be voted whether or not you attend the annual meeting. Even if you plan to attend the annual meeting, we think that it is a good idea to complete

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and return your proxy card before the annual meeting date just in case your plans change. If a proposal comes up for vote at the annual 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: (i) an amendment to the Company's Amended and Restated 2001 Incentive Plan to increase the number of shares of Common Stock reserved for issuance under such plan from 3,500,000 to 6,000,000, (ii) the election of our Class I director, Dr. Francis E. O'Donnell, Jr., M.D., to a term of three (3) years, and (iii) the ratification of our independent registered public accounting firm for the fiscal year ending December 31, 2009. We will also transact any other business that properly comes before the annual 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.

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 annual 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 annual meeting. Whether or not you plan to attend the annual 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 annual meeting. As the beneficial owner, you have the right to direct your broker on how to vote your shares and to attend the annual meeting. However, since you are not the stockholder of record, you may not vote these shares in person at the annual 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 annual meeting.

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 annual 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 annual meeting that is not on the proxy card.

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If you return a signed card, but do not provide voting instructions, your shares will be voted:

for an amendment to our Amended and Restated 2001 Incentive Plan to increase the number of shares of Common Stock reserved for issuance under such plan from 3,500,000 to 6,000,000;

for Dr. O Donnell, our current Chairman of the Board, as nominee for the one (1) Class I director of our Board of Directors;

to ratify the appointment of our independent registered public accounting firm for the fiscal year ending December 31, 2009; and

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

(2) You may vote in person at the annual meeting.

We will pass out written ballots to anyone who wants to vote at the annual meeting. However, if you hold your shares in street name, you must bring to the annual 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.

If you hold your shares through a brokerage firm, you may cast your vote by visiting www.proxyvote.com. If you are a registered stockholder (i.e., if you have a share certificate issued in your name), you may cast your vote by visiting www.voteproxy.com. You may also have access to the materials for the Meeting by visiting the website <http://proxy.bdsinternational.com>. When voting online, you will be asked to input a control number provided on your proxy card, which will grant you access to online voting.

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 (or voting online using the applicable control numbers) 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 annual 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;

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

attending the annual 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 the annual meeting and vote at the annual meeting, you must bring to the annual 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.

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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 annual meeting.

How are votes counted?

You may vote for, against, or abstain on each of the proposals being placed before our stockholders.

How many votes are required to adopt an amendment to the Amended and Restated 2001 Incentive Plan to increase the shares authorized for issuance thereunder from 3,500,000 to 6,000,000?

The affirmative vote of a majority of the votes cast at the meeting of the stockholders by the holders of shares of Common Stock entitled to vote are required to adopt the proposed amendment to our Amended and Restated 2001 Incentive Plan to increase the shares authorized for issuance thereunder from 3,500,000 to 6,000,000.

How many votes are required to elect Dr. O'Donnell as a Class I Director?

The affirmative vote of a plurality of the votes cast at the meeting of the stockholders by the holders of shares of Common Stock entitled to vote in the election are required to elect Dr. O'Donnell as a Class I Director.

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 of the stockholders by the holders of shares of Common Stock entitled to vote are required to ratify Cherry, Bekaert & Holland, L.L.P. as our independent registered public accounting firm for the year ending December 31, 2009.

How many votes are required to approve other matters that may come before the stockholders at the annual meeting?

An affirmative vote of a majority of the votes cast at the annual 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 annual meeting?

We will announce voting results at the annual meeting.

Who can help answer my questions?

You can contact our Secretary 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

2009 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 of Directors**) for use at the 2009 Annual Meeting of Stockholders of the Company (the **Meeting**). The Meeting is to be held at 11 a.m. on Thursday, July 23, 2009 at Hilton Garden Inn, Raleigh-Durham Airport, 1500 RDU Center Drive, Morrisville, NC 27560 and at any adjournment or adjournments thereof.

Record Date; Mailing Date

The Board of Directors has fixed the close of business on June 17, 2009 (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 23, 2009.

Proposals to be Submitted at the Meeting

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

1. To approve an amendment to the Company's Amended and Restated 2001 Incentive Plan to increase the number of shares of Common Stock reserved for issuance under such plan from 3,500,000 to 6,000,000 (Proposal 1);
2. To elect Francis E. O'Donnell, Jr., M.D. as a Class I director to serve for a three-year term that expires at the 2012 Annual Meeting of Stockholders, or until his successor has been duly elected and qualified (Proposal 2);
3. To ratify the appointment by the Audit Committee of the Company's Board of Directors of Cherry, Bekaert & Holland, L.L.P. as the Company's independent auditors for the fiscal year ending December 31, 2009 (Proposal 3); and
4. 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.

Information Concerning Solicitation and Voting

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As of the Record Date, there were [] outstanding shares of Common Stock, each share entitled to one vote on each matter to be voted on at the Annual Meeting. Only holders of shares of Common Stock on the Record Date will be entitled to vote at the Annual 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

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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 Annual Meeting. If a quorum should not be present, the Annual Meeting may be adjourned until a quorum is obtained. To be elected, the nominee named in Proposal 2 must receive the vote of a plurality of the votes of the shares of Common Stock present 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 Proposals 1, 2, and 3.

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 and directors and regular employees of the Company, without additional remuneration, by personal interviews, telephone 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 Annual 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 Annual Meeting, or any adjournments thereof, at which the proxy is to be used, or with the chairman of such Annual Meeting on the day of the Annual 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 ANNUAL MEETING.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF EACH OF THE PROPOSALS TO BE SUBMITTED AT THE MEETING.

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PROPOSAL 1

APPROVAL OF AMENDMENT TO AMENDED AND RESTATED 2001 INCENTIVE PLAN TO INCREASE THE NUMBER OF SHARES ISSUABLE THEREUNDER

Description of Proposed Amendment

On June 1, 2009, the Board of Directors unanimously approved an amendment (the **Plan Amendment**) to the Company's Amended and Restated 2001 Stock Incentive Plan (the **Plan**) to increase the number of shares of Common Stock reserved and available for issuance under the Plan from 3,500,000 to 6,000,000, such amendment to be effective upon approval by the Company's stockholders. The full text of the proposed Plan, as amended, 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 of Directors deems necessary and advisable to effect the increase in the number of shares of Common Stock reserved and available for issuance under the Plan. Stockholders are being asked to approve the Plan Amendment.

Text of the Plan Amendment

The text of the Plan Amendment pertaining to the amended sections is as follows:

4.1 MAXIMUM NUMBER OF SHARES ISSUABLE. Subject to adjustment as provided in Section 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be SIX MILLION (6,000,000) and shall consist of authorized but unissued or reacquired shares of Stock, treasury shares, or any combination thereof. If an outstanding Option for any reason expires or is terminated or canceled or if shares of Stock are acquired upon the exercise or Award of an Option or Restricted Share Agreement subject to a Company repurchase option and are repurchased by the Company, the shares of Stock allocable to the unexercised portion of such Option or such repurchased shares of Stock shall again be available for issuance under the Plan.

Vote Required

The approval of the Plan Amendment to increase the number of shares of Common Stock reserved and available for issuance under the Plan will be made upon the affirmative vote of the majority of shares voting on the proposal. Abstentions and brokers non-votes will have no effect on the outcome. 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

The purpose of the Plan is to enable the Company to obtain and retain competent personnel who will contribute to the Company's success by their ability, ingenuity and industry knowledge, and to provide incentives to such personnel and members that are linked directly to increases in stockholder value, and will therefore, inure to the benefit of all stockholders of the Company. Eligible recipients of awards under the Plan include employees, directors, consultants and advisors of the Company.

Currently, awards (consisting solely of options to purchase shares of Common Stock) issued under the Plan total 3,886,857 shares of Common Stock and there are therefore no shares of Common Stock reserved and available for issuance under the Plan. All proposed issuances of options heretofore granted (representing a maximum aggregate of 879,975 options) which are in excess of the 3,006,882 shares currently available for issuance under the Plan (taking into consideration 493,118 shares underlying options previously exercised) were issued to the holders thereof conditioned upon approval by stockholders of the Plan Amendment, and such issuances will be revoked if this proposal is not approved.

The Board of Directors has determined to increase the number of shares of Common Stock reserved and available for issuance under the Plan because the current number of shares is insufficient for the purposes of the

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Plan as stated above and for the Company's growth and hiring plans. 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.

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 available for issuance under the Plan. If the Plan Amendment is approved, the total number of shares of Common Stock available for issuance under the Plan will stand at 2,113,143. This will provide the Company with the ability to grant more awards than are currently available under the Plan to eligible recipients including employees, directors, consultants and advisors. The issuance in the future of awards under the Plan (which may consist of deferred stock, restricted stock or options to purchase shares of Common Stock) may have the effect of diluting future earnings per share and book value per share of the Company, 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 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 Bylaws. This is especially true as the Plan, as amended, provides that all options outstanding immediately prior to a Change in Control of the Company (as defined in the Plan) shall immediately become fully vested and exercisable. Holders of the Common Stock have no preemptive or other subscription rights.

The Plan, as amended, would cover a total of 6,000,000 shares of Common Stock (currently 3,500,000 shares). Options may be awarded during the ten-year term of the Plan to employees of the Company (including employees who are directors), consultants who are not employees and other affiliates of the Company as defined below. The Plan provides for the grant of options intended to qualify as incentive stock options (**Incentive Stock Options**) under Section 422 of the Internal Revenue Code of 1986, as amended (the **Code**), options which are not Incentive Stock Options (**Non-Statutory Stock Options**) and restricted shares of Common Stock.

Only qualified employees of the Company or its subsidiaries (currently approximately 22 persons) may be granted Incentive Stock Options. Affiliates of the Company, defined as employees of the Company, members of the Company's Board of Directors, or persons associated with the Company in such other capacity or relationship such as consultants or others as may be permitted by the Board of Directors, may be granted Non-Statutory Stock Options or restricted shares.

The compensation committee of the Board of Directors administers the Plan, selects the persons to whom options or restricted stock are granted and fixes the terms of any options granted under the Plan. The exercise date of an option granted under the Plan will be fixed by the compensation committee of the Board of Directors, but may not be later than ten years from the date of grant. Options may be exercised in such installments as are fixed by the compensation committee of the Board of Directors.

Options issued under the Plan are not transferable other than by will or the laws of descent and distribution, although they may be exercised during the grantee's lifetime by his/her legal representative if he/she becomes incapacitated. All options must be exercised within three months (3) after termination of the grantee's affiliation with the Company, except that Non-Statutory Stock Options shall remain outstanding: (i) for their entire term (A) following termination due to death or (B) with respect options held by a director who retires in good standing, and (ii) for a period of one year following termination due to permanent disability.

The exercise price of Incentive Stock Options granted under the Plan must be at least equal to the fair market value of the Common Stock, as determined by the Board of Directors, on the date of grant. Non-Statutory Stock Options may be granted at exercise prices not less than 100% of the fair market value of the Common Stock on the date of the grant. In the case of options granted to an employee who at the time of grant possessed

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more than 10% of the total combined voting power of all classes of stock of the Company, in the case of Incentive Stock Options and Non-Statutory Stock Options, the exercise price must be at least 110% of the fair market value of the Common Stock on the date of the grant. The Board of Directors is authorized to determine, in its discretion, the exercise price of other options, including any options that may be regranted to employees after their original grant has lapsed unexercised.

The Plan provides for automatic adjustment to the number of shares of Common Stock issuable upon exercise of options granted under the Plan to reflect stock dividends, stock splits, reorganizations, mergers and various other transactions occurring after the date of grant. Payment for shares purchased upon exercise of an option must be made in cash or, at the Board of Directors' discretion, by delivery of shares of Common Stock of the Company, or by a combination of such methods.

The Company's Board of Directors may at any time amend or revise the terms of the Plan, except that no such amendment or revision may be made without the approval of the holders of a majority of the Company's outstanding capital stock, voting together as a single class, if such amendment or revision would (a) increase the number of shares which may be issued under the Plan (other than changes in capitalization), (b) increase the maximum term of options, (c) decrease the minimum option price, (d) permit the granting of options to anyone not included within the Plan's eligible categories, (e) extend the term of the Plan or (f) materially increase the benefits accruing to eligible individuals under the Plan.

The Plan contains the following terms and conditions required in order to permit treatment of the options granted thereunder as incentive stock options: (i) all incentive stock options must be expressly designated as such at the time of grant and (ii) if any person to whom an incentive stock option is granted owns, at the time of the grant of such option, Common Stock possessing more than 10% of the combined voting power of all classes of the Company, then (a) the purchase price per share of the Common Stock subject to such option shall not be less than 110% of the fair market value of one share of Common Stock at the time of grant and (b) the exercise period shall not exceed five years from the date of grant.

Directors are eligible to participate in our Plan. The Plan provides for an initial grant of an option to purchase up to 30,000 shares of Common Stock to each director upon first joining our Board of Directors and subsequent grants of options to purchase 30,000 shares upon each anniversary of such director's appointment and an additional 15,000 option grant for serving as Lead Director. Additionally, directors will be granted 15,000 options for each committee chairmanship and 7,500 options for each committee membership. Such options are granted at an exercise price equal to the fair market value of the Common Stock on the grant date and immediately vest.

Federal Income Tax Consequences

Incentive Stock Options. In general, a participant will not recognize taxable income upon the grant or exercise of an Incentive Stock Option. Instead, a participant will recognize taxable income with respect to an Incentive Stock Option only upon the sale of Common Stock acquired through the exercise of the option (**ISO Stock**). The exercise of an Incentive Stock Option, however, may subject the participant to the alternative minimum tax.

Generally, the tax consequences of selling ISO Stock will vary with the length of time that the participant has owned the ISO Stock at the time it is sold. If the participant sells ISO Stock after having owned it for at least two years from the date the option was granted (the **Grant Date**) and one year from the date the option was exercised (the **Exercise Date**), then the participant will recognize long-term capital gain in an amount equal to the excess of the sale price of the ISO Stock over the exercise price.

If the participant sells ISO Stock for more than the exercise price prior to having owned it for at least two years from the Grant Date and one year from the Exercise Date (a **Disqualifying Disposition**), then any gain will be treated as ordinary compensation income to the extent that it does not exceed the gain that the participant

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would have realized had he sold the shares immediately upon exercise of the option and the remaining gain, if any, will be a capital gain. This capital gain will be a long-term capital gain if the participant has held the ISO Stock for more than one year prior to the date of sale.

If a participant sells ISO Stock for less than the exercise price, then the participant will recognize capital loss equal to the excess of the exercise price over the sale price of the ISO Stock. This capital loss will be a long-term capital loss if the participant has held the ISO Stock for more than one year prior to the date of sale.

Nonqualified Stock Options. A participant will not recognize taxable income upon the grant of a Non Statutory Stock Options. A participant who exercises a Non-Statutory Stock Options, generally, will recognize ordinary compensation income in an amount equal to the excess of the fair market value of the Common Stock acquired through the exercise of the option (**NSO Stock**) on the Exercise Date over the exercise price. With respect to any NSO Stock, a participant will have taxable income recognized upon the exercise of the option. Upon selling NSO Stock, a participant generally will recognize capital gain or loss in an amount equal to the excess of the sale price of the NSO Stock over the participant's tax basis in the NSO Stock. This capital gain or loss will be a long-term gain or loss if the participant has held the NSO Stock for more than one year prior to the date of the sale.

Tax Consequences to the Company. The Company will be entitled to a deduction in connection with a grant of a stock option only in the event and to the extent ordinary income is recognized by the participant. Any such deduction will be allowed to the Company for its taxable year within which ends the taxable year in which the participant's recognition of ordinary income occurs. Any such deduction will be subject to the limitations of Section 162(m) of the Internal Revenue Code.

Once income associated with such a grant is recognizable to a participant for Federal income tax purposes, the participant must either pay to the Company an amount sufficient to satisfy any federal, state and local taxes required to be withheld or make alternative arrangements acceptable to the Company.

The foregoing summary is not a complete description of all tax aspects of the Plan. The foregoing relates only to Federal income taxes; there may be other Federal tax consequences associated with the Plan, as well as foreign, state and local tax consequences.

Securities Authorized for Issuance Under Equity Compensation Plans

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 (b)	Number of securities remaining available for future issuance (c)
Equity compensation plans approved by security holders	3,006,882	\$ 3.81	
Equity compensation plans not approved by security holders	879,975	\$ 2.87	
Total	3,886,857	\$ 3.60	

* Currently, awards (consisting solely of options to purchase shares of Common Stock) issued under the Plan total 3,886,857 shares of Common Stock and, therefore, there are no shares of Common Stock reserved and available for issuance under the Plan. All proposed issuances of options heretofore granted (representing a maximum aggregate of 879,975 options) which are in excess of the 3,006,882 shares currently available for issuance under the Plan (taking into consideration 493,118 shares underlying options previously exercised) were issued to the holders thereof conditioned upon approval by stockholders of the Plan Amendment, and such issuances will be revoked if this proposal is not approved.

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NEW PLAN BENEFITS

Name and Position	Dollar Value (\$)	Number of Units
Mark A Sirgo, Pharm.D., President, Chief Executive Officer and Director	\$ 325,334	180,160
Andrew L Finn, Pharm.D., Executive Vice President of Product Development	\$ 48,960	40,670
James A McNulty, Chief Financial Officer, Secretary and Treasurer	\$ 272,343	130,552
Raphael J Mannino, Ph.D, Executive Vice President and Chief Scientific Officer	\$ 43,680	33,039
Executive Group	\$ 619,317	384,421
Non-Executive Director Group	\$ 105,595	103,809
Non-Executive Officer Employee Group	\$ 505,862	391,745

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF THE AMENDMENT TO THE AMENDED AND RESTATED 2001 INCENTIVE PLAN.

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PROPOSAL 2

ELECTION OF CLASS I DIRECTOR

Introduction

The Board of Directors currently consists of three classes of directors, with Class I currently consisting of Francis E. O. Donnell, Jr., M.D., Class II currently consisting of John J. Shea and Mark A. Sirgo, and Class III currently consisting of William B. Stone and William S. Poole. The term of the Class II directors will expire on the date of the 2010 annual meeting of stockholders and the term of the Class III directors will expire on the date of the 2011 annual meeting of stockholders.

At the Meeting, stockholders will be asked to elect Francis E. O. Donnell, Jr., M.D., as a Class I Director (the **Nominee**), to hold office until the 2012 annual meeting of stockholders or until his successor is elected and qualified or until his earlier resignation or removal.

It is the intention of the persons named in the enclosed proxy to vote to elect the Nominee, an incumbent director who has consented to serve if elected. If some unexpected occurrence should make necessary, in the discretion of the Board of Directors, the substitution of some other person for the Nominee, 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 of Directors.

Directors and Executive Officers

Listed below are the names of the directors, executive officers and significant employees of the Company, their ages as of June 18, 2009 and positions held:

Name	Age	Position(s) Held
Francis E. O. Donnell, Jr., M.D.	59	Chairman of the Board and Class I Director
Mark A. Sirgo, Pharm.D.	55	President, Chief Executive Officer and Class II Director
James A. McNulty	58	Chief Financial Officer, Secretary and Treasurer
William B. Stone	66	Lead Director and Class III Director
John J. Shea	82	Class II Director
William S. Poole	62	Class III Director

There are no family relationships between any director, executive officer or significant employee.

None of the Company's directors or executive officers have been involved, in the past five years, in a fashion material to an evaluation of such director's or officer's ability or integrity to serve as a director or executive officer, in any Certain Legal Proceedings, more fully detailed in Item 401(d) 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.

Francis E. O. Donnell, Jr., M.D., age 59, has been our Chairman of the Board and a Director since March 29, 2002. 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 managing director 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 is a co-founder and chairman of RetinaPharma Technologies, Inc. He serves as Chairman and CEO of Accentia Biopharmaceuticals, Inc., a holding company with commercialization assets representing a vertically-integrated platform for specialty pharmaceuticals and biologics. 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

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Department of Ophthalmology, St. Louis University School of Medicine. Dr. O'Donnell holds 34 U.S. Patents. Dr. O'Donnell is the 2000 Recipient of the Jules Stein Vision Award sponsored by Retinitis Pigmentosa International. He is a trustee of the Health Careers Foundation and of St. Louis University.

Mark A. Sirgo, Pharm.D., age 55, has been our President and Chief Executive Officer since July 2005. He joined our company in August 2004 as Senior Vice President of Commercialization and Corporate Development upon our acquisition of Arius Pharmaceuticals (**Arius**), 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 more than 20 years of experience in the pharmaceutical industry, including 16 years in clinical drug development; 7 years in marketing, sales, business development and 5 years in executive management. Prior to his involvement with Arius 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 Salix Pharmaceuticals (Nasdaq:SLXP), a specialty pharmaceutical company specializing in gastrointestinal products. 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 58, has served as our Secretary, Treasurer and Chief Financial Officer on a part time basis (estimated to constitute approximately 50% of his time) since October 2000. Beginning January 1, 2008, his position is full-time. Mr. McNulty has, since May 2000, also served as Chief Financial Officer of Hopkins Capital Group, an affiliation of limited liability companies which engage in venture activities. Hopkins Capital Group is owned and controlled by Dr. Francis E. O'Donnell, Jr. Mr. McNulty also serves as the Treasurer and Corporate Secretary of Accentia Biopharmaceuticals, Inc., a holding company with commercialization assets representing a vertically-integrated platform for specialty pharmaceuticals and biologics, and through December 31, 2007 as Chief Financial Officer for Biovest International, a majority-owned subsidiary of Accentia. 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, and McNulty Garcia & Ortiz. He served as CFO of Star Scientific, Inc. from October 1998 to May 2000. From June 2000 through January 2002 he served as CFO/COO of American Prescription Providers, Inc. He is a published co-author (with Pat Summerall) of *Business Golf, the Art of Building Relationships on the Links*. Mr. McNulty is a graduate of University of South Florida, a licensed Certified Public Accountant, and is a member of the American and Florida Institutes of CPAs.

William B. Stone, age 66, is a member of our Board of Directors and is our Lead Director. 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. 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 82, is a member of our Board of Directors. He is currently the head of his own firm of J. Shea Inc. and has also been a Quality Systems Adviser with Quintiles, a private consulting firm. Mr. Shea has been employed at J. Shea Inc. since 1989. 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 person for other companies, including Teledyne Relays, Ortho Diagnostics, Inc. and Bio Reagents & Diagnostics, Inc. Mr. Shea earned a B.S. in Chemistry at Bethany College.

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William S. Poole, age 62, is a member 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 a solid management team and dramatically improving profitability. As President of these firms, Mr. Poole had total P&L responsibility and directly oversaw vice presidents in charge of manufacturing, research & development, sales, legal, marketing, finance, regulatory and human resources functions. 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. Currently, Mr. Poole is Acting President/CEO of Spherics, Inc., a biotechnology company focusing on unique delivery mechanisms of certain drugs for the treatment of CNS diseases. In addition Mr. Poole is a Board Member of Accentia BioPharmaceuticals Inc., and is Chairman of the Compensation Committee.

Director Independence

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

Meetings of the Board of Directors

The Board of Directors met in person and telephonically ten times during 2008 and also acted by unanimous written consent. It is the Company's policy that all directors must attend all meetings, barring extenuating circumstances. Dr. O'Donnell was present at seventy-five (75%) percent or more of the Board of Directors meetings held during his tenure as a member of the Board of Directors.

Board Committees

Our Board of Directors has established three standing committees: Audit, Compensation, and Nominating and Corporate Governance. The aforementioned Committees (as well as our Lead Director) each operates under a charter that has been approved by the board.

Audit Committee

Our Board of Directors has an Audit Committee, composed of William B. Stone, John J. Shea and William S. Poole, all of whom are independent directors as defined in accordance with section 3(a)(58)(A) of the Exchange Act and the rules of the Nasdaq Stock Market. Mr. Stone serves as chairman of the committee. The Board of Directors 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 six times during 2008. Each member of the Audit Committee was present at all of the Audit Committee meetings held during such director's tenure as a member of the Audit Committee. The Audit Committee oversees our corporate accounting, financial reporting practices and the audits of financial statements. For this purpose, the Audit Committee has a charter 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. The Audit Committee approves the plan and fees for the annual audit, performs a review of quarterly reports, tax and other audit-related services, and approves in advance any non-audit service to be provided by the independent auditor. The Audit Committee monitors the independence of the independent auditor and the rotation of partners of the independent auditor on our engagement team as required by law. The Audit Committee reviews the financial statements to be included in our Annual Report on Form 10-K and reviews with management and the independent auditor the results of the annual

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audit and our quarterly financial statements. In addition, the Audit Committee oversees all aspects our systems of internal accounting control and corporate governance functions on behalf of the board. The Audit Committee provides oversight assistance in connection with legal and ethical compliance programs established by management and the board, including Sarbanes-Oxley implementation, and makes recommendations to the Board of Directors regarding corporate governance issues and policy decisions.

Nominating and Corporate Governance Committee

Our Board of Directors has a Nominating and Corporate Governance Committee composed of William S. Poole, John J. Shea and William B. Stone. 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 of Directors for consideration. The Nominating and Corporate Governance Committee was formed in May of 2004 and met one time in 2008. The Nominating and Corporate Governance Committee has a charter. 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 the Company, Attn: James A McNulty. There are no minimum qualifications for consideration for nomination to be a director of the Company. The nominating committee will assess all director nominees using the same criteria. All of the current nominees to serve as directors on our Board of Directors have previously served in such capacity. During 2008, we did not pay any fees to any third parties to assist in the identification of nominees. During 2008, we did not receive any director nominee suggestions from stockholders.

Compensation and Investment Committees

Our Board of Directors also has a Compensation Committee, which, either alone or in conjunction with the full board, as the case may be, reviews or recommends the compensation arrangements for our management and employees. The Compensation Committee also administers the Plan. The Compensation Committee has a charter and is composed of three members: John J. Shea, William B. Stone and William S. Poole, who acts as chairman of this committee. The compensation committee met four times during 2008.

Our Board of Directors also has an investment committee, which either alone or in conjunction with the full board, as the case may be, reviews or recommends the investment arrangements for our company. The members of the investment committee are Dr. Francis E. O'Donnell and William B. Stone. The investment committee as such did not meet during 2008.

Lead Director

On July 26, 2007, our Board of Directors created the position of Lead Director. Our Board of Directors 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 of Directors who shall serve in a lead capacity to coordinate the activities of the other non-employee directors, interface with and advise management, and to perform such other duties as are specified in the charter or as our Board of Directors may determine.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires that our directors and executive officers and persons who beneficially own more than 10% of our Common Stock (referred to herein as the reporting persons) file with the SEC various reports as to their ownership of and activities relating to our Common Stock. Such reporting persons are required by the SEC regulations to furnish us with copies of all Section 16(a) reports they file.

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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 2008, all Forms 3, 4 and 5 were timely filed with the SEC by such reporting persons, except that one Form 5 was filed on February 11, 2009 by Mark A. Sirgo, our President and Chief Executive Officer, covering several small transactions as defined in SEC Rule 16a-6, which acquisitions were not previously reported on a timely basis.

Code of Ethics

We have adopted a code of ethics that applies to all employees, as well as each member of our Board of Directors. 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.bdsinternational.com.

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Audit Committee Report*

The audit committee of the Board of Directors (the **Committee**) during 2008 was composed of three directors: William B. Stone, William S. Poole and John J. Shea, each of whom was independent as defined by the rules of the Nasdaq Stock Market. Mr. Stone serves as chairman of the committee. The Board of Directors 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 2009.

Management is responsible for the Company's financial statements, financial reporting process and systems of internal controls. 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 Committee's responsibility is to oversee all aspects the financial reporting process on behalf of the Board of Directors. The responsibilities of the Committee also include engaging and evaluating the performance of the accounting firm that serves as the Company's independent auditor.

The 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 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 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 Committee, the Committee recommended (and the Board of Directors 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, 2008. The Committee and the Board of Directors 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.

Audit Committee of the Board of Directors

/s/ William B. Stone

/s/ William S. Stone

/s/ John J. Shea

* 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 Securities 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 or the Securities Exchange Act.

Table of Contents**Executive Compensation**

The following table sets forth all annualized compensation paid to our named executive officers at the end of the fiscal years ended December 31, 2008 and 2007. 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, 2008.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)(12)	Option Awards (\$)(12)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation		All Other Compensation (\$)	Total (\$)
							Earnings (\$)			
Mark A. Sirgo, Pharm.D. President, Chief Executive Officer and Director	2008	\$ 301,920	\$ 150,000	0	\$ 119,288	\$ 30,516 ⁽¹⁾	0	\$ 22,871 ⁽³⁾	\$ 624,595	
	2007	\$ 286,169	0	0	\$ 1,522,035	\$ 44,770 ⁽²⁾	0	\$ 32,404 ⁽⁴⁾	\$ 1,885,378	
Andrew L. Finn, Pharm.D. Executive Vice President of Product Development	2008	\$ 244,800	\$ 120,000	0	\$ 96,720	0	0	\$ 18,259 ⁽⁵⁾	\$ 479,779	
	2007	\$ 236,941	0	0	\$ 383,897	0	0	\$ 9,838 ⁽⁶⁾	\$ 630,677	
James A. McNulty Chief Financial Officer, Secretary and Treasurer	2008	\$ 202,252	\$ 100,000	0	\$ 69,696	0	0	\$ 26,475 ⁽⁷⁾	\$ 398,423	
	2007	\$ 114,400	0	0	\$ 380,033	0	0	\$ 17,714 ⁽⁸⁾	\$ 512,147	
Raphael J. Mannino, Ph.D. Executive Vice President and Chief Scientific Officer	2008	\$ 222,768 ⁽¹¹⁾	0	0	\$ 43,681	0	0	\$ 20,532 ⁽⁹⁾	\$ 286,981	
	2007	\$ 218,026 ⁽¹¹⁾	0	0	\$ 40,580	\$ 44,770 ⁽²⁾	0	\$ 11,726 ⁽¹⁰⁾	\$ 315,102	

⁽¹⁾ The compensation disclosed in this item is comprised of 30,000 stock options granted as compensation for serving as a director.

⁽²⁾ The compensation disclosed in this item is comprised of 20,000 stock options granted as compensation for serving as a director.

⁽³⁾ Includes: Vacation payout of \$4,554, \$6,817 of health insurance premiums paid and 401(k) matching of \$11,500 paid in 2008.

⁽⁴⁾ Includes: Vacation payout of \$21,154 and 401(k) matching of \$11,250 paid in 2007.

⁽⁵⁾ Includes: \$6,759 of health insurance premiums paid and 401(k) matching of \$11,500 paid in 2008.

⁽⁶⁾ Includes: 401(k) matching of \$9,838 paid in 2007.

⁽⁷⁾ Includes: Vacation payout of \$2,640, \$12,335 of health insurance premiums paid and 401(k) matching of \$11,500 paid in 2008.

⁽⁸⁾ Includes: Vacation payout of \$11,243 and 401(k) matching of \$6,291 paid in 2007.

⁽⁹⁾ Includes: Car allowance of \$6,500, \$8,569 of health insurance premiums paid and 401(k) matching of \$5,463 paid in 2008.

⁽¹⁰⁾ Includes: Car allowance of \$6,500 and 401(k) matching of \$5,226 paid in 2007.

⁽¹¹⁾ Includes \$120,000, which funds were reimbursed by us to the University of Medicine and Dentistry of New Jersey during 2007 and 2008 (pursuant to a contractual arrangement) for services rendered by Dr. Mannino to such university.

⁽¹²⁾ The amounts included in these columns are the aggregate dollar amounts of compensation expense recognized by us for financial statement reporting purposes in accordance with FAS 123R for the fiscal years ended December 31, 2008 and December 31, 2007, and thus include amounts from option awards granted in and prior to the indicated year. Pursuant to SEC rules, the amounts in this column exclude the impact of estimated forfeitures related to service-based vesting conditions. For information on the valuation assumptions used in calculating these dollar amounts, see Note 1 to our audited financial statements included in this Report for the fiscal years ended December 31, 2008 and December 31, 2007, each as filed with the SEC. These amounts reflect our accounting expense for these awards and do not correspond to the actual value that may be recognized by the individuals upon option exercise. During the fiscal year ended December 31, 2008, there were no option award forfeitures related to service-based vesting conditions.

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 On August 24, 2004, Dr. Sirgo executed a three-year employment agreement to be our Senior Vice President of Commercial and Corporate Development and the

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President of Arius at an annual salary of \$175,000. Dr. Sirgo also received a signing bonus in the amount of \$31,177 at the signing of this agreement. He was subsequently promoted three times and now holds the position of President and Chief Executive Officer of our company.

On February 22, 2007, Dr. Sirgo's employment agreement was amended to: (i) make it renewable for consecutive one year terms after August 24, 2007 unless written notice is given by either party at least 30 days prior to the end of the applicable term and (ii) increase Dr. Sirgo's annual salary to \$260,000, which will be adjusted to \$296,000 per annum at such time as we engage in any asset sale, royalty sale, bank loan, joint venture/partnering funding, or debt and or equity financing which yields gross proceeds of \$5 million or greater. Such adjustment occurred in May 2007. Dr. Sirgo is eligible for a discretionary annual bonus of up to 50% of his base salary.

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).

Andrew L. Finn, Pharm.D., Executive Vice President of Product Development On August 24, 2004, Dr. Finn executed a three-year employment agreement to be our Senior Vice President of Product Development and the Senior Vice President and Chief Operating Officer of Arius at an annual salary of \$175,000. He was subsequently promoted and now holds the position of Executive Vice President of Product Development of our company. Dr. Finn also received a signing bonus in the amount of \$28,092 at the signing of this agreement.

On February 22, 2007, Dr. Finn's employment agreement was amended to: (i) make it renewable for consecutive one year terms after August 24, 2007 unless written notice is given by either party at least 30 days prior to the end of the applicable term and (ii) increase Dr. Finn's annual salary to \$228,800, which will be adjusted to \$240,000 per annum at such time as we engage in any asset sale, royalty sale, bank loan, joint venture/partnering funding, or debt and or equity financing which yields gross proceeds of \$5 million or greater. Such adjustment occurred in May 2007. Dr. Finn is eligible for a discretionary annual bonus of up to 50% of his base salary.

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

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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).

James A. McNulty, CPA, Chief Financial Officer, Secretary and Treasurer Through December 31, 2007 he 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. He has an employment agreement with us (which was amended on August 31, 2002, and subsequently amended again in June 2003) for a base salary of \$185,000, reduced to \$110,000 in June 2003 and then increased to \$114,400 in February 2007 concurrently with Mr. McNulty's entry into his new employment agreement described below. Mr. McNulty's employment agreement, dated February 22, 2007, is for a term of one year ending on February 22, 2008 and is subject at the end of that term 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. Mr. McNulty is also employed part-time as Secretary/Treasurer of Accentia Biopharmaceuticals, Inc. Under the terms of the agreement, Mr. McNulty received base salary in 2008 of \$198,000 per year and a target bonus of up to 50% of his base salary.

We may terminate Mr. McNulty's employment agreement without cause and Mr. McNulty may resign upon 30 days advance written notice to the other party. 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 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).

Dr. Raphael Mannino, Ph.D., Executive Vice President and Chief Scientific Officer On September 1, 2002, Dr. Mannino executed an employment agreement with us at an annual salary of \$210,000. In 2006, this agreement expired. On February 22, 2007, we entered into a new employment agreement with Dr. Mannino calling for a base salary of \$218,400.

Dr. Mannino's employment agreement, dated February 22, 2007, is for a term of one year ending on February 22, 2008 and is subject at the end of that term 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. Under the terms the agreement, Dr. Mannino will receive base salary of \$218,400 per year and a target bonus of up to 50% of his base salary.

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We may terminate Dr. Mannino's employment agreement without cause and Dr. Mannino may resign upon 30 days advance written notice to the other party. We may immediately terminate Dr. Mannino's employment agreement for Good Cause (as defined in the employment agreement). Upon the termination of Dr. Mannino's employment for any reason, Dr. Mannino 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. Mannino is terminated during the term of the his employment agreement other than for Good Cause (as defined in the employment agreement), or if Dr. Mannino terminates his employment for Good Reason (as defined in the employment agreement), Dr. Mannino 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. Mannino 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 Dr. Mannino'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 Dr. Mannino'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).

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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, 2008.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	OPTION AWARDS					STOCK AWARDS			
	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 Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (#)
Mark A. Sirgo, Pharm.D.	30,000			\$ 2.01	7/24/2018				
			40,985 ⁽¹⁾	\$ 2.01	7/24/2018				
			48,448 ⁽²⁾	\$ 2.85	1/31/2018				
	20,000			\$ 4.13	7/25/2017				
	144,667		289,333 ⁽³⁾	\$ 6.63	4/13/2017				
	30,594		15,297 ⁽⁴⁾	\$ 2.42	1/26/2017				
	11,820		5,910 ⁽⁵⁾	\$ 2.05	7/27/2016				
	49,000			\$ 3.03	12/1/2015				
	20,000			\$ 2.94	8/22/2015				
	8,929			\$ 2.94	7/28/2015				
5,147			\$ 3.40	10/21/2014					
Andrew L. Finn, Pharm.D.			33,231 ⁽¹⁾	\$ 2.01	7/24/2018				
			39,282 ⁽²⁾	\$ 2.85	1/31/2018				
	33,334		66,666 ⁽³⁾	\$ 6.63	4/13/2017				
	24,804		12,405 ⁽⁴⁾	\$ 2.42	1/26/2017				
	5,402		5,201 ⁽⁵⁾	\$ 2.05	7/27/2016				
	49,000			\$ 3.03	12/1/2015				
	8,929			\$ 2.94	7/28/2015				
5,147			\$ 3.40	10/21/2014					
James A. McNulty			18,277 ⁽¹⁾	\$ 2.01	7/24/2018				
			32,408 ⁽²⁾	\$ 2.85	1/31/2018				
	33,334		66,666 ⁽³⁾	\$ 6.63	4/13/2017				
	22,738		11,371 ⁽⁴⁾	\$ 2.42	1/26/2017				
	10,402		5,201 ⁽⁵⁾	\$ 2.05	7/27/2016				
	10,000			\$ 3.03	12/1/2015				
	26,189			\$ 2.94	7/28/2015				
	3,235			\$ 3.40	10/21/2014				
18,616			\$ 3.83	8/14/2013					
Raphael J Mannino, Ph.D.			19,765 ⁽¹⁾	\$ 2.01	7/24/2018				
			14,299 ⁽²⁾	\$ 2.85	1/31/2018				
	20,000			\$ 4.13	7/25/2017				
	21,704		10,854 ⁽⁴⁾	\$ 2.42	1/26/2017				
	9,929		4,965 ⁽⁵⁾	\$ 2.05	7/27/2016				
	20,000			\$ 2.05	7/27/2016				
	20,000			\$ 2.94	8/22/2015				
	10,714			\$ 2.94	7/28/2015				
6,176									