

Ocean Power Technologies, Inc.  
Form DEF 14A  
August 28, 2013

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934 (Amendment No.)

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

Ocean Power Technologies, Inc.

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(Name of Registrant as Specified In Its Charter)

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

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No fee required.

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(1) Amount Previously Paid:

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(3) Filing Party:

(4) Date Filed:

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1590 Reed Road

Pennington, NJ 08534 USA

Tel: 609-730-0400 — Fax: 609-730-0404

August 28, 2013

Dear Stockholder,

We cordially invite you to attend our 2013 Annual Meeting of Stockholders to be held at 9:00 a.m. Eastern Daylight Time on Thursday, October 3, 2013 at our offices at 1590 Reed Road, Pennington, NJ 08534. The attached notice of annual meeting and proxy statement describes the business we will conduct at the meeting and provides information about Ocean Power Technologies, Inc. that you should consider when you vote your shares.

Your vote is very important, regardless of the number of shares you hold. Whether or not you plan to attend the meeting, please carefully review the enclosed proxy statement and then cast your vote.

We hope that you will join us on October 3, 2013.

Sincerely,

/s/CHARLES F. DUNLEAVY

Charles F. Dunleavy

*Chairman of the Board of Directors*



**OCEAN POWER TECHNOLOGIES, INC.**

**1590 Reed Road**

**Pennington, NJ 08534**

**Notice of 2013 Annual Meeting of Stockholders**

**NOTICE IS HEREBY GIVEN that the 2013 Annual Meeting of Stockholders of Ocean Power Technologies, Inc., a Delaware corporation, will be held on:**

***Date:*** October 3, 2013

***Time:*** 9:00 a.m. Eastern Daylight Time

1590 Reed Road

***Place:*** Pennington, NJ 08534

USA

- Purposes:***
1. To elect five persons to our Board of Directors;
  2. To consider and take action on the ratification of the selection of KPMG LLP as our independent registered public accounting firm for fiscal 2014;
  3. To conduct a nonbinding advisory vote on executive officer compensation;
  4. To approve an amendment to our 2006 Stock Incentive Plan to increase the aggregate number of shares authorized for issuance under the plan by 800,000 shares; and
  5. To transact such other business as may properly come before the meeting or any adjournments thereof.

***Record Date:*** The Board of Directors has fixed the close of business on August 19, 2013 as the record date for determining stockholders entitled to notice of, and to vote at, the meeting or any adjournment or postponement of the meeting.

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE 2013 ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON OCTOBER 3, 2013:**

**Copies of this proxy statement and of our annual report for the fiscal year ended April 30, 2013 are available by visiting the following website: <http://phx.corporate-ir.net/phoenix.zhtml?c=155437&p=proxy>**

FOR THE BOARD OF DIRECTORS

/s/BRIAN M. POSNER

Brian M. Posner

Chief Financial Officer,

Secretary and Treasurer

Pennington, NJ

August 28, 2013

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**OCEAN POWER TECHNOLOGIES, INC.**

**1590 Reed Road**

**Pennington, NJ 08534**

**PROXY STATEMENT**

**Annual Meeting of Stockholders To Be Held October 3, 2013**

**GENERAL INFORMATION**

This Proxy Statement is furnished to stockholders of Ocean Power Technologies, Inc., a Delaware corporation (the “Company”), in connection with the solicitation by our Board of Directors of proxies for use at our Annual Meeting of Stockholders (the “Meeting”). The Meeting is scheduled to be held on Thursday, October 3, 2013, at 9:00 a.m., Eastern Daylight Time, at our offices located at 1590 Reed Road, Pennington, NJ. We anticipate that this Proxy Statement and the enclosed form of proxy will be mailed to stockholders on or about August 28, 2013.

At the Meeting, stockholders will be asked to vote upon: (1) the election of five directors; (2) the ratification of the selection of our independent registered public accounting firm for fiscal 2014; (3) a nonbinding advisory vote on executive officer compensation; (4) the approval of an amendment to our 2006 Stock Incentive Plan to increase the aggregate number of shares issuable under the plan by 800,000; and (5) such other business as may properly come before the Meeting and at any adjournments thereof.

**Voting Rights and Votes Required**

The close of business on August 19, 2013 has been fixed as the record date for the determination of stockholders entitled to receive notice of and to vote at the Meeting. As of the close of business on such date, we had outstanding and entitled to vote 10,356,946 shares of Common Stock, par value \$0.001 per share (the “Common Stock”). Because stockholders often cannot attend the meeting in person, a large number of shares is usually represented by proxy. You may vote your shares by completing the enclosed proxy card and mailing it in the envelope provided. Stockholders who hold shares in “street name” should refer to their proxy card or the information forwarded by their bank, broker or other holder of record for instructions on the voting options available to them.

A majority of the shares of Common Stock entitled to vote at the Meeting must be represented in person or by proxy at the Meeting in order to constitute a quorum for the transaction of business. The record holder of each share of Common Stock entitled to vote at the Meeting will have one vote for each share so held. Abstentions and broker nonvotes will count for quorum purposes.

Directors are elected by a plurality of the votes cast. Stockholders may not cumulate their votes. The five candidates receiving the highest number of votes will be elected. If the shares you own are held in street name by a bank or brokerage firm, that bank or brokerage firm, as the record holder of your shares, is required to vote your shares according to your instructions. **If you do not instruct your bank or broker how to vote with respect to this item, your bank or broker may not vote with respect to the election of directors.** In tabulating the votes, votes withheld in connection with the election of one or more nominees and broker nonvotes will be disregarded and will have no effect on the outcome of the vote.

In addition, each of the following proposals requires the affirmative vote of a majority of the votes cast for approval:

- The proposal to ratify the selection of our independent registered public accounting firm (Proposal 2);
- The proposal to approve the compensation of our Executive Officers by a nonbinding advisory vote (Proposal 3);
- The proposal to approve an amendment to our 2006 Stock Incentive Plan to increase the aggregate number of shares authorized for issuance by 800,000 shares (Proposal 4).

For each of these proposals, abstentions and broker non-votes will be disregarded and will have no effect on the outcome.

## **Voting of Proxies**

If the accompanying proxy is properly executed and returned, the shares represented by the proxy will be voted at the Meeting as specified in the proxy. If no instructions are specified, the shares represented by any properly executed proxy will be voted **FOR** the election of the nominees listed below under "Proposal One - Election of Directors," **FOR** the ratification of the selection of our independent registered public accounting firm, **FOR** the approval of the compensation of our Executive Officers by a nonbinding advisory vote and **FOR** the approval of the amendment to our 2006 Stock Incentive Plan to increase aggregate number of shares issuable under the plan by 800,000.

## **Revocation of Proxies**

Any proxy given pursuant to this solicitation may be revoked by a stockholder at any time before it is exercised by: (i) providing written notice to our Secretary, (ii) delivery to us of a properly executed proxy bearing a later date, or (iii) voting in person at the Meeting.

## **Solicitation of Proxies**

We will bear the cost of this solicitation, including amounts paid to banks, brokers, and other record owners to reimburse them for their expenses in forwarding solicitation materials regarding the Meeting to beneficial owners of Common Stock. The solicitation will be by mail, with the materials being forwarded to stockholders of record and certain other beneficial owners of Common Stock, and by our officers and other regular employees (at no additional compensation). Our officers and employees may also solicit proxies from stockholders by personal contact, by telephone, or by other means if necessary in order to assure sufficient representation at the Meeting.

Computershare Investor Services has been retained to receive and tabulate proxies.

## **PROPOSAL ONE - ELECTION OF DIRECTORS**

Pursuant to our by-laws, our directors serve one-year terms and are elected for a new one-year term at each annual meeting of stockholders.

The five persons listed in the table below have been designated by the Board of Directors as nominees for election as directors with terms expiring at the 2013 annual meeting. Bruce A. Peacock and David L. Davis are not standing for reelection to the Board of Directors, and David L. Keller is a new nominee for director. Unless a contrary direction is indicated, it is intended that proxies received will be voted for the election as directors of the five nominees, to serve for one-year terms, and in each case until their successors are elected and qualified. Each of the nominees has consented to being named in this Proxy Statement and to serve as a director if elected. In the event any nominee for director declines or is unable to serve, the proxies may be voted for a substitute nominee selected by the Board of Directors. Our Board of Directors has resolved that immediately after the conclusion of the current term of our directors and immediately before the commencement of the term of the directors elected at the Meeting that the size of the Board of Directors be reduced to five.

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR ALL NOMINEES.**

All of our directors bring to our Board of Directors executive leadership experience from their service as executives and/or directors of our Company and/or other entities. The biography of each of the nominees below contains information regarding the person's service as a director, business experience, director positions held currently or at any time during the last five years, and the experiences, qualifications, attributes and skills that caused the Nominating and Corporate Governance Committee and our Board of Directors to determine that the person should serve as a director, given our business and structure.

Name	Age	Position(s) with Ocean Power Technologies, Inc.	Served as
			Director
			From
Terence J. Cryan	51	Director	2012
David L. Keller	59	New Nominee for Director	—
Seymour S. Preston III	79	Vice Chairman and Lead Independent Director	2003
Dr. George W. Taylor	79	Executive Vice Chairman	1984
Charles F. Dunleavy	64	Chairman of the Board and Chief Executive Officer	1990

**Terence J. Cryan** has been a member of the OPT Board of Directors since October 2012. Since September 2001, Mr. Cryan has been Co-founder and Managing Director of Concert Energy Partners, LLC, an investment banking and private equity investment firm with a focus on the traditional and alternative energy, power and natural resources industries. In addition to his responsibilities at Concert Energy Partners, from 2007 through 2010, Mr. Cryan also served as President and CEO of Medical Acoustics LLC, a medical device technology company. Between 1990 and 2001, Mr. Cryan was a Senior Managing Director in the investment banking department at Bear Stearns & Co. Inc. in New York City and a Managing Director at Paine Webber/Kidder Peabody in both New York City and London serving clients in the energy and natural resources sector. Mr. Cryan has served on the boards of directors of a number of publically traded companies including, Uranium Resources, Inc., since 2006; Global Power Equipment Group Inc., since 2008; Gryphon Gold Corporation from 2009 to 2012; and The Providence Service Corporation from 2009 to 2011. From September 2012 until April 2013, Mr. Cryan also served as interim President and CEO of Uranium Resources, Inc. Prior to joining our Board of Directors, Mr. Cryan was a member of our Board of Advisors since 2003. Mr. Cryan earned his Bachelor of Arts degree from Tufts University in 1983 and a Masters of Science degree in Economics from The London School of Economics in 1984. We believe Mr. Cryan's qualifications to sit on our Board of Directors include his significant experience in financial matters, his prior board and executive experience at other companies, his broad energy industry background and his extensive expertise in financings, mergers and acquisitions.

**David L. Keller** is a new nominee for director. He is currently an independent director of ThermoEnergy, Inc., a company engaged in the worldwide development, sales and commercialization of patented and/or proprietary municipal and industrial wastewater treatment and power generation technologies. Mr. Keller previously served as

President, Chief Executive Officer and Director of Global Power Equipment Group Inc., a comprehensive provider of power generation equipment and modification and maintenance services for customers in the domestic and international energy, power infrastructure and service industries, from September 2009 until his retirement in June 2012 and, following his retirement, continued to serve Global Power Equipment Group Inc. as a consultant until March 2013. Mr. Keller served as the President and Chief Operating Officer of The Babcock & Wilcox Company (“B&W”), a wholly owned subsidiary of McDermott International, Inc., from March 2001 until his retirement in June 2007. Mr. Keller’s prior position was President of Diamond Power International, Inc., a wholly owned subsidiary of B&W, from March 1998 to February 2001. During his tenure with B&W, Mr. Keller served as a Board Chairman or Director of subsidiaries and joint ventures in the People’s Republic of China, Denmark, the United Kingdom, Australia and South Africa. Mr. Keller holds a Bachelor of Science degree in Mathematics from the University of Akron. He brings to the Board of Directors a comprehensive knowledge of the power generation industry. In addition to his experience and understanding in the industry, Mr. Keller also has significant executive management experience, having directly overseen sales, manufacturing, accounting, legal, supply chain and personnel functions of a business whose revenues reached approximately \$2 billion under his management.

**Seymour S. Preston III** has been a director since September 2003. Mr. Preston has been our vice chairman and lead independent director since January 2009. Since 1994, Mr. Preston has been President of The Millrace Group, a management consulting firm. Mr. Preston is also a director and serves on the audit committee of Independent Publications, Inc., a newspaper publisher. Mr. Preston was a director of Albemarle Corporation, a specialty chemicals company, from 1996 to 2008; Scott Specialty Gas Corporation, a provider of gases for calibration, testing and emission standards, from 1994 to 2007; and, Tufco Technologies, Inc., a consumer products contract manufacturing company, from 1999 to 2009. From 1994 to 2003, he was the chairman and chief executive officer of AAC Engineered Systems, Inc., a privately-held manufacturing company. Over the period from 1961 to 1989, Mr. Preston held various positions at Pennwalt Corporation, including serving as president, chief operating officer and director from 1978 to 1989. Mr. Preston served as president and chief executive officer of Elf Atochem North America, Inc., a chemical and plastics company, from 1990 to 1993. Mr. Preston received his Masters of Business Administration from Harvard Business School and his B.A. degree from Williams College. We believe Mr. Preston’s qualifications to sit on our Board of Directors include his leadership and business skills. Mr. Preston has prior experience as a chairman, chief executive officer, board member, audit committee member and president of several companies.

**Dr. George W. Taylor** has served as our executive vice chairman since October 2011. From January 2009 to October 2011 he served as our executive chairman. Prior to January 2009, Dr. Taylor had served as our chief executive officer since 1993 and as a director since 1984, when he co-founded our company. From 1990 to 2004, Dr. Taylor was our president, and from 1984 to 1990, he was our vice president. In 1979, he co-founded and served as president of Princeton Research Associates, Inc., a consulting engineering, technical marketing and product development company. In 1970, Dr. Taylor co-founded Princeton Materials Science, Inc., a manufacturer of liquid crystal displays and digital watches. Dr. Taylor received a Bachelor of Engineering degree with First Class Honours in Electrical Engineering and a Doctor of Engineering degree from the University of Western Australia and a Ph.D. in Electrical Engineering degree from the University of London. He is a Fellow of the Institute of Engineers, Australia and the Institute of Electrical Engineers, London. We believe Dr. Taylor's qualifications to sit on our Board of Directors include his leadership skills, business development experience and technical knowledge. Dr. Taylor has been a director of the Company for over 25 years and offers the perspective, institutional knowledge and deep understanding of our business accumulated over his many years of involvement with the Company.

**Charles F. Dunleavy** has served as our chairman since October 2011. He has also served as our chief executive officer since January 2010. Prior to his appointment as our chief executive officer, he served as our chief financial officer and our senior vice president since 2001 and as a director and as our treasurer and secretary since 1990. From 1993 to 2001, Mr. Dunleavy served as our vice president, finance. From 1990 to 1993, Mr. Dunleavy served as vice president, chief financial officer and director of Whole Systems International Corp., a privately held company specializing in multimedia instructional systems and information technology. From 1983 to 1990, Mr. Dunleavy was the corporate controller for Intermetrics, Inc., a publicly held software engineering company that is now a part of L-3 Communications. Mr. Dunleavy holds a Master of Business Administration degree with honors from Rutgers Graduate School of Business Administration. He received his A.B. degree from Colgate University with honors. We believe Mr. Dunleavy's qualifications to sit on our Board of Directors include his leadership skills and significant business development, finance and capital market experience. In addition, Mr. Dunleavy has over 20 years of experience with the Company and over that time has developed a significant perspective, institutional knowledge and understanding of the Company's business.

## **Executive Officers**

We have one executive officer who is not also a director:

<b><u>Name</u></b>	<b><u>Age</u></b>	<b><u>Position with Ocean Power Technologies, Inc.</u></b>
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Brian M. Posner	51	Chief Financial Officer, Secretary and Treasurer
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**Brian M. Posner** has served as our chief financial officer since June 2010. From January 2009 until its sale to Covidien plc in September 2009, Mr. Posner was chief financial officer of Power Medical Interventions, a publicly-traded medical device company. From June 1999 to December 2008, Mr. Posner served in a series of

positions of increasing responsibility with Pharmacoepia, Inc., a clinical development stage biopharmaceutical company, culminating in his service as Executive Vice President and Chief Financial Officer from May 2006 to December 2008. Mr. Posner also worked at other early-stage and publicly-held businesses and served on the audit staff of PricewaterhouseCoopers LLP where he had a diverse group of clients in the manufacturing, banking and natural resources sectors. Mr. Posner is a Certified Public Accountant and holds a Master of Business Administration degree from Pace University and a Bachelors degree in accounting from Queens College in New York City.

On July 31, 2013, Mr. Posner notified the Company of his decision to resign as the Chief Financial Officer in order to pursue another business opportunity. Mr. Posner's last date of employment with the Company will be August 30, 2013, and until that date, he will continue to perform his responsibilities and assist with transition matters. Mr. Posner's decision to submit his resignation was not the result of any disagreement with the Company, its board of directors or its management on any matter relating to the Company's operations, policies or practices.

After Mr. Posner's departure, Mr. Dunleavy will serve as Interim Chief Financial Officer while the Company conducts a search for a permanent Chief Financial Officer.



## Director Compensation

Each non-employee director annually receives \$15,000 and a choice of either (a) an option worth \$20,000, based on the Black-Scholes formula, to purchase shares of Common Stock that is fully vested at the time of grant, or (b) Common Stock worth \$20,000, which vests in equal installments over three years. Prior to the October 2012 Annual Meeting, equity compensation was awarded to each non-employee board member at the time of the annual meeting for the past year served. Beginning with the October 2012 meeting, equity compensation to non-employee board members was changed to an award at the time of the Annual meeting on a prospective basis, or for the year to be served. Such change resulted in an unusually large aggregate award in fiscal 2013. Each non-employee director also receives \$3,000 for each Board meeting he attends in person or by video or teleconference, \$2,500 for each Audit Committee meeting he attends in person or by video or teleconference, \$2,000 for each Compensation Committee he attends in person or by video or teleconference and \$1,500 for each Nominating and Corporate Governance Committee meeting he attends in person or by video or teleconference.

We reimburse each non-employee director for out-of-pocket expenses incurred in connection with attending our Board and Board committee meetings. Compensation for our directors, including cash and equity compensation, is determined, and remains subject to adjustment, by our Board of Directors.

The following table summarizes compensation paid to our non-employee directors in fiscal 2013.

<u>Name</u>	<u>Fees Earned or Paid in Cash (\$)</u>	<u>Restricted</u>	<u>All Other Compensation (\$)</u>	<u>Total (\$)</u>
		<u>Stock and Option Awards (\$) (1)(2)</u>		
Terence J. Cryan	33,500	20,000	4,365 (3)	57,865
David L. Davis	56,000	40,000	—	96,000
Thomas J. Meaney(4)	21,500	20,000	42,000 (4)	83,500
Bruce A. Peacock	49,000	40,000	—	89,000
Seymour S. Preston III	55,000	40,000	—	95,000

(1) Represents the fair value of the shares and options on October 4, 2012 the date of grant, in accordance with Accounting Standards Codification (ASC) No. 718, *Compensation — Stock Compensation* (ASC 718). The amount includes restricted stock awards and options granted to our non-employee directors for service on the

Board of Directors during fiscal 2013.

(2) Options were awarded during fiscal 2013 for service on the Board of Directors in arrears for the term ended October 4, 2012 and prospectively for the term ending October 3, 2013. We expect to make such awards prospectively in the future. The breakdown of option awards outstanding to each of the non-employee directors at year end was as follows:

	<b>For term ended</b>	<b>For term ended</b>	<b>Total</b>
	<b>Oct. 4, 2012</b>	<b>Oct. 3, 2013</b>	
Mr. Cryan	—	9,908	9,908
Mr. Davis	10,263	9,908	20,171
Mr. Meaney	10,263	—	10,263
Mr. Peacock	10,263	9,908	20,171

In fiscal 2013, Mr. Preston was awarded two grants of 6,872 unvested shares of Restricted Stock for his service on the Board of Directors for the term ended October 4, 2012 and for the term ending October 3, 2013, for a total of 13,744 shares of Restricted Stock.

Options to purchase 1,500 shares of Common Stock were awarded during Fiscal 2013 to Mr. Cryan for his service (3) on the Board of Advisors prior to the October 2012 Annual Meeting. Upon his appointment as a director, Mr. Cryan ceased to be a member of the Board of Advisors.

Mr. Meaney is a party to a consulting agreement with the Company for the provision of marketing services and (4) receives fees from the Company of \$950 per day of services provided. The amount in this column reflects consulting fees paid through October 2012. Mr. Meaney did not stand for re-election at the annual meeting of stockholders on October 4, 2012.

## **Corporate Governance**

Our Board of Directors believes that good corporate governance is important to ensure that the Company is managed for the long-term benefit of our stockholders. This section describes key corporate governance guidelines and practices that our Board has adopted. Complete copies of our corporate governance guidelines, committee charters and code of business conduct and ethics are available on the corporate governance section of our website, [www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com). Alternatively, you can request a copy of any of these documents by writing to our Secretary at 1590 Reed Road, Pennington, NJ 08534.

### ***Corporate Governance Guidelines***

Our Board has adopted corporate governance guidelines to assist in the exercise of its duties and responsibilities and to serve the best interests of the Company and our stockholders. These guidelines, which provide a framework for the conduct of the Board's business, provide that:

the Board's principal responsibility is to oversee the management of Ocean Power Technologies, Inc.;

a majority of the members of the Board shall be independent directors;

the non-employee directors shall meet regularly in executive session;

directors have full and free access to management and, as necessary and appropriate, independent advisors; and

at least annually, the Board and its committees will conduct a self-evaluation to determine whether they are functioning effectively.

### ***Board Determination of Independence***

Under applicable NASDAQ rules, a director will only qualify as an “independent director” if, in the opinion of our Board of Directors, that person does not have a relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Our Board has determined that none of Mr. Cryan, Mr. Keller, Mr. Preston, Mr. Davis or Mr. Peacock has a relationship that would interfere, or has interfered, with the exercise of independent judgment in carrying out the responsibilities of a director, and that each of these directors is an “independent director” as defined under Rule 5605(a)(2) of the NASDAQ Marketplace Rules.

### ***Meetings of the Board of Directors***

The Board of Directors held six meetings during fiscal 2013. During fiscal 2013, each director attended at least 75% of the aggregate of the total number of meetings of (a) the Board of Directors and (b) the committees on which such director served.

Our corporate governance guidelines provide that directors are expected to attend the annual meeting of stockholders. All directors attended the 2012 annual meeting of stockholders.

### ***Board Leadership Structure***

The Board of Directors is led by the chairman, who is also the chief executive officer of the Company. The Board of Directors has also established the position of executive vice chairman, who is also an executive of the Company, and the position of vice chairman and lead independent director. The chairman and chief executive officer and executive vice chairman consult periodically with the vice chairman and lead independent director on matters facing the Board of Directors and the Company. In addition, the vice chairman and lead independent director serves as the principal liaison between the chairman and chief executive officer and the independent directors and presides at all meetings of the Board of Directors, at executive sessions of non-management directors and at the annual meeting of stockholders. The Board of Directors believes that this leadership structure is appropriate for the Company at this time because it includes a strong independent director role, and provides a balanced approach to managing the Board of Directors and overseeing the Company. The current leadership structure permits the chairman and chief executive officer to focus his attention on the Company’s business and the Board of Directors’ oversight responsibilities. Similarly, this leadership structure permits the executive vice chairman to direct his attention to strategic planning and business development. The Board of Directors recognizes that, depending on the circumstances, other leadership structures might be

appropriate. Accordingly, the Board of Directors periodically reviews its leadership structure.

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### ***Board Committees***

Our Board of Directors has established three standing committees: an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. Each committee operates under a charter that has been approved by the Board. The charters of all Board committees are available on our website at [www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com).

Our Board has determined that all of the members of the Compensation Committee and the Nominating and Corporate Governance Committee are independent as defined under Rule 5605(a)(2) of the NASDAQ Stock Market. Our Board has also determined that all Audit Committee members meet the independence requirements contemplated by Rule 5605(c) of the NASDAQ Stock Market and Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

*Audit Committee.* The current members of our Audit Committee are Terence J. Cryan, David L. Davis and Bruce A. Peacock. Bruce A. Peacock is the chair of the committee and is our Audit Committee financial expert. The Audit Committee met four times in fiscal 2013. Messrs. Davis and Peacock will continue to serve until the expiration of their terms and will not stand for reelection at the Meeting. The Board of Directors will evaluate the composition of the Audit Committee at that time and take action as necessary to ensure continued compliance with applicable laws, regulations and listing standards.

Our Audit Committee assists our Board of Directors in its oversight of the integrity of our consolidated financial statements, our independent registered public accounting firm's qualifications, independence and performance.

Our 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 our independent registered public accounting firm; reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly consolidated financial statements and related disclosures; monitoring our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics; establishing procedures for the receipt and retention of accounting related complaints and concerns; meeting independently with our independent registered public accounting firm and management; and preparing the Audit Committee report required by Securities and Exchange Commission ("SEC") rules.

*Compensation Committee.* The current members of our Compensation Committee are Terence J. Cryan, David L. Davis, and Seymour S. Preston III. David L. Davis is the chair of the committee. Our Compensation Committee assists our Board of Directors in the discharge of its responsibilities relating to the compensation of our executive officers. Mr. Davis will continue to serve until the expiration of his term and will not stand for reelection at the

Meeting. The Board of Directors will evaluate the composition of the Compensation Committee at that time and take action as necessary to ensure continued compliance with applicable laws, regulations and listing standards.

Our Compensation Committee's responsibilities include: reviewing and approving, or making recommendations to the Board of Directors with respect to, our executive vice chairman's and chief executive officer's compensation; evaluating the performance of our executive officers and reviewing and approving, or making recommendations to the Board of Directors with respect to, the compensation of our executive officers; overseeing and administering, and making recommendations to the Board of Directors with respect to, our cash and equity incentive plans; and reviewing and making recommendations to the Board of Directors with respect to director compensation. The Compensation Committee met four times in fiscal 2013.

The Compensation Committee has the authority to retain compensation consultants and other outside advisors to assist in the evaluation of executive officer compensation. To date, the Compensation Committee has utilized independent salary surveys in lieu of retaining such advisors or consultants.

**Additional information regarding compensation of executive officers is provided on pages 11 through 18 of this Proxy Statement.**

*Nominating and Corporate Governance Committee.* The members of our Nominating and Corporate Governance Committee are Terence J. Cryan, Bruce A. Peacock and Seymour S. Preston III. Seymour S. Preston III is the chair of the committee. Mr. Peacock will continue to serve until the expiration of his term and will not stand for reelection at the Meeting. The Board of Directors will evaluate the composition of the Nominating and Corporate Governance Committee at that time and take action as necessary to ensure continued compliance with applicable laws, regulations and listing standards.

Our Nominating and Corporate Governance Committee's responsibilities include: recommending to the Board of Directors the persons to be nominated for election as directors or to fill vacancies on the Board of Directors and to be appointed to each of the Board's committees; overseeing an annual review by the Board of Directors with respect to management succession planning; developing and recommending to the Board of Directors corporate governance principles and guidelines; and overseeing periodic evaluations of the Board of Directors. The Nominating and Corporate Governance Committee met once in fiscal 2013.

### ***Risk Oversight***

The Board of Directors has an active role, as a whole and also at the committee level, in overseeing management of the Company's risks. The Board of Directors regularly reviews information regarding the Company's financial position and operations, as well as the risks associated with each. While the Board of Directors is ultimately responsible for risk oversight at the Company, our Board committees assist the Board of Directors in fulfilling its oversight responsibilities in certain areas of risk. The Audit Committee assists the Board of Directors in fulfilling its oversight responsibilities with respect to risk management in the areas of financial reporting, internal controls and compliance with legal and regulatory requirements. The Compensation Committee assists the Board of Directors in fulfilling its oversight responsibilities with respect to the management of risks arising from our compensation policies and programs. The Nominating and Corporate Governance Committee assists the Board of Directors in fulfilling its oversight responsibilities with respect to the management of risks associated with the Board organization, membership and structure of the Board of Directors, succession planning for our directors and executive officers, and corporate governance.

### ***Director Nomination Process***

The current nominees for election to the Board were nominated by the full Board of Directors. At the Meeting, stockholders will be asked to consider the election of Terence J. Cryan, David L. Keller, Seymour S. Preston III,



Charles F. Dunleavy and Dr. George W. Taylor.

The process followed by our 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 Nominating and Corporate Governance Committee and the Board.

In considering whether to recommend any particular candidate for inclusion in the Board's slate of recommended director nominees, our Nominating and Corporate Governance Committee applies the criteria set forth in our corporate governance guidelines. These criteria include the candidate's integrity, business acumen, knowledge of our business and industry or of other industries with comparable risks and issues, experience, diligence, potential conflicts of interest and the ability to act in the interests of all stockholders. The Nominating and Corporate Governance Committee considers the value of diversity when recommending candidates. The committee views diversity broadly to include diversity of experience, skills and viewpoint. The Nominating and Corporate Governance Committee does not assign specific weights to particular criteria and no particular criterion is a prerequisite for each prospective nominee. Our Board believes that the backgrounds and qualifications of its directors, considered as a group, should provide a composite mix of experience, knowledge and abilities that will allow it to fulfill its responsibilities.

Stockholders may recommend individuals to our Nominating and Corporate Governance Committee for consideration as potential director candidates. The Nominating and Corporate Governance Committee will evaluate stockholder-recommended candidates by following the same process and applying the same criteria as it follows for candidates submitted by others.

Stockholders may directly nominate a person for election to our Board by complying with the procedures set forth in Article I, Section 1.10 of our by-laws, and with the rules and regulations of the SEC. Under our by-laws, only persons nominated in accordance with the procedures set forth in the by-laws will be eligible to serve as directors. In order to nominate a candidate for service as a director, you must be a stockholder at the time you give the Board notice of your nomination, and you must be entitled to vote for the election of directors at the meeting at which your nominee will be considered. In accordance with our by-laws, director nominations generally must be made pursuant to notice to our Secretary delivered to or mailed and received at our principal executive offices at 1590 Reed Road, Pennington, NJ 08534, not later than the 90th day, nor earlier than the 120th day, prior to the first anniversary of the prior year's annual meeting of stockholders. Your notice must set forth (i) the name, age, business address and residence address of the nominee, (ii) the principal occupation or employment of the nominee, (iii) the class and number of shares of capital stock of Ocean Power Technologies, Inc. owned beneficially or of record by the nominee and (iv) all other information relating to the nominee that is required to be disclosed in solicitations of proxies for the election of directors in an election contest, or is otherwise required, in each case, pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. The stockholder making the nomination must include his or her name and address, a statement as to the class and amount of shares beneficially owned by the stockholder, a description of any arrangements or understandings between the stockholder and the nominee, a representation that the stockholder intends to appear in person or by proxy at the annual meeting and a representation as to whether such stockholder intends, or is part of a group that intends, to deliver a proxy statement/and or solicit proxies.



### ***Communicating with the Independent Directors***

Our Board will give appropriate attention to written communications that are submitted by stockholders, and will respond if and as appropriate. The chairman (if an independent director), or the lead independent director (if one is appointed), or otherwise the chairman of the Nominating and Corporate Governance Committee, is primarily responsible for monitoring communications from stockholders and for providing copies or summaries to the other directors as he or she considers appropriate.

Communications are forwarded to all directors if they relate to important substantive matters and include suggestions or comments considered to be important for the directors to know. In general, communications relating to corporate governance and corporate strategy are more likely to be forwarded than communications relating to ordinary business affairs, personal grievances and matters as to which we receive repetitive or duplicative communications.

Stockholders who wish to send communications on any topic to our Board should address such communications to Board of Directors c/o Secretary, Ocean Power Technologies, Inc., 1590 Reed Road, Pennington, NJ 08534.

### ***Code of Ethics***

We have adopted a Code of Business Conduct and Ethics that applies to our employees, officers (including our principal executive officer and principal financial officer) and directors. The Code of Business Conduct and Ethics is posted on our website at [www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com) and can also be obtained free of charge by sending a request to our Secretary at 1590 Reed Road, Pennington, NJ 08534. Any changes to or waivers under the Code of Business Conduct and Ethics as it relates to our executive vice chairman, chief executive officer, chief financial officer, controller or persons performing similar functions must be approved by our Board of Directors and will be disclosed in a Current Report on Form 8-K within four business days of the change or waiver.

### ***Section 16(a) Beneficial Ownership Reporting Compliance***

Pursuant to Section 16(a) of the Exchange Act and the rules issued thereunder, our executive officers and directors are required to file with the SEC reports of ownership and changes in ownership of Common Stock. Copies of such reports are required to be furnished to us. Based solely on a review of the copies of such reports furnished to us, or written representations that no other reports were required, we believe that all required reports were filed in fiscal 2013 in a timely manner, except that, as a result of administrative errors, a Form 4 reporting five transactions was not timely filed on behalf of Charles Dunleavy, and one Form 4 each reporting three transactions was not timely filed on

behalf of each of George Taylor and Brian Posner. In addition, as a result of administrative errors, one Form 4 each reporting two transactions was not timely filed on behalf of each of David Davis and Bruce Peacock and one Form 4 each reporting one transaction was not timely filed on behalf of Terence Cryan, Thomas Meaney and Seymour Preston III.

**PROPOSAL TWO - RATIFICATION OF THE SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors, in accordance with the recommendation of the Audit Committee, has selected KPMG LLP to audit our consolidated financial statements for fiscal 2014. KPMG LLP has audited our consolidated financial statements since fiscal 2005.

Although stockholder approval of the selection of KPMG LLP is not required by law, our Board of Directors believes it is advisable to give stockholders an opportunity to ratify this selection. If this proposal is not approved at the Meeting, the Board will reconsider its selection of KPMG LLP.

We expect representatives of KPMG LLP to attend the Meeting, to be available to respond to appropriate questions from stockholders, and to have the opportunity to make a statement if so desired.

### Fees of Independent Registered Public Accounting Firm

The following table summarizes the fees of KPMG LLP, our independent registered public accounting firm, billed to us for each of the last two fiscal years.

<u>Fee Category</u>	<u>Fiscal</u> <u>2013</u>	<u>Fiscal</u> <u>2012</u>
Audit Fees(1)	\$246,102	\$247,342
Audit-Related Fees(2)	96,338	15,696
Tax Fees(3)	56,204	9,417
All Other Fees(4)	—	—
Total Fees	\$398,644	\$272,455

- (1) Audit fees consist of fees for the audit and quarterly reviews of our consolidated financial statements and other professional services provided in connection with statutory and regulatory filings or engagements.

Audit-related fees consist of fees for assurance and related services that are reasonably related to the performance of the audit and the review of our consolidated financial statements and which are not reported under “Audit Fees.”

- (2) Audit-related fees in 2013 consisted of fees for consent in connection with Form S-3 and comfort letter in connection with the At the Market (ATM) offering agreement with Ascendant Capital Markets. Audit-related fees in fiscal 2012 consisted of fees for reviews of grant milestones in the UK.

- (3) Tax fees for fiscal 2013 and fiscal 2012 include fees for tax return preparation assistance and review. In addition, fiscal year 2013 included tax services related to our project off the coast of Oregon.

- (4) We were not billed any “Other Fees” in fiscal 2013 or fiscal 2012.

### Pre-Approval Policies and Procedures

The Audit Committee’s policy is that all audit services and all non-audit services to be provided to us by our independent registered public accounting firm must be approved in advance by our Audit Committee. The Audit Committee’s approval procedures include the review and approval of engagement letters from our independent registered public accounting firm that document the fees for all audit services and non-audit services, primarily tax advice and tax return preparation and review.

All audit services and all non-audit services in fiscal 2013 were pre-approved by the Audit Committee. The Audit Committee has determined that the provision of the non-audit services for which these fees were rendered is compatible with maintaining the independent auditor's independence.

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE PROPOSAL TO RATIFY THE SELECTION OF KPMG LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR FISCAL 2014.**

## **SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information regarding the beneficial ownership of Common Stock as of July 31, 2013 by (a) each person known by us to be the beneficial owner of more than 5% of the outstanding shares of Common Stock, (b) each named executive officer identified in the Summary Compensation Table below, (c) each director and nominee for director, and (d) all executive officers and directors as a group.

The Percentage of Common Stock outstanding is based on 10,356,946 shares of our Common Stock outstanding as of July 31, 2013. For purposes of the table below, and in accordance with the rules of the SEC, we deem shares of Common Stock subject to options that are currently exercisable or exercisable within sixty days of July 31, 2013 and restricted stock that is currently vested or that will vest within sixty days of July 31, 2013, to be outstanding and to be beneficially owned by the person holding the options or restricted stock for the purpose of computing the percentage ownership of that person, but we do not treat them as outstanding for the purpose of computing the percentage ownership of any other person. Except as otherwise noted, each of the persons or entities in this table has sole voting and investing power with respect to all of the shares of Common Stock beneficially owned by them, subject to community property laws, where applicable. The street address of each beneficial owner is c/o Ocean Power Technologies, Inc., 1590 Reed Road, Pennington, NJ 08534.

<u>Name</u>	<u>Amount</u>	<u>Percentage</u>
<i>Executive Officers and Directors</i>		
Dr. George W. Taylor(1)	699,570	6.6
Charles F. Dunleavy(2)	440,758	4.1
Brian M. Posner(3)	36,410	*
Terence J. Cryan(4)	10,000	*
David L. Davis(5)	10,263	*
David L. Keller	—	—
Bruce A. Peacock(6)	10,263	*
Seymour S. Preston III(7)	21,894	*
All current executive officers and directors as a group (7 individuals)(8)	1,229,158	11.2

\* Represents a beneficial ownership of less than one percent of our outstanding Common Stock.

Includes 543 shares held by Princeton Research Associates, Inc. Dr. Taylor is president and a director of Princeton Research Associates. Dr. Taylor disclaims beneficial ownership of the shares held by Princeton Research

(1) Associates except to the extent of his pecuniary interest therein. Also includes 237,829 shares of Common Stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2013.

(2) Includes 307,856 shares of Common Stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2013.

(3) Includes 27,936 shares of Common Stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2013.

Includes 9,000 shares of Common Stock issuable upon the exercise of options that are currently exercisable or (4) exercisable within sixty days of July 31, 2013. Mr. Cryan received these options for his service as a member of the Company's Board of Advisors.

(5) Includes 10,263 shares of Common Stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2013.

(6) Includes 10,263 shares of Common Stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2013.

- (7) Includes 7,500 shares of Common Stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2013.
  
- (8) Includes 610,647 shares of Common Stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2013.

## **CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS**

### *Review and Approval of Related Person Transactions*

The Audit Committee is charged with the responsibility of reviewing and approving all related person transactions (as defined in SEC regulations), and periodically reassessing any related person transaction entered into by the Company to ensure continued appropriateness. This responsibility is set forth in our Audit Committee charter. A related party transaction will only be approved if the members of the Audit Committee determine that the transaction is in the best interests of the Company. If a director is involved in the transaction, he or she will recuse himself or herself from all decisions regarding the transaction.



## **EXECUTIVE COMPENSATION**

### **Overview of Executive Compensation**

Our Compensation Committee is responsible for overseeing the compensation of all of our executive officers. In this capacity, the Compensation Committee designs, implements, reviews and approves all compensation for our named executive officers. The goal of the Compensation Committee is to ensure that our compensation programs are aligned with our business goals and objectives and that the total compensation paid to each of our named executive officers is fair, reasonable and competitive.

### ***Compensation Objectives and Philosophy***

Our compensation programs are designed to attract and retain qualified and talented executives, motivating them to achieve our business goals and rewarding them for superior short- and long-term performance. In particular, our compensation programs are intended to reward the achievement of specified predetermined quantitative and qualitative goals and to align our executives' interests with those of our stockholders in order to attain the ultimate objective of increasing stockholder value.

### ***Elements of Total Compensation and Relationship to Performance***

Key elements of these programs include:

base salary compensation designed to reward annual achievements, with consideration given to the executive's qualifications, scope of responsibility, leadership abilities and management experience and effectiveness;

cash bonus awards designed to align executive compensation with business objectives and performance; and

equity-based incentive compensation, primarily in the form of stock options and restricted stock, the value of which is dependent upon the performance of our Common Stock, and which is subject to multi-year vesting that requires continued service and/or the attainment of certain performance goals.

*Determining and Setting Executive Compensation*

Our management develops our compensation plans by utilizing publicly available compensation and on-line survey data for a broad selection of national and regional companies, which we believe are generally comparable to the Company in terms of public ownership, organization structure, size and stage of development, and against which we believe we may compete for executive talent. The results of these analyses are reviewed with and approved by the Compensation Committee annually. We believe that these compensation practices provide us with appropriate compensation guidelines. The Compensation Committee generally targets compensation for our executives near the median range of compensation paid to similarly situated executives in comparable companies covered by the on-line survey data. Other considerations, including market factors, the unique nature of our business and the experience level of an executive, may dictate variations to this general target.

Our business is characterized by a long product development cycle, including a lengthy engineering and product-testing period and regulatory approval and licensing. Because of this, many of the traditional benchmarking metrics, such as product sales, revenues and profits are inappropriate for our company. Instead, the specific factors the Compensation Committee considers when determining our named executive officers' compensation include:

key product development initiatives;

technology advancements;

achievement of regulatory and other commercial milestones;

establishment and maintenance of key strategic relationships;

implementation of appropriate financing strategies; and

financial and operating performance.

### Summary Compensation Table

The following table sets forth the compensation paid or accrued during the two fiscal years ended April 30, 2013 and 2012 to our executive vice chairman, chief executive officer and chief financial officer. We refer to these officers collectively as our named executive officers.

<b>Name and Principal Position</b>	<b>Year</b>	<b>Salary (\$)</b>	<b>Bonus (\$)</b>	<b>Option Awards (\$)</b>	<b>Restricted Stock Awards (\$)</b>	<b>All Other Compensation (\$)</b>	<b>Total (\$)</b>
		<b>(a)</b>	<b>(b)</b>	<b>(c)</b>	<b>(d)</b>	<b>(e)</b>	
Dr. George W. Taylor Executive Vice Chairman	2013	495,962 (f)	—	73,191	—	10,650	579,803
	2012	507,558	98,000	127,131	—	11,200	743,889
Charles F. Dunleavy Chief Executive Officer	2013	439,676 (g)	—	74,097	—	11,326	525,099
	2012	454,423	98,000	131,499	—	11,083	695,005
Brian M. Posner Chief Financial Officer	2013	303,523	40,000	37,495	—	8,934	389,952
	2012	289,224	52,000	32,050	12,150	4,935	390,359

Salary represents actual salary earned during each fiscal year. The amounts in this column are different from the (a) amounts listed below under description of employment agreements, due to increases in salary levels and payments for unused vacation during each fiscal year.

(b) The amounts in this column reflect cash bonuses paid to the named executive officers for performance during the applicable fiscal year. All bonuses for named executive officers were entirely discretionary.

The entries in the option awards column reflect the grant date fair value of the awards for fiscal 2013 and 2012, as applicable, for financial statement reporting purposes in accordance with Accounting Standards Codification (ASC) No. 718, *Compensation — Stock Compensation*, excluding forfeiture assumptions, and utilizing the (c) Black-Scholes method. See Note 2(m) of the Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended April 30, 2013 for a discussion of the relevant assumptions used to determine the valuation of our stock options for accounting purposes.

The amounts in this column reflect grant date fair value of the awards for fiscal 2013 and 2012, as applicable, for financial statement reporting purposes in accordance with Accounting Standards Codification (ASC) No. 718, (d) *Compensation — Stock Compensation*. See Notes 2(m) and 11 of the Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended April 30, 2013 for a discussion regarding the valuation of our restricted stock for accounting purposes.

(e) In each case, reflects Company 401(k) plan matching contributions.

As described in the narrative disclosure below, Dr. Taylor has agreed to a temporary salary reduction, pursuant to which he forgoes a portion of his cash salary in exchange for an equity grant of equal value. The equity grants are made each calendar quarter, so while a portion of his cash salary was foregone in April 2013, no corresponding (f) equity grant was made until June 2013, after the end of the fiscal year. Accordingly, the amount listed in the Salary column includes \$4,584 of salary that was foregone but for which the equity grant had not been made as of April 30, 2013.

As described in the narrative disclosure below, Mr. Dunleavy has agreed to a temporary salary reduction, pursuant to which he forgoes a portion of his cash salary in exchange for an equity grant of equal value. The equity grants are made each calendar quarter, so while a portion of his cash salary was foregone in April 2013, no (g) corresponding equity grant was made until June 2013, after the end of the fiscal year. Accordingly, the amount listed in the Salary column includes \$4,167 of salary that was foregone but for which the equity grant had not been made as of April 30, 2013.

## **Employment Agreements**

### ***Dr. George W. Taylor — Executive Vice Chairman***

Under an amended and restated employment agreement entered into in April 2009, Dr. Taylor is entitled to an annual base salary of \$475,000 subject to adjustment upon annual review by our Board of Directors. Dr. Taylor is also eligible to earn discretionary incentive bonuses and incentive compensation.

Dr. Taylor and the Company entered into a letter agreement dated December 12, 2012 that temporarily reduced his salary to \$420,000 on an annualized basis in order to help reduce the monthly cash expenditures of the Company. The period of temporary salary reduction commenced on January 1, 2013 and continued in effect until July 31, 2013. On July 11, 2013, Dr. Taylor and the Company entered into an additional letter agreement that extended the period of temporary salary reduction to December 31, 2013. In consideration of acceptance of the temporary salary reduction during these periods, the Company agreed to issue to Dr. Taylor incentive stock options or shares of restricted stock under the Company's 2006 Stock Incentive Plan equal in value to the aggregate reduction in Dr. Taylor's base salary for such periods.

Upon the termination of his employment other than for cause, or if he terminates his employment for good reason, Dr. Taylor has the right to receive severance payments equal to one year of his base salary then in effect (calculated without giving effect to any temporary salary reduction). Dr. Taylor is not entitled to severance if we terminate his employment for cause or if he resigns without good reason. Pursuant to this agreement, Dr. Taylor is prohibited from competing with us and soliciting our customers, prospective customers or employees during the term of his employment and for a period of one year after the termination or expiration of his employment.

### ***Charles F. Dunleavy — Chief Executive Officer***

Under an amended and restated employment agreement entered into in April 2009, Mr. Dunleavy is entitled to an annual base salary of \$300,000 subject to adjustment upon annual review by our Board of Directors. Mr. Dunleavy's

annual base salary was adjusted by our Board of Directors upon his assumption of the chief executive officer position and effective January 15, 2010, was increased to \$425,000. Mr. Dunleavy is also eligible to earn discretionary incentive bonuses and incentive compensation.

Mr. Dunleavy and the Company entered into a letter agreement dated December 12, 2012 that temporarily reduced his salary to \$375,000 on an annualized basis in order to help reduce the monthly cash expenditures of the Company. The period of temporary salary reduction commenced on January 1, 2013 and continued in effect until July 31, 2013. On July 11, 2013, Mr. Dunleavy and the Company entered into an additional letter agreement that extended the period of temporary salary reduction to December 31, 2013. In consideration of acceptance of the temporary salary reduction during these periods, the Company agreed to issue to Mr. Dunleavy incentive stock options or shares of restricted stock under the Company's 2006 Stock Incentive Plan equal in value to the aggregate reduction in Mr. Dunleavy's base salary for such periods.

Upon the termination of his employment other than for cause, or if he terminates his employment for good reason, Mr. Dunleavy has the right to receive severance payments equal to one year of his base salary then in effect (calculated without giving effect to any temporary salary reduction). Mr. Dunleavy is not entitled to severance if we terminate his employment for cause or if he resigns without good reason. Pursuant to this agreement, Mr. Dunleavy is prohibited from competing with us and soliciting our customers, prospective customers or employees during the term of his employment and for a period of one year after the termination or expiration of his employment.

***Brian M. Posner — Chief Financial Officer, Secretary and Treasurer***

Under an agreement entered into in May 2010, Mr. Posner is entitled to an annual base salary of \$265,000 subject to adjustment upon annual review by our Board of Directors. Mr. Posner's base salary has been adjusted by our Board of Directors and was increased to \$282,000 effective May 1, 2011 and increased to \$298,000 effective May 1, 2012. Mr. Posner is also eligible to earn discretionary incentive bonuses and incentive compensation.

Upon the termination of his employment other than for cause, or if he terminates his employment for good reason, Mr. Posner has the right to receive severance payments equal to six months of his base salary then in effect. On July 31, 2013, Mr. Posner tendered his voluntary resignation, effective August 30, 2013, in order to pursue another business opportunity. In connection with his resignation, he will receive his base salary and accrued vacation through the date of his departure, August 30, 2013. Pursuant to his employment agreement, Mr. Posner is prohibited from competing with us and soliciting our customers, prospective customers or employees during the term of his employment and for a period of one year after the termination or expiration of his employment.

## **Stock Option and Other Compensation Plans**

### ***2001 Stock Plan***

Our 2001 Stock Plan was adopted by our Board of Directors and approved by our stockholders on August 24, 2001. The 2001 Stock Plan provides for the grant of incentive stock options, non-statutory options, restricted stock awards and stock awards. A maximum of 1,000,000 shares of Common Stock are authorized for issuance under our 2001 Stock Plan. Our employees, officers, directors, consultants and advisors are eligible to receive awards under our 2001 Stock Plan; however, incentive stock options may only be granted to our employees.

Our Board of Directors administers our 2001 Stock Plan. Pursuant to the terms of our 2001 Stock Plan, and to the extent permitted by law, our Board may delegate administrative authority to a committee composed of two or more of our non-executive directors. Our Board of Directors, or a committee to whom the Board of Directors delegates authority, selects the recipients of awards and determines:

the number of shares of Common Stock covered by options and the dates upon which the options become exercisable;

the exercise price of options;

the duration of the options; and

the terms and conditions of awards, including transfer restrictions, conditions for repurchase and rights of first refusal.

The 2001 Stock Plan provides that outstanding options shall become fully exercisable if we undergo a fundamental transaction, as defined in the 2001 Stock Plan, and the successor entity does not assume the options under the 2001 Stock Plan or substitute equivalent options.

As of April 30, 2013, options to purchase 196,675 shares of our Common Stock at a weighted average exercise price of \$14.94 were outstanding under our 2001 Stock Plan, options to purchase 43,100 shares of Common Stock had been exercised and options to purchase 608,415 shares of Common Stock had been forfeited. No further stock options or other awards have been granted under the 2001 Stock Plan since the effective date of our 2006 Stock Incentive Plan described below.

### ***2006 Stock Incentive Plan***

Our 2006 Stock Incentive Plan was adopted by our Board of Directors on December 7, 2006, was approved by our stockholders on January 12, 2007 and became effective on April 24, 2007. The 2006 Stock Incentive Plan provides for the grant of incentive stock options, non-statutory stock options, restricted stock awards and other stock-unit awards. On October 2, 2009, an amendment to the 2006 Stock Incentive Plan was approved, increasing the aggregate number of shares authorized for issuance by 850,000 shares to 1,653,215 shares. In 2010, our Board of Directors approved amending and restating the 2006 Stock Incentive Plan to make certain adjustments, including imposing minimum performance periods for performance awards and minimum vesting periods for time-based awards, a requirement that we obtain stockholder approval prior to certain option and stock appreciation right repricing actions, and limiting the situations in which vesting periods may be waived or accelerated. This amendment and restatement did not require the approval of our stockholders.

Our stockholders are being asked to vote on a new amendment to our 2006 Stock Incentive Plan to increase the aggregate number of shares issuable by 800,000. If the new amendment is approved, the number of shares of Common Stock reserved for issuance under the 2006 Stock Incentive Plan would increase to 2,453,215, consisting of 1,653,215 previously issued shares and 800,000 newly issued shares. See “Proposal Four – To Approve Amendment to our 2006 Stock Incentive Plan” on page 18 of this proxy statement.



Our employees, officers, directors, consultants and advisors are eligible to receive awards under our 2006 Stock Incentive Plan; however, incentive stock options may only be granted to our employees. The maximum number of shares of Common Stock with respect to which awards may be granted to any participant under our 2006 Stock Incentive Plan is 200,000 per calendar year.

Our 2006 Stock Incentive Plan is administered by our Board of Directors. Pursuant to the terms of our 2006 Stock Incentive Plan, and to the extent permitted by law, our Board of Directors may delegate authority to one or more committees or subcommittees of the Board of Directors or to our officers. Our Board of Directors or any committee to whom the Board of Directors delegates authority selects the recipients of awards and determines:

the number of shares of Common Stock covered by options and the dates upon which the options become exercisable;

the exercise price of options; provided, however, that the exercise price shall not be less than 100% of the fair market value of the underlying Common Stock on the date the option is granted;

the duration of the options; and

the number of shares of Common Stock subject to any restricted stock or other stock-unit awards and the terms and conditions of such awards, including conditions for repurchase, issue price and repurchase price.

If our Board of Directors delegates authority to an officer, the officer has the power to make awards to all of our employees, except to executive officers. Our Board of Directors will fix the terms of the awards to be granted by such officer, including the exercise price of such awards, and the maximum number of shares subject to awards that such officer may make.

If a merger or other reorganization event occurs, our Board of Directors may provide that all of our outstanding options are to be assumed or substituted by the successor corporation. Our Board of Directors may also provide that, in the event the succeeding corporation does not agree to assume, or substitute for, outstanding options, then all unexercised options will become exercisable in full prior to the completion of the event and that these options will terminate immediately prior to the completion of the merger or other reorganization event if not previously exercised. Our Board of Directors may also provide for a cash out of the value of any outstanding options.

No awards may be granted under our 2006 Stock Incentive Plan after December 6, 2016, but the vesting and effectiveness of awards granted before that date may extend beyond that date. Our Board of Directors may amend,

suspend or terminate our 2006 Stock Incentive Plan at any time, except that stockholder approval will be required for any revision that would materially increase the number of shares reserved for issuance, expand the types of awards available under the plan, materially modify plan eligibility requirements, extend the term of the plan or materially modify the method of determining the exercise price of options granted under the plan, or otherwise as required to comply with applicable law or stock market requirements.

As of April 30, 2013, options to purchase 1,109,313 shares of our Common Stock at a weighted average exercise price of \$6.10 were outstanding under our 2006 Stock Incentive Plan, no options to purchase shares of Common Stock had been exercised and options to purchase 724,152 shares of Common Stock had been forfeited.

As of April 30, 2013, we had granted 269,998 shares of restricted Common Stock under our 2006 Stock Incentive Plan, of which 54,802 remain outstanding.

**2013 Outstanding Equity Awards at Fiscal Year End Table**

The following table contains certain information regarding equity awards held by the named executive officers as of April 30, 2013:

Name	Option Awards				Number of Shares or Units of Stock That Have Not Vested #	Market Value of Shares or Units of Stock That Have Not Vested (\$)
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date		
Dr. George W. Taylor	25,000(a)	—	16.11	6/15/2017	—	—
	25,000(c)	—	16.11	6/15/2017	—	—
	22,500(a)	—	9.52	6/19/2018	—	—
	22,500(c)	—	9.52	6/19/2018	—	—
	30,000(d)	—	4.85	10/1/2019	—	—
	30,000(d)	—	5.29	7/15/2020	—	—
	17,500(e)	17,500	(e) 4.05	6/13/2021	—	—
	937 (g)	4,358	(g) 4.05	6/13/2021	—	—
	—	35,000	(d) 2.00	6/12/2022	—	—
	—	6,980	(k) 2.01	6/18/2022	—	—
	13,482(l)	—	1.52	4/8/2023	—	—
Charles F. Dunleavy	22,500(a)	—	17.00	9/30/2013	—	—
	17,000(b)	—	17.90	12/15/2013	—	—
	15,000	—				