

CYTOKINETICS INC
Form DEF 14A
March 31, 2010

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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

Cytokinetics, Incorporated

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box)

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 1. Title of each class of securities to which transaction applies:
 2. Aggregate number of securities to which transaction applies:
 3. Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):
 4. Proposed maximum aggregate value of transaction:
 5. Total fee paid:
- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
 - 1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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Cytokinetics, Incorporated

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

May 20, 2010

To the Stockholders:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of Cytokinetics, Incorporated (the Company), a Delaware corporation, will be held on Thursday, May 20, 2010, at 10:00 a.m. local time, at the Embassy Suites Hotel, 250 Gateway Boulevard, South San Francisco, CA 94080, for the following purposes:

1. To elect Stephen Dow, John T. Henderson and Michael Schmertzler as Class III Directors, each to serve for a three-year term and until their successors are duly elected and qualified (Proposal One);
2. To ratify the selection by the Audit Committee of the Board of Directors of PricewaterhouseCoopers LLP as the independent registered public accounting firm to the Company for the fiscal year ending December 31, 2010 (Proposal Two);
3. To approve an amendment to the 2004 Equity Incentive Plan, as amended, to increase the number of authorized shares reserved for issuance thereunder by 2,300,000 (Proposal Three); and
4. To transact such other business as may properly be brought before the meeting and any adjournment(s) thereof.

The foregoing items of business are more fully described in the Proxy Statement accompanying this Notice.

Only stockholders of record at the close of business on March 26, 2010 are entitled to notice of and to vote at the meeting.

Sincerely,

Sharon A. Barbari
Corporate Secretary

South San Francisco, California
March 31, 2010

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YOUR VOTE IS IMPORTANT

THIS PROXY STATEMENT IS FURNISHED IN CONNECTION WITH THE SOLICITATION OF PROXIES BY THE COMPANY, ON BEHALF OF THE BOARD OF DIRECTORS, FOR THE 2010 ANNUAL MEETING OF STOCKHOLDERS. THE PROXY STATEMENT AND THE RELATED PROXY FORM ARE BEING DISTRIBUTED ON OR ABOUT APRIL 7, 2010. YOU CAN VOTE YOUR SHARES USING ONE OF THE FOLLOWING METHODS:

COMPLETE AND RETURN A WRITTEN PROXY CARD

BY INTERNET OR TELEPHONE

ATTEND THE COMPANY'S 2010 ANNUAL MEETING OF STOCKHOLDERS AND VOTE

ALL STOCKHOLDERS ARE CORDIALLY INVITED TO ATTEND THE MEETING. HOWEVER, TO ENSURE YOUR REPRESENTATION AT THE MEETING, YOU ARE URGED TO MARK, SIGN, DATE AND RETURN THE ENCLOSED PROXY CARD AS PROMPTLY AS POSSIBLE IN THE POSTAGE-PREPAID ENVELOPE ENCLOSED FOR THAT PURPOSE OR VOTE YOUR SHARES BY INTERNET OR TELEPHONE. ANY STOCKHOLDER ATTENDING THE MEETING MAY VOTE IN PERSON EVEN IF HE OR SHE HAS RETURNED A PROXY CARD OR VOTED BY INTERNET OR TELEPHONE.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held on May 20, 2010

This Proxy Statement, Notice of Annual Meeting and Form of Proxy Card, and the 2009 Annual Report to Stockholders, are available at www.cytokinetics.com/proxy. You may obtain directions to the Annual Meeting of Stockholders by directing a request to:

**Investor Relations
Cytokinetics, Incorporated
280 East Grand Avenue
South San Francisco, California 94080
email: investor@cytokinetics.com
Telephone: 650-624-3000.**

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CYTOKINETICS, INCORPORATED
280 East Grand Avenue
South San Francisco, California 94080

PROXY STATEMENT
FOR THE ANNUAL MEETING OF STOCKHOLDERS
May 20, 2010

INFORMATION CONCERNING SOLICITATION AND VOTING

General

The Board of Directors of Cytokinetics, Incorporated (the "Company") is soliciting proxies for use at the Annual Meeting of Stockholders (the "Annual Meeting") to be held at the Embassy Suites Hotel, 250 Gateway Boulevard, South San Francisco, CA 94080, on Thursday, May 20, 2010, at 10:00 a.m. local time, and at any adjournment(s) thereof, for the purposes set forth herein and in the accompanying Notice of Annual Meeting of Stockholders. The Company's principal executive offices are located at the address listed at the top of the page and the telephone number is (650) 624-3000.

The Company's Annual Report and its Annual Report on Form 10-K, containing financial statements for the fiscal year ended December 31, 2009, are being provided together with these proxy solicitation materials to all stockholders entitled to vote. This proxy statement, the accompanying proxy card, the Company's Annual Report and its Annual Report on Form 10-K will first be mailed on or about April 7, 2010 to all stockholders entitled to vote at the meeting.

THE COMPANY SHALL PROVIDE WITHOUT CHARGE TO ANY STOCKHOLDER SOLICITED BY THESE PROXY SOLICITATION MATERIALS A COPY OF THE COMPANY'S ANNUAL REPORT ON FORM 10-K, TOGETHER WITH THE FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE ANNUAL REPORT ON FORM 10-K, UPON REQUEST OF THE STOCKHOLDER MADE IN WRITING TO CYTOKINETICS, INCORPORATED, 280 EAST GRAND AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA, 94080, ATTN: INVESTOR RELATIONS, ANNUAL STOCKHOLDER MEETING.

Record Date and Share Ownership

Stockholders of record at the close of business on March 26, 2010 (the "Record Date") are entitled to notice of and to vote at the meeting and at any adjournment(s) thereof. The Company has one series of common shares issued and outstanding, designated as Common Stock, \$0.001 par value per share (the "Common Stock"), and one series of undesignated Preferred Stock, \$0.001 par value per share (the "Preferred Stock"). As of the Record Date, 170,000,000 shares of Common Stock were authorized and 62,464,802 shares were issued and outstanding. As of the Record Date, 10,000,000 shares of Preferred Stock were authorized and none were issued or outstanding.

Revocability of Proxies

Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before its use by: (i) issuing a later proxy, (ii) delivering to the Company at its principal offices (Attention: Corporate Secretary) a written notice of revocation, or (iii) attending the Annual Meeting and voting in person.

Voting

On all matters, each share has one vote. See Proposal One Election of Three Class III Directors Vote Required.

Solicitation of Proxies

The Company will bear the entire cost of solicitation of proxies, including preparation, assembly, printing and mailing of this proxy statement, the proxy card and any additional information furnished to stockholders. Copies of

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solicitation materials will be furnished to banks, brokerage houses, fiduciaries and custodians holding in their names shares of Common Stock beneficially owned by others to forward to such beneficial owners. The Company may reimburse persons representing beneficial owners of Common Stock for their costs of forwarding solicitation materials to such beneficial owners. Proxies may be solicited by certain of the Company's directors, officers and regular employees, without additional compensation, personally or by telephone or facsimile.

Voting Via the Internet or by Telephone

Stockholders may grant a proxy to vote their shares by means of the telephone or on the Internet. The laws of the State of Delaware, under which the Company is incorporated, specifically permit electronically transmitted proxies, provided that each such proxy contains or is submitted with information from which the Inspector of Elections can determine that such proxy was authorized by the stockholder.

The telephone and Internet voting procedures below are designed to authenticate stockholders' identities, to allow stockholders to grant a proxy to vote their shares and to confirm that stockholders' instructions have been recorded properly. Stockholders granting a proxy to vote via the Internet should understand that there may be costs associated with electronic access, such as usage charges from Internet access providers and telephone companies, which must be borne by the stockholder.

For Shares Registered in Your Name

Stockholders of record may go to <http://www.proxyvoting.com/cytk> to grant a proxy to vote their shares by means of the Internet. They will be required to provide the Company's number and control number contained on their proxy cards. The voter will then be asked to complete an electronic proxy card. The votes represented by such proxy will be generated on the computer screen and the voter will be prompted to submit or revise them as desired. Any stockholder using a touch-tone telephone may also grant a proxy to vote shares by calling 1-866-540-5760 and following the recorded instructions.

For Shares Registered in the Name of a Broker or Bank

Most beneficial owners whose stock is held in street name receive instructions for granting proxies from their banks, brokers or other agents, rather than the Company's proxy card.

A number of brokers and banks are participating in a program provided through Broadridge Financial Solutions that offers the means to grant proxies to vote shares via telephone and the Internet. If your shares are held in an account with a broker or bank participating in the Broadridge Financial Solutions program, you may grant a proxy to vote those shares telephonically by calling the telephone number shown on the instruction form received from your broker or bank, or via the Internet at Broadridge Financial Solutions' web site at <http://www.proxyvote.com>.

General Information for All Shares Voted Via the Internet or By Telephone

Votes submitted via the Internet or by telephone must be received by 11:59 p.m., Eastern Time on May 19, 2010. Submitting your proxy via the Internet or by telephone will not affect your right to vote in person should you decide to attend the Annual Meeting.

Quorum; Abstentions; Broker Non-Votes

Votes cast by proxy or in person at the Annual Meeting (Votes Cast) will be tabulated by the Inspector of Elections (the Inspector) who is expected to be a representative from BNY Mellon Shareowner Services, the Company's

Transfer Agent and Registrar. The Inspector will also determine whether or not a quorum is present. Except in certain specific circumstances, the affirmative vote of a majority of shares present in person or represented by proxy at a duly held meeting at which a quorum is present is required under Delaware law for approval of proposals presented to stockholders. In general, Delaware law provides that a quorum consists of a majority of shares entitled to vote and present or represented by proxy at the meeting.

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The Inspector will treat shares that are voted WITHHELD or ABSTAIN as being present and entitled to vote for purposes of determining the presence of a quorum. However, such shares will not be treated as votes in favor of approving any matter submitted to the stockholders for a vote. When proxies are properly dated, executed and returned, or if instructions are properly carried out for Internet or telephone voting, the shares represented by such proxies will be voted at the Annual Meeting in accordance with the stockholder's instructions. If no specific instructions are given, the shares will be voted (i) for the election of the nominees for directors set forth herein; (ii) for the ratification of PricewaterhouseCoopers LLP; (iii) for approval of the amendment to the 2004 Equity Incentive Plan, as amended; and (iv) upon such other business as may properly come before the Annual Meeting or any adjournment thereof, but will not be voted in the election of directors other than as provided in (i) above.

If a broker indicates on the enclosed proxy or its substitute that such broker does not have discretionary authority as to certain shares to vote on a particular matter (broker non-votes), then those shares will be considered as present with respect to establishing a quorum for the transaction of business. The Company believes that the tabulation procedures to be followed by the Inspector are consistent with the general statutory requirements in Delaware concerning voting of shares and determination of a quorum.

Broker non-votes with respect to proposals set forth in this proxy statement will not be considered Votes Cast and, accordingly, will not affect the determination as to whether the requisite number of Votes Cast has been obtained with respect to a particular matter.

Deadline for Receipt of Stockholder Proposals

Stockholders are entitled to present proposals for action at a forthcoming meeting if they comply with the requirements of the Company's bylaws and the rules established by the Securities and Exchange Commission (the SEC) under the Securities Exchange Act of 1934, as amended (the Exchange Act). Under these requirements, proposals of stockholders of the Company that are intended to be presented by such stockholders at the Company's 2011 Annual Meeting of Stockholders must be received by the Company no later than December 1, 2010. A copy of the relevant bylaws provisions relating to stockholder proposals is available upon written request to Cytokinetics, Incorporated, 280 East Grand Avenue, South San Francisco, California 94080, Attention: Corporate Secretary.

PROPOSAL ONE

ELECTION OF THREE CLASS III DIRECTORS

Nominees

The Company's Board of Directors currently has eight members. The Company has a classified Board of Directors, which is divided into three classes of directors whose terms expire at different times. The three classes are currently comprised of the following directors:

Class I consists of L. Patrick Gage and A. Grant Heidrich, who will serve until the 2011 Annual Meeting of Stockholders;

Class II consists of Robert I. Blum, Denise M. Gilbert and James A. Spudich, who will serve until the 2012 Annual Meeting of Stockholders; and

Class III consists of Stephen Dow, John T. Henderson and Michael Schmertzler, who will serve until the 2010 Annual Meeting of Stockholders and stand for re-election as Class III Directors at such meeting.

At each Annual Meeting of Stockholders, the successors to directors whose terms will then expire will be elected to serve from the time of election and qualification until the third Annual Meeting of Stockholders following election and until their successors have been duly elected and qualified. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of an equal number of directors.

Unless otherwise instructed, the proxy holders will vote the proxies received by them for the Company's three nominees named below, who are currently directors of the Company. The nominees have consented to be named as

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nominees in the proxy statement and to continue to serve as directors if elected. If any nominee becomes unable or declines to serve as a director or if additional persons are nominated at the meeting, the proxy holders intend to vote all proxies received by them in such a manner as will assure the election of the nominees listed below if possible (or, if new nominees have been designated by the Board of Directors, in such a manner as to elect such nominees), and the specific nominees to be voted for will be determined by the proxy holders.

The nominees for the Class III Directors are as follows:

Stephen Dow

John T. Henderson

Michael Schmertzler

Biographical information for each Class III Director can be found below in the Board of Directors section. The Company is not aware of any reason that any nominee will be unable or will decline to serve as a director. The term of office of each person elected as a Class III Director will continue until the Company's 2013 Annual Meeting of Stockholders or until a successor has been elected and qualified. There are no arrangements or understandings between any director or executive officer and any other person pursuant to which he is or was to be selected as a director or officer of the Company.

Vote Required

Directors will be elected by a plurality vote of the shares of Common Stock present or represented and entitled to vote on this matter at the meeting. Accordingly, the candidates receiving the highest number of affirmative votes of shares represented and voting on this proposal at the meeting will be elected directors of the Company. Votes withheld from a nominee and broker non-votes will be counted for purposes of determining the presence or absence of a quorum but, because directors are elected by a plurality vote, will have no impact once a quorum is present. See Quorum; Abstentions; Broker Non-Votes.

**THE CLASS I AND II DIRECTORS RECOMMEND THAT
STOCKHOLDERS VOTE *FOR* THE CLASS III NOMINEES LISTED ABOVE.**

PROPOSAL TWO

**RATIFICATION OF SELECTION OF PRICEWATERHOUSECOOPERS LLP
AS INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM TO THE COMPANY FOR
THE FISCAL YEAR ENDING DECEMBER 31, 2010**

The Audit Committee of the Board of Directors has selected PricewaterhouseCoopers LLP, an independent registered public accounting firm, to audit the Company's financial statements for the fiscal year ending December 31, 2010, and recommends that the stockholders vote for ratification of such selection. Although action by stockholders is not required by law, the Board of Directors has determined that it is desirable to request ratification of this selection by the stockholders. Notwithstanding the selection or ratification, the Audit Committee, in its discretion, may direct the selection of a new independent registered public accounting firm at any time during the year, if the Audit Committee determines that such a change would be in the Company's best interest.

Representatives of PricewaterhouseCoopers LLP are expected to be present at the meeting and will be afforded the opportunity to make a statement if they desire to do so, and are expected to be available to respond to appropriate questions.

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**THE BOARD OF DIRECTORS RECOMMENDS THAT
STOCKHOLDERS VOTE *FOR* RATIFICATION OF THE SELECTION BY THE AUDIT
COMMITTEE OF THE BOARD OF DIRECTORS OF
PRICEWATERHOUSECOOPERS LLP AS INDEPENDENT REGISTERED PUBLIC
ACCOUNTING FIRM TO THE COMPANY
FOR THE FISCAL YEAR ENDING DECEMBER 31, 2010.**

Principal Accountant Fees and Services

Fees incurred for professional services provided by our independent registered public accounting firm in each of the last two fiscal years were:

	Years Ended December 31,	
	2009	2008
Audit Fees	\$ 652,851	\$ 468,038
Audit-Related Fees		
Tax Fees		
Other Fees	1,500	1,500
	\$ 654,351	\$ 469,538

PricewaterhouseCoopers LLP served as our independent registered public accounting firm for the years ended December 31, 2009 and 2008.

Audit fees include fees associated with the annual audit of our financial statements, the interim review of our financial statements included in quarterly reports on Form 10-Q, fees associated with Sarbanes-Oxley compliance, audit services provided in connection with private placements of Common Stock, issuance of consents relating to registration statement filings with the SEC and all services that are normally provided by the accounting firm in connection with statutory and regulatory filings or engagements.

Other fees in 2009 and 2008 include the cost of our subscription to an accounting research tool provided by PricewaterhouseCoopers LLP.

All audit services and non-audit services provided to the Company by our independent registered public accounting firm are required to be pre-approved by the Audit Committee. The pre-approval of non-audit services to be provided by PricewaterhouseCoopers LLP includes making a determination that the provision of the services is compatible with maintaining the independence of PricewaterhouseCoopers LLP as our independent registered public accounting firm. All services for audit and other fees set forth in the table above were pre-approved by the Audit Committee.

PROPOSAL THREE

**APPROVAL OF AMENDMENT TO
THE 2004 EQUITY INCENTIVE PLAN, AS AMENDED**

The 2004 Equity Incentive Plan, as amended (the "2004 Equity Plan"), was originally adopted by the Board of Directors in January 2004 and approved by the stockholders in February 2004. A total of 1,600,000 split-adjusted shares of Common Stock were initially authorized for issuance thereunder. The authorized amount was thereafter increased pursuant to: i) the evergreen provisions of the 2004 Equity Plan, through May 2008; ii) by shares returned to the Company's 1997 Stock Option/Stock Issuance Plan (the "1997 Plan") that were rolled into the 2004 Equity Plan pursuant to the terms of the 2004 Equity Plan; iii) by 2,000,000 shares as of May 22, 2008 as approved by the stockholders; and iv) by 2,000,000 shares as of May 21, 2009 as approved by the stockholders. As of February 28, 2010, a total of 10,435,948 shares are authorized for issuance under the 2004 Equity Plan, which may be increased by the number of shares, if any, returned on or after February 28, 2010 to the 1997 Plan as a result of termination of options or repurchase of shares issued under such plan, up to a maximum of 644,066 additional shares.

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The Board of Directors is now requesting that the stockholders approve an amendment to the 2004 Equity Plan to increase the number of authorized shares reserved for issuance under the 2004 Equity Plan by an aggregate of 2,300,000 shares. The Board of Directors has approved the increase to the authorized share reserve, subject to approval from the stockholders at the Annual Meeting. Approval of the amendment to the 2004 Equity Plan requires the affirmative vote of the holders of a majority of the shares of our Common Stock that are present in person or by proxy and entitled to vote at the Annual Meeting.

Proposed Amendment to Be Made to the 2004 Equity Plan

The following is a summary of the proposed amendment to the 2004 Equity Plan. This summary is qualified in its entirety by reference to the actual text of the proposed revision of the 2004 Equity Plan, set forth as Appendix A.

The stockholders are being asked to approve an increase to the number of authorized shares of the Company's Common Stock reserved for issuance under the 2004 Equity Plan by 2,300,000 shares, from 10,435,948 shares as of February 28, 2010 to 12,735,948 shares.

The Board of Directors believes that the approval of the amendment to the 2004 Equity Plan is essential to the Company's continued success. In particular, the Board of Directors believes that the Company's employees are its most valuable assets and that the awards permitted under the 2004 Equity Plan are vital to its ability to attract and retain outstanding and highly skilled individuals in the extremely competitive labor markets in which it operates. Such awards also are crucial to the Company's ability to motivate its employees to achieve the Company's goals. The proposed increase in the number of shares authorized for issuance under the 2004 Equity Plan is intended to provide sufficient shares to fund anticipated equity awards at least until the 2011 annual stockholders meeting.

Vote Required

The approval of the 2004 Equity Plan requires the affirmative vote of a majority of the shares present in person or represented by proxy at the Annual Meeting.

Recommendation of the Board of Directors

The Board of Directors recommends voting **FOR** approval of the amendment to the 2004 Equity Plan and the number of authorized shares reserved for issuance thereunder.

Summary of the 2004 Equity Plan, As Amended

The following is a summary of the principal features of the 2004 Equity Plan, as amended by the Board of Directors and subject to stockholder approval as described in this Proposal 3. The summary is qualified in its entirety by reference to the 2004 Equity Plan itself set forth in Appendix A.

The 2004 Equity Plan provides for the grant of the following types of incentive awards: (i) stock options, (ii) restricted stock, (iii) stock appreciation rights, and (iv) performance units and performance shares. Each of these is referred to as an Award. Those who will be eligible for Awards under the 2004 Equity Plan are members of the Board of Directors and employees and consultants who provide services to the Company and its parent or subsidiaries. As of February 28, 2010, approximately 120 of our employees, directors and consultants are eligible to participate in the 2004 Equity Plan.

Number of Shares of Common Stock Available Under the 2004 Equity Plan. The maximum aggregate number of shares that may be awarded and sold under the 2004 Equity Plan, after giving effect to the proposed amendment, is

12,735,948 shares, which may be increased by the number of shares, if any, returned on or after February 28, 2010 to the 1997 Plan as a result of termination of options or repurchase of shares issued under such plan, up to a maximum of 644,066 additional shares.

Shares subject to Awards granted with an exercise price less than the fair market value on the date of grant count against the share reserve as two shares for every one share subject to such an Award.

If an Award expires or becomes unexercisable without having been exercised in full, or, with respect to restricted stock, performance shares or performance units, is forfeited to or repurchased by the Company, the

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unpurchased shares (or for Awards other than options and stock appreciation rights, the forfeited or repurchased shares) which were subject thereto will become available for future grant or sale under the 2004 Equity Plan. Upon exercise of a stock appreciation rights settled in shares, the gross number of shares covered by the portion of the stock appreciation right will cease to be available under the 2004 Equity Plan. If the exercise price of an option is paid by tender to the Company, or by attestation to the ownership of shares owned by the participant, the number of shares available for issuance under the 2004 Equity Plan will be reduced by the gross number of shares for which the option is exercised. Shares that have actually been issued under the 2004 Equity Plan under any Award will not be returned to the 2004 Equity Plan and will not become available for future distribution under the 2004 Equity Plan; provided, however, that if shares of restricted stock, performance shares or performance units are repurchased by the Company or are forfeited to the Company, such shares will become available for future grant under the 2004 Equity Plan as described above. Shares used to pay the exercise price of an Award and/or used to satisfy tax withholding obligations will not become available for future grant or sale under the 2004 Equity Plan. To the extent an Award is paid out in cash rather than stock, such cash payment will not reduce the number of shares available for issuance under the 2004 Equity Plan.

If the Company declares a stock dividend or engages in a reorganization or other change in our capital structure, including a merger, the Administrator (as defined below) will adjust the (i) number and class of shares available for issuance under the 2004 Equity Plan, (ii) number, class and price of shares subject to outstanding Awards, and (iii) specified per-person limits on Awards to reflect the change.

Administration of the 2004 Equity Plan. The Board of Directors, or the Compensation and Talent Committee of the Board of Directors, or a committee of directors or of other individuals satisfying applicable laws and appointed by the Board of Directors (referred to as the Administrator), will administer the 2004 Equity Plan. To make grants to certain of the Company's officers and key employees, the members of the committee must qualify as non-employee directors under Rule 16b-3 of the Exchange Act, and as outside directors under Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code), so that the Company can receive a federal tax deduction for certain compensation paid under the 2004 Equity Plan.

Subject to the terms of the 2004 Equity Plan, the Administrator has the sole discretion to select the employees, consultants, and directors who will receive Awards, to determine the terms and conditions of Awards, to modify or amend each Award (subject to the restrictions of the 2004 Equity Plan), to interpret the provisions of the 2004 Equity Plan and outstanding Awards, and to allow participants to satisfy withholding tax obligations by electing to have the Company withhold from the shares to be issued upon exercise that number of shares having a fair market value equal to the minimum amount required to be withheld.

The Administrator may, with stockholder approval, implement an exchange program under which (i) outstanding Awards may be surrendered or cancelled in exchange for Awards of the same type, Awards of a different type, or cash; (ii) participants would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator; and/or (iii) the exercise price of an outstanding Award could be reduced. However, subject to the mandatory anti-dilution adjustments section of the 2004 Equity Plan, the Administrator cannot amend the terms of any Award to reduce the exercise price of such outstanding Award or cancel an outstanding Award in exchange for cash or other Awards with an exercise price that is less than the exercise price of the original Award, without stockholder approval.

Options. The Administrator may grant nonstatutory stock options and incentive stock options under the 2004 Equity Plan. The Administrator determines the number of shares subject to each option, although the 2004 Equity Plan provides that a participant may not receive options for more than 1,500,000 shares in any fiscal year, except in connection with his or her initial employment with the Company, in which case he or she may be granted an option covering up to a maximum of 3,000,000 shares.

The Administrator determines the exercise price of options granted under the 2004 Equity Plan, provided the exercise price must be at least equal to the fair market value of our Common Stock on the date of grant. In addition, the exercise price of an incentive stock option granted to any participant who owns more than 10% of the total voting power of all classes of our outstanding stock must be at least 110% of the fair market value of the Common Stock on the grant date.

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The term of each option will be stated in the Award agreement. The term of an option may not exceed ten years, except that, with respect to any participant who owns more than 10% of the voting power of all classes of the Company's outstanding capital stock, the term of an incentive stock option may not exceed five years.

After a termination of service with the Company, a participant will be able to exercise the vested portion of his or her option for the period of time stated in the Award agreement. If no such period of time is stated in the participant's Award agreement, the participant will generally be able to exercise his or her option for (i) three months following his or her termination for reasons other than death or disability, and (ii) twelve months following his or her termination due to death or disability.

Restricted Stock. Awards of restricted stock are rights to acquire or purchase shares of our Common Stock, which vest in accordance with the terms and conditions established by the Administrator in its sole discretion. For example, the Administrator may set restrictions based on the achievement of specific performance goals. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed. The Award agreement generally will grant the Company a right to repurchase or reacquire the shares upon the termination of the participant's service with the Company for any reason (including death or disability). The Administrator will determine the number of shares granted pursuant to an Award of restricted stock, but no participant will be granted a right to purchase or acquire more than 1,000,000 shares of restricted stock during any fiscal year, except that a participant may be granted up to an additional 1,000,000 shares of restricted stock in connection with his or her initial employment with the Company.

Stock Appreciation Rights. The Administrator will be able to grant stock appreciation rights (SARs), which are the rights to receive the appreciation in fair market value of Common Stock between the exercise date and the date of grant. The Company can pay the appreciation in either cash, shares of Common Stock or a combination thereof. The Administrator, subject to the terms of the 2004 Equity Plan, will have complete discretion to determine the terms and conditions of SARs granted under the 2004 Equity Plan, provided, however, that the exercise price may not be less than 100% of the fair market value of a share on the date of grant and the term of an SAR may not exceed ten years. No participant will be granted SARs covering more than 1,500,000 shares during any fiscal year, except that a participant may be granted SARs covering up to an additional 1,500,000 shares in connection with his or her initial employment with the Company.

The Administrator may grant affiliated SARs, freestanding SARs, tandem SARs or any combination thereof. An affiliated SAR is an SAR that is granted in connection with a related option and which automatically will be deemed to be exercised at the same time that the related option is exercised. However, an affiliated SAR will not require a reduction in the number of shares subject to the related option. A freestanding SAR is one that is granted independent of any options. A tandem SAR is a SAR granted in connection with an option that entitles the participant to exercise the SAR by surrendering to the Company an equivalent portion of the unexercised related option. A tandem SAR may be exercised only with respect to the shares for which its related option is then exercisable. With respect to a tandem SAR granted in connection with an incentive stock option, the tandem SAR will expire no later than the expiration of the underlying incentive stock option, the value of the payout with respect to the tandem SAR will be for no more than 100% of the difference between the exercise price of the underlying incentive stock option and the fair market value of the shares subject to the underlying incentive stock option at the time the tandem SAR is exercised, and the tandem SAR will be exercisable only when the fair market value of the shares subject to the incentive stock option exceeds the exercise price of the incentive stock option.

After termination of service with the Company, a participant will be able to exercise the vested portion of his or her SAR for the period of time stated in the Award agreement. If no such period of time is stated in a participant's Award agreement, a participant will generally be able to exercise his or her vested SARs for the same period of time as applies to stock options.

Performance Units and Performance Shares. The Administrator will be able to grant performance units and performance shares, which are Awards that will result in a payment to a participant only if the performance goals or other vesting criteria the Administrator may establish are achieved or the Awards otherwise vest. Earned performance units and performance shares will be paid, in the Administrator's sole discretion, in the form of cash, shares, or in a combination thereof. The Administrator will establish performance or other vesting criteria in its discretion, which, depending on the extent to which they are met, will determine the number and/or the value of

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performance units and performance shares to be paid out to participants. The performance units and performance shares will vest at a rate determined by the Administrator; provided, however, that after the grant of a performance unit or performance share, the Administrator, in its sole discretion, may reduce or waive any performance objectives or other vesting provisions for such performance unit or performance share. During any fiscal year, no participant will receive more than 1,000,000 performance shares and no participant will receive performance units having an initial value greater than \$4,000,000, except that a participant may be granted up to an additional 1,000,000 performance shares in connection with his or her initial employment with the Company. Performance units will have an initial value established by the Administrator on or before the date of grant. Performance shares will have an initial value equal to the fair market value of a share of our Common Stock on the grant date.

Performance Goals. Awards under the 2004 Equity Plan may be made subject to the attainment of performance goals relating to one or more business criteria within the meaning of Section 162(m) of the Code and may provide for a targeted level or levels of achievement including: cash position, clinical progression, collaboration arrangement, collaboration progression, earnings per share, financing event, net income, operating cash flow, operating expenses, operating income, product approval, product revenues, profit after tax, projects in development, regulatory filings, return on assets, return on equity, revenue growth, and total stockholder return. The performance goals may differ from participant to participant and from Award to Award, may be used alone or in combination, may be used to measure the performance of the Company as a whole or a business unit of the Company and may be measured relative to a peer group or index.

Transferability of Awards. Awards granted under the 2004 Equity Plan are generally not transferable, and all rights with respect to an Award granted to a participant generally will be available during a participant's lifetime only to the participant. The Administrator may only make an Award transferable to one or more of the following: (i) the participant's spouse, children or grandchildren (including any adopted and step children or grandchildren), parents, grandparents, siblings or any Family Member (as defined pursuant to Rule 701 of the Securities Act of 1933, as amended) of the participant; (ii) a trust for the benefit of one or more of the participant or the persons referred to in clause (i); (iii) a partnership, limited liability company or corporation in which the participant or the persons referred to in clause (i) are the only partners, members or stockholders; or (iv) charitable donations.

Change in Control. In the event of a change in control of the Company, each outstanding Award will be assumed or an equivalent option or right substituted by the successor corporation or a parent or subsidiary of the successor corporation. If the successor corporation refuses to assume or substitute for the Award, then: (i) the participant will fully vest in, and have the right to exercise, all of his or her outstanding options and stock appreciation rights, including shares as to which such Awards would not otherwise be vested or exercisable; (ii) all restrictions on restricted stock will lapse; and, (iii) with respect to performance shares and performance units, all performance goals or other vesting criteria will be deemed achieved at target levels and all other terms and conditions met. In addition, if an option or stock appreciation right is not assumed or substituted for in the event of a change in control, the Administrator will notify the participant in writing or electronically that the option or stock appreciation right will be fully vested and exercisable for a period of time determined by the Administrator in its sole discretion, and the option or stock appreciation right will terminate upon the expiration of such period.

With respect to Awards granted to an outside director that are assumed or substituted for, if on the date of or following such assumption or substitution the participant's status as a director or a director of the successor corporation, as applicable, is terminated other than upon a voluntary resignation by the participant not at the request of the successor, then: (i) the participant will fully vest in, and have the right to exercise, his or her options and/or stock appreciation rights as to all of the shares subject to the Award, including shares as to which such Awards would not otherwise be vested or exercisable; (ii) all restrictions on restricted stock shall lapse; and, (iii) with respect to performance shares and performance units, all performance goals or other vesting criteria will be deemed achieved at target levels and all other terms and conditions met.

Amendment and Termination of the 2004 Equity Plan. The Administrator will have the authority to amend, alter, suspend or terminate the 2004 Equity Plan, except that stockholder approval will be required for any amendment to the 2004 Equity Plan to the extent required by any applicable laws. No amendment, alteration, suspension or termination of the 2004 Equity Plan will impair the rights of any participant, unless mutually agreed otherwise between the participant and the Administrator, which agreement must be in writing and signed by the

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participant and the Company. The 2004 Equity Plan will terminate in January 2014 unless the Board of Directors terminates it earlier.

Number of Awards Granted to Employees, Consultants, and Directors

The number of Awards that an employee, director or consultant may receive under the 2004 Equity Plan is in the Administrator's discretion and therefore cannot be determined in advance. The following table sets forth (a) the aggregate number of shares of Common Stock subject to options granted under the 2004 Equity Plan during the last fiscal year, (b) the average per share exercise price of such options, (c) the aggregate number of shares issued during the last fiscal year pursuant to awards of stock options granted under the 2004 Equity Plan, and (d) the total dollar value of such issued shares, calculated as the difference between the fair market value of the Common Stock on the stock option exercise date, and the exercise price.

Name of Individual or Group	Number of Options Granted	Average per Share Exercise Price of Options Granted	Number of Options Exercised	Dollar Value of Options Exercised
All executive officers, as a group	900,000	\$ 1.85	90,000	\$ 81,547
All directors who are not executive officers, as a group	258,542	\$ 2.26	316,646	\$ 743,713
All employees who are not executive officers, as a group	634,208	\$ 1.86	85,357	\$ 143,409

No restricted stock shares were awarded under the 2004 Equity Plan during the last fiscal year.

As of February 28, 2010, a total of 8,395,047 shares were subject to outstanding stock options awarded under the 2004 Equity Plan and the 1997 Plan. As of such date, these stock option awards had a weighted average exercise price of \$4.34 per share and a weighted average remaining term of 7.4 years. No stock option awards were granted under the 2004 Equity Plan or 1997 Plan in which the exercise price for the underlying shares was less than the fair market value of such shares on the date of grant. As of February 28, 2010, a total of 187,560 shares of unvested restricted stock were outstanding. As of February 28, 2010, there were 2,684,967 shares available for grant under the 2004 Equity Plan, which may be increased by the number of shares, if any, returned on or after February 28, 2010 to the 1997 Plan as a result of termination of options or repurchase of shares issued under such plan, up to a maximum of 644,066 additional shares.

Federal Tax Aspects

The following is a summary of the general federal income tax consequences to U.S. taxpayers and the Company of Awards granted under the 2004 Equity Plan. Tax consequences for any particular individual may be different.

Nonstatutory Stock Options. No taxable income is reportable when a nonstatutory stock option with an exercise price equal to the fair market value of the underlying stock on the date of grant is granted to a participant. Upon exercise, the participant will recognize ordinary income in an amount equal to the excess of the fair market value (on the exercise date) of the shares purchased over the exercise price of the option. Any taxable income recognized in connection with an option exercise by an employee of the Company is subject to tax withholding by the Company.

Any additional gain or loss recognized upon any later disposition of the shares would be capital gain or loss.

As a result of Section 409A of the Code and the Treasury regulations promulgated thereunder (Section 409A), however, nonstatutory stock options and stock appreciation rights granted with an exercise price below the fair market value of the underlying stock or with a deferral feature may be taxable to the recipient in the year of vesting in an amount equal to the difference between the then fair market value of the underlying stock and the exercise price of such Awards and may be subject to an additional 20% federal income tax plus penalties and interest. In addition, certain states, such as California, have adopted similar tax provisions.

Incentive Stock Options. No taxable income is reportable when an incentive stock option is granted or exercised (except for purposes of the alternative minimum tax, in which case taxation is the same as for nonstatutory stock options). If the participant exercises the option and then later sells or otherwise disposes of the shares more

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than two years after the grant date and more than one year after the exercise date, the difference between the sale price and the exercise price will be taxed as capital gain or loss. If the participant exercises the option and then later sells or otherwise disposes of the shares before the end of the two- or one-year holding periods described above, he or she generally will have ordinary income at the time of the sale equal to the fair market value of the shares on the exercise date (or the sale price, if less) minus the exercise price of the option.

Stock Appreciation Rights. No taxable income is reportable when a stock appreciation right with an exercise price equal to the fair market value of the underlying stock on the date of grant is granted to a participant. Upon exercise, the participant will recognize ordinary income in an amount equal to the amount of cash received and the fair market value of any shares received. Any additional gain or loss recognized upon any later disposition of the shares would be capital gain or loss.

Restricted Stock, Performance Units and Performance Shares. A participant generally will not have taxable income at the time an Award of restricted stock, performance shares or performance units are granted. Instead, he or she will recognize ordinary income in the first taxable year in which his or her interest in the shares underlying the Award becomes either (i) freely transferable, or (ii) no longer subject to substantial risk of forfeiture. However, the recipient of a restricted stock Award may elect to recognize income at the time he or she receives the Award in an amount equal to the fair market value of the shares underlying the Award (less any cash paid for the shares) on the date the Award is granted.

Section 409A. Section 409A of the Code, which was added by the American Jobs Creation Act of 2004, provides certain new requirements on non-qualified deferred compensation arrangements. Awards granted under the 2004 Equity Plan with a deferral feature will be subject to the requirements of Section 409A, including discount stock options and stock appreciation rights discussed above. If an Award is subject to and fails to satisfy the requirements of Section 409A, the recipient of that Award may recognize ordinary income on the amounts deferred under the Award, to the extent vested, which may be prior to when the compensation is actually or constructively received. Also, if an Award that is subject to Section 409A fails to comply with Section 409A's provisions, Section 409A imposes an additional 20% federal income tax on compensation recognized as ordinary income, as well as interest on such deferred compensation. Some states may also apply a penalty tax (for instance, California imposes a 20% penalty tax in addition to the 20% federal penalty tax). The Internal Revenue Service has not issued complete and final guidance under Section 409A and, accordingly, the requirements of Section 409A (and the application of those requirements to Awards issued under the 2004 Equity Plan) are not entirely clear. **We strongly encourage recipients of such Awards to consult their tax, financial or other advisor regarding the tax treatment of such Awards.**

Tax Effect for the Company; Section 162(m). The Company generally will be entitled to a tax deduction in connection with an Award under the 2004 Equity Plan in an amount equal to the ordinary income realized by a participant and at the time the participant recognizes such income (for example, the exercise of a nonstatutory stock option). Special rules limit the deductibility of compensation paid to the Company's Chief Executive Officer (i.e., its principal executive officer) and to each of its three most highly compensated executive officers for the taxable year (other than the principal executive officer or principal financial officer). Under Section 162(m) of the Code, the annual compensation paid to any of these specified executives will be deductible only to the extent that it does not exceed \$1,000,000. However, the Company can preserve the deductibility of certain compensation in excess of \$1,000,000 if the conditions of Section 162(m) are met. These conditions include stockholder approval of the 2004 Equity Plan, setting limits on the number of Awards that any individual may receive and for Awards other than certain stock options, establishing performance criteria that must be met before the Award actually will vest or be paid. The 2004 Equity Plan has been designed to permit the Administrator to grant Awards that qualify as performance-based for purposes of satisfying the conditions of Section 162(m), thereby permitting the Company to continue to receive a federal income tax deduction in connection with such Awards.

THE FOREGOING IS ONLY A SUMMARY OF THE EFFECT OF FEDERAL INCOME TAXATION UPON PARTICIPANTS AND THE COMPANY WITH RESPECT TO THE GRANT AND EXERCISE OF AWARDS UNDER THE INCENTIVE PLAN. IT DOES NOT PURPORT TO BE COMPLETE, AND DOES NOT DISCUSS THE TAX CONSEQUENCES OF A PARTICIPANT'S DEATH OR THE PROVISIONS OF THE INCOME TAX LAWS OF ANY MUNICIPALITY, STATE OR FOREIGN COUNTRY IN WHICH THE PARTICIPANT MAY RESIDE.

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**THE BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS
VOTE *FOR* APPROVAL OF THE AMENDMENT TO THE 2004 EQUITY PLAN**

FORWARD-LOOKING STATEMENTS

This proxy statement, including the section entitled "Compensation Discussion and Analysis" set forth below, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act. These statements are based on our current expectations and involve risks and uncertainties, which may cause results to differ materially from those set forth in the statements. These forward-looking statements reflect management's current expectations concerning future results and events and can generally be identified by the use of words such as may, will, should, could, would, likely, potential, continue, future, estimate, believe, assume, intend, plan, and other similar words or phrases, as well as statement