CORNERSTONE THERAPEUTICS INC
Form 10-K/A
April 11, 2013
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

(Mark One)

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2012

OR

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _________ to _________

Commission file number: 000-50767

CORNERSTONE THERAPEUTICS INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware **(State or Other Jurisdiction of** **Incorporation or Organization)**	**04-3523569** **(IRS Employer** **Identification No.)**
1255 Crescent Green Drive, Suite 250 **Cary, North Carolina** **(Address of Principal Executive Offices)**	**27518** **(Zip Code)**

Registrant s telephone number, including area code:

(919) 678-6611

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, $0.001 par value per share	**The NASDAQ Stock Market LLC**

Securities registered pursuant to Section 12(g) of the Act:

None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ¨ No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ¨ No x

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ¨

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	¨	Accelerated filer	¨
Non-accelerated filer	x (Do not check if a smaller reporting company)	Smaller reporting company	¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

The aggregate market value of the registrant s common stock held by non-affiliates of the registrant as of June 30, 2012 was approximately $55,969,487 based on a price per share of $6.33, the last reported sale price of the registrant s common stock on the NASDAQ Stock Market on that date.

As of April 5, 2013 the registrant had 26,788,641 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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CORNERSTONE THERAPEUTICS INC.

ANNUAL REPORT

ON FORM 10-K

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EXPLANATORY NOTE

This Amendment No. 1 to Form 10-K (this Amendment) amends the Annual Report on Form 10-K for the year ended December 31, 2012 originally filed on March 14, 2013 (the Form 10-K) by Cornerstone Therapeutics Inc. (Cornerstone, the company, we or us). We are filing th Amendment to present the information required by Part III of the Form 10-K as we will not file a definitive proxy statement within 120 days of the end of fiscal year ended December 31, 2012.

Also included in this Amendment are (i) the signature page, (ii) certifications required of the principal executive officer and principal financial officer under Section 302 of the Sarbanes-Oxley Act of 2002 and (iii) the Exhibit Index, which has been amended and restated in its entirety as set forth below solely to include the additional certifications. Because no financial statements are contained within this Amendment, we are not including certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Except as described above, no other changes have been made to the Form 10-K. Other than the information specifically amended and restated herein, this Amendment does not reflect events occurring after March 14, 2013, the date of the Form 10-K, or modify or update those disclosures that may have been affected by subsequent events.

PART III

Item 10. *DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE*

Directors and Executive Officers

Information regarding our executive officers and directors may be found under the caption Executive Officers of the Registrant and Non-Employee Directors of the Registrant, respectively, in Part I of this annual report on Form 10-K. Such information is incorporated herein by reference.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors, executive officers and the holders of more than 10% of our common stock to file with the SEC initial reports of ownership of our common stock and other equity securities on a Form 3 and reports of changes in such ownership on a Form 4 or Form 5. Officers, directors and 10% stockholders are required by SEC regulations to furnish us with copies of all Section 16(a) forms they file. To our knowledge, based solely upon a review of the copies of such forms furnished to us for the year ended December 31, 2012, and the information provided to us by those persons required to file such reports, no such person failed to file the forms required by Section 16(a) of the Exchange Act on a timely basis during the year ended December 31, 2012, except that one Form 4, covering a total of one transaction, was filed late by Mr. Collard; one Form 3 and one Form 4, covering a total of one transaction, were filed late by Mr. Franklin; one Form 4, covering a total of one transaction, was filed late by Mr. Harper; two Form 4s, covering a total of two transactions, were filed late by Mr. Roberts; and one Form 4, covering a total of one transaction, was filed late by Mr. Powell.

Code of Ethics

We have adopted a code of business conduct and ethics that applies to our directors, officers (including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions) and other employees. A copy of our code of business conduct and ethics is available on our website at www.crtx.com under Investors Corporate Governance. We intend to post on our website and file on Form 8-K, if required, all disclosures that are required by applicable law, the rules of the SEC or NASDAQ listing standards concerning any amendment to, or waiver from, our code of business conduct and ethics.

Director Nomination Process

The Nominating and Corporate Governance Committee is responsible for identifying individuals qualified to become board members, consistent with criteria approved by the board, and recommending the persons to be nominated for election as directors,

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except where we are legally required by contract, bylaw or otherwise to provide third parties with the right to nominate directors. The process followed by the Nominating and Corporate Governance Committee to identify and evaluate director candidates includes requests to board members and others for recommendations, meetings from time to time to evaluate biographical information and background material relating to potential candidates and interviews of selected candidates by members of the committee and the board, with direct input from our Chief Executive Officer. From time to time, the Nominating and Corporate Governance Committee may retain the services of an executive search firm to help identify and evaluate potential director candidates but did not retain such services during the year ended December 31, 2012.

In considering whether to recommend any particular candidate for inclusion in the board s slate of recommended director nominees, the Nominating and Corporate Governance Committee applies certain criteria, including the candidate s reputation for integrity, honesty and adherence to high ethical standards, business acumen, experience and judgment, understanding of our business and industry, diligence, conflicts of interest or the appearance thereof, other directorships and their impact on the ability of the candidate to devote adequate time to service on our board and the ability to act in the interests of all stockholders. The committee does not assign specific weights to particular criteria, and no particular criterion is a prerequisite for any prospective nominee. Our Board of Directors has adopted guidelines that provide that nominees shall not be discriminated against on the basis of race, religion, national origin, sex, sexual orientation, disability or any other basis proscribed by law and require the Nominating and Corporate Governance Committee to consider the value of diversity on our board. The Nominating and Corporate Governance Committee implements and assesses the effectiveness of these guidelines and the board s commitment to diversity by considering these guidelines in our assessment of potential director nominees and the overall make-up of our Board of Directors. We believe that the backgrounds and qualifications of our directors, considered as a group, should provide a significant breadth of experience, knowledge and abilities that will assist our board in fulfilling its responsibilities.

Pursuant to our certificate of incorporation and our bylaws, the Nominating and Corporate Governance Committee selects and recommends the directors for nomination by our Board of Directors.

Stockholders may recommend individuals to the Nominating and Corporate Governance Committee for consideration as potential director candidates by submitting their names, together with appropriate biographical information and background materials and a statement as to whether the stockholder or group of stockholders making the recommendation has beneficially owned more than 5% of our common stock for at least a year as of the date such recommendation is made, to the Nominating and Corporate Governance Committee, c/o Corporate Secretary, Cornerstone Therapeutics Inc., 1255 Crescent Green Drive, Suite 250, Cary, North Carolina 27518. Assuming that appropriate biographical and background material has been provided on a timely basis, the Nominating and Corporate Governance Committee will evaluate stockholder recommended candidates by following substantially the same process, and applying substantially the same criteria, as it follows for candidates submitted by others. Stockholders also have the right under Section 1.10 of our bylaws to directly nominate director candidates, without any action or recommendation on the part of the Nominating and Corporate Governance Committee or the board, by following the procedures set forth therein.

Audit Committee

We have a separately designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Exchange Act. The members of the Audit Committee are Mr. Codeanne, Mr. Enright and Dr. Shawver. Mr. Codeanne serves as chair of the Audit Committee. The Board of Directors has determined that all of the members of the Audit Committee are independent as defined under NASDAQ rules and that they meet the additional independence requirements applicable to audit committee members. The Board of Directors has also determined that Mr. Codeanne is an audit committee financial expert as defined by applicable SEC rules.

The Audit Committee s responsibilities include:

- appointing, approving the compensation of and assessing the independence of our independent registered public accounting firm;
- overseeing the work of our independent registered public accounting firm, including through the receipt and consideration of reports from the independent registered public accounting firm;
- reviewing and discussing with management and the independent registered public accounting firm our annual and quarterly financial statements and related disclosures;

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- monitoring our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics;
- establishing policies regarding hiring employees from the independent registered public accounting firm and procedures for the receipt and retention of accounting-related complaints and concerns;
- meeting independently with our independent registered public accounting firm and management to discuss our financial statements, and other financial reporting and audit matters;
- preparing the audit committee report required by SEC rules; and
- reviewing and approving or ratifying related person transactions.

Item 11. ***EXECUTIVE COMPENSATION***

Compensation Discussion and Analysis

This Compensation Discussion and Analysis, which we refer to herein as the CD&A, describes our executive compensation philosophy, components and policies, including analysis of the compensation earned by our named executive officers for 2012 as detailed in the accompanying tables.

The following executives were our named executive officers for 2012:

Name	Position
Craig A. Collard	Chief Executive Officer
Alastair McEwan	Chief Financial Officer
Kenneth R. McBean	President
Andrew K. W. Powell	Executive Vice President, General Counsel and Secretary
Joshua B. Franklin	Vice President, Strategy and Business Development
Vincent T. Morgus	Former Executive Vice President, Chief Financial Officer and Treasurer

Executive Summary

Key Executive Compensation Actions and Highlights

In 2012, we continued to implement our pay for performance philosophy, taking into account both our company s performance and various considerations that affect our ability to achieve our strategic growth objectives. The elements of our compensation process, and the rationale for each, are described below.

For 2012, our Compensation Committee decided not to award merit increases in base salary to our named executive officers, but made an adjustment to Mr. Powell s base salary since it had been unchanged since his hiring in 2009. For 2013, merit increases for our named executive officers were based on executive performance and were decided on an individual basis.

Our Compensation Committee determined that we performed well in 2012, including over-achieving our key financial goal related to non-GAAP income from operations, growing revenue and completing the acquisition of EKR. The Committee also noted that we continued to execute our strategic plan, and that we met most of our other corporate and organizational goals. Accordingly, our named executive officers received cash bonuses which reflected both our company s performance in 2012 and their performance against specific individual goals, and when taken together as a group, they received bonus pay outs that were broadly consistent with their target bonuses for 2012.

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Our Compensation Committee determined that it would keep annual cash bonus targets for 2013 at 2012 levels.

In February 2012 and March 2013, we granted equity awards consisting of stock options and restricted stock to each of our named executive officers who had been with us for more than six months. These awards were based on our corporate performance, the executives individual performance and the target equity award levels reflected in certain executives employment agreements.

Compensation Governance

Consistent with our philosophy of pay for performance, the following features are built into our executive compensation process to ensure appropriate process and governance:

- Our Compensation Committee is comprised solely of independent directors.
- Our Compensation Committee uses independently generated third party data to obtain an understanding of compensation practices at companies in our industry.
- Our Compensation Committee approves and reviews our executive officers individual goals to ensure that they are aligned with our corporate goals and that they do not create incentives to engage in behaviors that might expose us to undue risk or have a material adverse effect on us.
- Our Compensation Committee regularly reviews our executive compensation program as a whole, including base salaries, annual cash incentives and equity-based incentives, to ensure that it properly rewards the value of executives contributions to the achievement of our corporate goals.
- Our Board of Directors has adopted a clawback policy that will allow us to seek recovery of certain compensation from our executive officers in the event of an accounting restatement caused by our material noncompliance with applicable financial reporting requirements.
- Our policies include stringent insider trading policy prohibitions as well as prohibitions on speculating or trading in derivative instruments related to company securities.
- In 2011 we provided, and every three years thereafter we expect to provide, our stockholders with the opportunity to cast an advisory vote on executive compensation as required by Section 14A of the Exchange Act.

Executive Compensation Philosophy

The principal objectives of our executive compensation program are to attract and retain talented executives. Our philosophy is to use cash compensation, stock options and restricted stock to reward performance and incentivize our executives to create and maintain stockholder value.

Elements of Compensation

We have entered into executive employment agreements with each of our named executive officers. Each of our named executive officers is entitled to the following elements of compensation, which are discussed more fully below:

base salary;

target cash bonus (in the discretion of our Compensation Committee and ratified by the Board); and

target equity awards (in the discretion of our Compensation Committee and ratified by the Board).

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Compensation Principles, Philosophy and Objectives

The following principles have guided our Compensation Committee in developing our compensation programs and in determining total compensation levels for our executive officers:

- we must be prepared to compete with other organizations for executive talent and ensure that our compensation practices compare favorably with others in our industry;
- our compensation practices should take into account the development of our business, our continuing growth and the company culture that we wish to build; and
- our compensation programs should encourage our executive officers to increase long-term stockholder value in a manner that appropriately rewards the achievement of specified short-term objectives without creating undue risk for us or our stockholders.

Our philosophy is to relate compensation to measurable goals of both the company and our individual executives, and we strive to make our compensation decisions objective by rewarding our executives for meeting these goals.

The objective of our executive compensation program is to attract and retain key employees and then motivate them to achieve and reward them for achieving our business goals. We do this by:

- providing competitive compensation that consists of cash and equity-based components that appropriately encourage and reward performance and create enduring long-term stockholder value;
- rewarding our executive officers for their individual contributions to our success;
- aligning the interests of our executives as a group by linking individual executive compensation to the company-wide achievement of both our short-term operating imperatives and our long-term strategic objectives; and
- aligning the interests of our executives with those of our stockholders by building a culture of equity ownership and shared risk.

Elements of Executive Compensation

Consistent with our executive officers employment agreements, our Compensation Committee determined that the compensation of our executive officers for 2012 should consist of base salary, a discretionary bonus and stock-based compensation. The committee does not target a specific mix of executive compensation by allocating total compensation across cash and noncash pay, between current and long-term pay or among different types of long-term incentive awards.

Our overall executive compensation program includes the following major elements:

Compensation Element	Objective	Key Features
Base salary	Provide a fixed level of cash compensation based on responsibilities, background, training and experience to encourage retention and recognize performance.	Annually reviewed by our Compensation Committee.

Cash Bonus	Reward executive officers for their individual performance and contributions to corporate performance. Reinforce pay for performance.	Determined in the discretion of our Compensation Committee based on the achievement of specific corporate and individual goals.
Stock-based compensation	Align our executive officers long-term interests with those of our stockholders by rewarding officers for sustaining long-term corporate performance; encourage retention through the use of vesting provisions.	May consist of stock options and / or restricted stock awards.
Broad-based benefits	Provide a safety net of protection against the financial catastrophes that can result from illness, disability or death.	Executive officers participate in the same plans as other employees, except that our medical insurance, dental insurance and vision insurance plans are provided to them at no cost.
Perquisites and severance benefits	Promote client development and fulfillment of business duties on an efficient and cost-effective basis; provide reasonable level of severance compensation in certain circumstances.	Designed to represent a small part of our overall compensation package.

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Process for Determining Executive Compensation

Overview

Our Compensation Committee annually approves salary increases, targets for annual bonuses, the amounts of stock option and restricted stock awards and payouts of bonuses, in its discretion. In exercising its discretion, the committee considers our actual corporate performance compared to our corporate goals and actual individual performance compared to individual goals. The committee also ascribes weight to the Chief Executive Officer s assessment of executive performance. In general, our Compensation Committee does not take into account amounts realizable from prior compensation when making future pay decisions.

Role of Executive Officers

Our Chief Executive Officer assists our Compensation Committee by annually developing the individual objectives and reviewing the performance of each of our executive officers (other than his own, which is reviewed by our Compensation Committee). Our Chief Executive Officer generally makes specific recommendations regarding salary adjustments and amounts of discretionary bonuses, if any, for each executive. Our Chief Executive Officer s recommendations are then reviewed by our Compensation Committee. That review includes a rigorous assessment of our overall corporate performance and the performance of individual executives, and includes consideration of any factors that are relevant to corporate or executive performance. The committee then either approves our Chief Executive Officer s recommendations or exercises its discretion by modifying any recommended salary adjustments and/or bonus payments to our executive officers. In exercising its discretion the committee may take into account the market data information discussed below.

Role of Compensation Consultants and Surveys

In setting executive compensation, our Compensation Committee generally considers, along with various other factors, the compensation paid to officers with similar responsibilities in similar companies. Our Compensation Committee does not retain a compensation consultant to assist in setting executive compensation. However, in order to improve its understanding of compensation practices at companies in our industry, our Compensation Committee does consider market data from a variety of sources, including the Radford Survey covering pharmaceutical and bio-technology companies having between 150 and 499 employees and between $50 million and $150 million in revenues. The committee does not use this data, or any customized subset thereof, to benchmark its compensation decisions. In 2012, after establishing compensation levels, it used this data to assess and confirm generally whether the nature and overall level of compensation paid to our executives, including the compensation packages provided to our newly hired executives, is reasonably sufficient to support our objectives of attracting and retaining talented executives. Our Compensation Committee did not attempt to align our overall compensation structure to any specific percentile of the companies whose data it reviewed.

Role of Corporate and Individual Performance

Our Compensation Committee believes that our success is dependent upon, and reflective of, the performance of our senior management team, including our executive officers. In an effort to appropriately incentivize our executives to achieve certain objectives, the committee approves various commercialization, development, clinical, regulatory, financial, operational and

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organizational goals. The process of setting performance goals begins with our Chief Executive Officer proposing our annual corporate goals. These are reviewed by our Compensation Committee and then modified as the committee believes is appropriate. Our Compensation Committee then recommends that our full Board provisionally adopt these corporate goals, subject to further review and adjustment throughout the year as necessary based on changing market and competitive conditions.

Once we have set our corporate goals, we establish individual goals for each of our executive officers. Our Chief Executive Officer s individual goals are the same as our corporate goals. The individual goals for our other executive officers are set early in the first quarter of the calendar year and focus on contributions that will facilitate the achievement of our corporate goals. Each executive officer reviews our corporate goals and proposes individual goals that appropriately support our corporate goals, taking into account the executive s functional responsibilities. These individual goals are approved by our Chief Executive Officer and then submitted to our Compensation Committee for discussion, revision and adoption.

Our Compensation Committee regularly tracks our progress towards our corporate and individual goals. As part of this process the Compensation Committee also assesses the continuing relevance of these goals, and may add to or revise these goals as necessary or appropriate based on emergent challenges and opportunities. Our Compensation Committee believes that if our focus changes due to market shifts or potential opportunities, our goals, on an individual and corporate basis, should be correspondingly adjusted to encourage our executive officers to position us to capitalize on such shifts and opportunities, rather than focusing on past goals that may or may not continue to enhance stockholder value. Any change in our corporate goals is subject to adoption by the full Board of Directors.

Goals may relate to objective financial metrics (such as the achievement of a certain level of sales), to objective non-financial achievements (such as the approval of a product for sale) or to qualitative performance (such as building and integrating a new process into our operational structure). We intend for goals to be achievable as the result of sustained focused effort on the part of the executive team, and it is our expectation that in normal circumstances executives will achieve substantially all of their individual goals, and as a result we will achieve substantially all of our corporate goals.

Corporate Performance

When making compensation decisions for our executive officers with respect to annual bonuses and equity awards, our Compensation Committee first assesses the level to which we have achieved our corporate goals. The assessment of the achievement of any corporate goal is in the discretion of our Compensation Committee, and may exceed 100%. In reaching an overall assessment of corporate performance, our Compensation Committee may choose to weight our corporate goals. The overall assessment may be expressed as a percentage of full goal achievement. The assessment takes into account any revisions to goals made throughout the year. The weighting of particular goals is a matter of committee discretion, though as a general rule the committee ascribes particular weight to goals related to financial performance. While total achievement of all corporate goals, as revised during the year, may not be expected, our Compensation Committee demands that management significantly advance our business objectives and the interests of stockholders throughout the year for the committee to consider it appropriate to base decisions regarding cash and equity incentive compensation on an overall assessment that we achieved our corporate goals at 100% or more.

Individual Performance

Having made an overall assessment of corporate performance, our Compensation Committee then assesses the level to which each of our executive officers achieved their individual goals. In assessing individual achievement, our Compensation Committee may choose to weight an individual s goals, and the resulting assessment may be expressed as a percentage of full goal achievement.

In making compensation decisions for each individual executive officer, our Compensation Committee considers both the executive s achievement of his individual goals and our achievement of our corporate goals. Because the goals of our Chief Executive Officer are the same as our corporate goals, the committee s assessment of his individual achievement will normally be the same as the committee s overall assessment of our corporate performance. In addition to assessing the Chief Executive Officer s performance against operating goals, the Committee may take into account his strategic leadership and its impact on our company s direction. In the case of other executive officers, the committee will exercise its discretion in balancing individual achievement and corporate performance when determining annual cash bonus and equity awards, as it deems appropriate.

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Our Compensation Committee believes that it is not appropriate, for a company that is transforming its business, to have a rigid funding metric for executive bonus and equity awards. However, as a general matter, the committee believes that, in the absence of special circumstances, our pay-for-performance philosophy demands that actual annual bonus and equity awards made to our executive officers, as a group, should not reflect a level of achievement in excess of that reflected in the committee s overall assessment of corporate performance. Our Compensation Committee believes that, at this time, this flexible but principled process is appropriate because it allows the committee to consider (i) goals established by the committee at the beginning of the year and goals communicated to our executive officers at any point throughout the year, (ii) the effects of unanticipated events and circumstances on our business or on a particular executive s performance, and (iii) the performance of our executives in managing change, addressing emergent challenges and exploiting unexpected opportunities.

Our 2012 corporate and individual goals and their impact on our named executive officers compensation are discussed more fully below.

Impact of 2011 Say-on-Pay Vote on Executive Compensation

In approving the 2013 compensation of our named executive officers, our Compensation Committee considered the results of the advisory vote on executive compensation at the 2011 Annual Meeting of Stockholders. Over 99% of the votes cast on this say-on-pay proposal were voted in favor of approving, on an advisory basis, the compensation of our named executive officers. Our Compensation Committee believes these results affirm our stockholders support of our approach to executive compensation. Accordingly, our Compensation Committee did not adopt any changes to our executive compensation based on the results of the say-on-pay vote. Our Compensation Committee will continue to consider the outcome of say-on-pay proposals when making future compensation decisions for our named executive officers.

Executive Compensation in 2012

Base Salary

Our Compensation Committee has established base salaries for our named executive officers at levels that are intended to reflect the scope of their responsibilities and relevant backgrounds, training and experience. When establishing a named executive officer s base salary, our Compensation Committee takes into account his seniority, his level of responsibility, the functional role of the position and compensation practices in the pharmaceutical industry and among public companies. The Compensation Committee reviews our named executive officers base salaries annually.

The following table shows annual base salaries in effect for 2011, 2012 and 2013 for each named executive officer, as well as the percentage increase from 2012 to 2013:

Executive	2011 Base Salary	2012 Base Salary	Percent Increase	2013 Base Salary
Craig A. Collard	$ 400,000	$ 400,000	12.5%	$ 450,000
Alastair McEwan	N/A	$ 190,000	N/A	$ 190,000
Kenneth R. McBean	$ 295,000	$ 295,000	2.0%	$ 300,900
Andrew K. W. Powell	$ 275,000	$ 280,500	N/A	$ 280,500
Joshua B. Franklin	$ 231,750	$ 233,864	2.0%	$ 238,541
Vincent T. Morgus	$ 285,000	$ 285,000	N/A	N/A

For 2012, our Compensation Committee decided not to award merit increases in base salary to our named executive officers, but made an adjustment to Mr. Powell s base salary since it had been unchanged since his hiring in 2009. For 2013, we awarded merit increases of 2% to all of our named executives except for Mr. McEwan who was hired in November 2012 and for Mr. Powell. We made a further increase to Mr. Collard s salary for 2013 in order to reflect his strategic responsibilities and his importance to our company.

Annual Performance-Based Cash Incentive Compensation

Our current named executive officers are eligible for annual cash bonuses pursuant to the terms of their respective employment agreements. Annual bonuses are intended to link our strategic and corporate operating plans with individual performance, and to provide executive officers with incentives to achieve greater corporate performance by focusing on the attainment of specific goals.

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Our Compensation Committee annually determines the target cash bonus for each named executive officer based on a percentage of such officer s annual base salary. Although the employment agreements we have entered into with each of our named executive officers provide for target cash bonuses up to 50% for Mr. Collard, 40% for Mr. McBean and 35% for our other named executive officers, our Compensation Committee retains discretion to set the target cash bonuses for each named executive officer either above or below these levels. For 2012, our Compensation Committee set the target cash bonus for each of our named executive officers, other than Mr. Collard, at the maximum target level set forth in the executive s respective employment agreement. In the case of Mr. Collard, the committee set the target cash bonus percentage at 75% of base salary to incentivize performance during 2012.

2012 Cash Bonus

When exercising its discretion in awarding cash bonuses for 2012, our Compensation Committee considered our achievement of our overall corporate goals and our named executive officers achievement of their individual goals. In part, our Compensation Committee used non-GAAP income from operations as one of the measures of our performance. The section titled Reconciliation of Non-GAAP Financial Measures in Item 7 of this annual report on Form 10-K contains an explanation of how we calculate this measure and provides a reconciliation of this measure to the most directly comparable GAAP measure.

In addition, our Compensation Committee also used, in part, non-GAAP pre-tax income, which is calculated as GAAP income (loss) before income taxes adjusted for stock-based compensation expense, amortization and impairment of product rights, transaction-related expenses, acquisition adjustments related to inventory, our CARDENE I.V. charitable inventory donation, our RETAVASE inventory write-off, changes in acquisition-related contingent payments, and the gain on the divestiture of certain product rights, divided by the sum of the weighted-average number of common shares and dilutive common share equivalents outstanding during the year, as adjusted for the impact of the shares related to the convertible debt.

In reviewing all of our 2012 corporate goals, our Compensation Committee focused on the degree to which we were able to achieve our corporate goals, which included:

- To achieve net revenue of at least $87.6 million;
- To achieve non-GAAP income from operations of at least $11.8 million;
- To achieve non-GAAP pre-tax income per share of $0.36;
- To complete an accretive acquisition transaction with $50 million in annualized revenues that is expected to provide 20% net income per share growth;
- To achieve development and approval milestones for certain products in our pipeline; and
- To make certain organizational changes to enhance organizational alignment, efficiency and compliance.

Based on its review of our corporate performance, our Compensation Committee determined that we performed well in 2012 and over-achieved our financial goals and our acquisition goal, while achieving approval of only one of our products in development. Our Compensation Committee ultimately determined that 90% represented a reasonable estimate of the extent to which we had met our corporate goals for 2012 and was therefore an appropriate basis from which to make bonus determinations.

In making this estimate, our Compensation Committee considered all aspects of our corporate performance in 2012, focusing on the following key financial and non-financial results for the year:

Net revenues from all products were $116.1 million;

Non-GAAP income from operations was $30.0 million;

Non-GAAP pre-tax income per share was $0.91;

We completed the acquisition of EKR, the licensing of BETHKIS and the revision of our CUROSURF license in 2012 with the result that we estimate annual revenues will increase by more than $50 million and we believe we have a reasonable basis for double digit net income per share growth in future;

We achieved approval of our Hydrocodone Polistirex and Chlorpheniramine Polistirex Extended Release Suspension product, but failed to achieve approval of our LIXAR product candidate; and

We enhanced our organization through changes to our management, compliance and human resources development processes.

In reaching its final assessment that we achieved nearly all of our goals, our Compensation Committee applied a subjective approach, ascribing particular weight to our achievement of financial metrics and our success in completing strategic acquisitions. At the same time, however, our Compensation Committee also took note of the fact that our development projects failed to result in the approval of our LIXAR product.

In addition to considering our overall corporate performance, our Compensation Committee also took into account the achievement by our named executive officers of the following individual goals:

Craig Collard. Mr. Collard s goals were the same as our corporate goals and the committee took that into account when assessing his performance. At the same time, the committee considered that Mr. Collard s exceptional leadership and the strategic development of our company more than offset the shortfall in the achievement of our corporate goals and the committee awarded him a cash bonus substantially in excess of his target.

Ken McBean. Mr. McBean s goals related to the management of our commercial functions and the integration of the EKR products into our portfolio. In determining Mr. McBean s annual cash bonus award, the committee considered that our company exceeded our sales targets and integrated the EKR team into [our existing?] hospital sales force.

Alastair McEwan. Mr. McEwan s goals related to the management of our finance and investor relations functions and the completion and integration of the EKR transaction. In determining Mr. McEwan s annual cash bonus award, the committee considered that Mr. McEwan had only been with the company since November 2012.

Andrew Powell. Mr. Powell s goals related to the management of our legal function, the oversight of our governance and organizational processes, the execution of our acquisition transactions, and the enhancement of our intellectual property portfolio. In determining Mr. Powell s annual cash bonus award, the committee considered that our corporate goals and the interests of our stockholders were significantly advanced in each of these areas.

Joshua Franklin. Mr. Franklin s goals related to the company s business development efforts and the execution and integration of significant acquisition and licensing transactions. In determining Mr. Franklin s annual cash bonus award the committee took note of the acquisition and timely integration of EKR, the licensing of BETHKIS and the revision of our CUROSURF license.

Vincent Morgus. Mr. Morgus s cash bonus award was determined at the time of his separation from the company and reflected the terms of the Separation Letter Agreement and General Release we entered into with him.

Our Compensation Committee s assessment of each named executive officer s achievement, based in part upon the recommendation of the Chief Executive Officer, was then weighed together with the committee s overall assessment of our performance against our corporate goals. The committee, in its discretion, then made awards to each executive officer that it considered appropriately reflected their overall performance.

The following table illustrates our actual and target cash bonuses for 2012:

	2012 Target Bonus		2012 Actual Cash Bonus		
Executive	Dollars	% of Base Salary	Dollars	% of Base Salary	% of Target
Craig A. Collard	$ 300,000	75%	$ 375,000	94%	125%
Kenneth R. McBean	$ 118,000	40%	$ 109,740	37%	93%
Alastair McEwan (1)	$ 11,084	35%	$ 10,308	5%	93%
Andrew K. W. Powell	$ 98,175	35%	$ 83,940	30%	86%
Joshua B. Franklin	$ 81,852	35%	$ 76,122	33%	93%

(1)