

QUIDEL CORP /DE/  
Form DEF 14A  
April 02, 2010

**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**

**QUIDEL CORPORATION**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

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

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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**QUIDEL CORPORATION**  
**10165 McKellar Court**  
**San Diego, CA 92121**  
**(858) 552-1100**

April 2, 2010

To Our Stockholders:

You are cordially invited to attend the Annual Meeting of Stockholders, which will be held on Wednesday, May 12, 2010, at 8:30 a.m., local time, at the San Diego Marriott Del Mar, located at 11966 El Camino Real, San Diego, California 92130. At the Annual Meeting, you will be asked to consider and vote upon (i) the election of seven directors designated herein to the Board of Directors; (ii) the ratification of the selection of Ernst & Young LLP as our independent registered public accounting firm; (iii) the approval of the adoption of our 2010 Equity Incentive Plan; and (iv) such other business as may properly be presented at the Annual Meeting or any adjournments or postponements thereof.

Enclosed are the Notice of the Annual Meeting, the Proxy Statement and accompanying proxy card, and a copy of our Annual Report to Stockholders.

To assure your representation at the Annual Meeting, you are urged to vote on, date, sign and return the enclosed proxy card for which a prepaid, return envelope is provided. Your prompt response is helpful and appreciated.

Our Board of Directors and officers look forward to seeing you at the Annual Meeting.

Sincerely yours,

/s/ Douglas C. Bryant  
Douglas C. Bryant  
*President and Chief Executive Officer*  
QUIDEL CORPORATION

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**QUIDEL CORPORATION**  
**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**  
**To Be Held On May 12, 2010**

To Our Stockholders:

The Annual Meeting of Stockholders of Quidel Corporation will be held on Wednesday, May 12, 2010, at 8:30 a.m., local time, at the San Diego Marriott Del Mar, located at 11966 El Camino Real, San Diego, California 92130, for the following purposes:

1. To elect seven directors designated herein to serve on the Board of Directors to hold office until the 2011 Annual Meeting of Stockholders and until their successors are elected and qualified;
2. To ratify the selection by the Audit Committee of the Board of Directors of Ernst & Young LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2010;
3. To approve the adoption of the Quidel Corporation 2010 Equity Incentive Plan; and
4. To transact such other business as may properly be presented at the Annual Meeting or any adjournments or postponements thereof.

Only stockholders of record at the close of business on March 19, 2010 are entitled to receive notice of and to vote at the Annual Meeting and any adjournments or postponements thereof.

The Board of Directors of Quidel Corporation unanimously recommends that the stockholders vote FOR the seven nominees for the Board of Directors named in the accompanying Proxy Statement; FOR the ratification of the selection of Ernst & Young LLP as our independent registered public accounting firm; and FOR the adoption of the 2010 Equity Incentive Plan.

**All stockholders are cordially invited to attend the Annual Meeting. You are urged to sign, date and otherwise complete the enclosed proxy card and return it promptly in the enclosed envelope whether or not you plan to attend the Annual Meeting. If you attend the Annual Meeting and wish to do so, you may vote your shares in person even if you have signed and returned your proxy card.**

By Order of the Board of Directors,

/s/ Douglas C. Bryant  
Douglas C. Bryant  
*President and Chief Executive Officer*

San Diego, California  
April 2, 2010

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**QUIDEL CORPORATION**  
**Principal Executive Offices**  
**10165 McKellar Court**  
**San Diego, California 92121**  
**(858) 552-1100**

**PROXY STATEMENT**  
**ANNUAL MEETING OF STOCKHOLDERS**  
**MAY 12, 2010**

This Proxy Statement is furnished in connection with the solicitation of proxies by the Board of Directors of Quidel Corporation for use at the 2010 Annual Meeting of Stockholders to be held on Wednesday, May 12, 2010, at 8:30 a.m., local time, at the San Diego Marriott Del Mar, located at 11966 El Camino Real, San Diego, California 92130, and at any and all adjournments and postponements of the Annual Meeting. This Proxy Statement and the accompanying proxy card will first be sent to stockholders on or about April 7, 2010.

We will pay the expenses in connection with this solicitation. Our employees may solicit proxies by mail, in person, by telephone, facsimile or other electronic means and will not receive any additional compensation for such solicitations. In addition, we have engaged InvestorCom, Inc. to aid in the solicitation of proxies to be voted at the Annual Meeting at an estimated cost of \$7,500 plus out-of-pocket expenses. We will also pay brokers or other nominees for the expenses of forwarding soliciting material to beneficial owners.

**RECORD DATE AND VOTING**

The close of business on March 19, 2010 has been fixed as the record date (the Record Date ) for determining the stockholders entitled to notice of and to vote at the Annual Meeting. On the Record Date, 28,923,211 shares of our voting common stock were outstanding. Each share of such common stock is entitled to one vote on any matter that may be presented for consideration and action by the stockholders at the Annual Meeting. A quorum is required to transact business at the Annual Meeting. The holders of a majority of the outstanding shares of common stock on the Record Date and entitled to be voted at the Annual Meeting, present in person or by proxy, will constitute a quorum for the transaction of business at the Annual Meeting and any adjournments and postponements thereof. Abstentions and broker non-votes are counted for the purpose of determining the presence or absence of a quorum for the transaction of business.

Where a stockholder has directed how his or her proxy is to be voted, it will be voted according to the stockholder's directions. If your shares are held in a brokerage account or by another nominee, you are considered the beneficial owner of shares held in street name, and this proxy and the related materials are being forwarded to you by your broker or nominee (the record holder) along with a voting instruction card. As the beneficial owner, you have the right to direct your record holder regarding how to vote your shares, and the record holder is required to vote your shares in accordance with your instructions. If a proposal is routine, a broker or other entity holding shares for a beneficial owner in street name may vote on the proposal without voting instructions from the owner. If a proposal is non-routine, the broker or other entity may vote on the proposal only if the beneficial owner has provided voting instructions. A broker non-vote occurs when the broker or other entity is unable to vote on a proposal because the proposal is non-routine and the beneficial owner does not provide instructions.

If you do not give instructions to your record holder prior to the Annual Meeting, the record holder will be entitled to vote your shares in its discretion only on Proposal 2 (Ratification of Appointment of Independent Registered Public Accounting Firm) and will not be able to vote your shares on Proposal 1 (Election of Directors), or Proposal 3 (Adoption of 2010 Equity Incentive Plan) and your shares will be counted as a broker non-vote on those proposals. We are not aware of any other matters to be presented at the Annual Meeting except for those described in this proxy statement. However, if any other matters not described in this proxy statement are properly presented at the Annual Meeting, the persons named as proxies will use their own judgment to determine how to vote your shares. If the Annual Meeting is adjourned, your shares may be voted by the persons named as proxies on the new meeting date as well, unless you have revoked your proxy instructions prior to that time.

With regard to the election of directors, votes may be cast in favor of a director nominee or withheld. Because directors are elected by plurality, broker non-votes will be entirely excluded from the vote and will have no effect on its outcome. If a quorum is present at the Annual Meeting, the nominees receiving the greatest number of votes (up to seven



directors) will be elected. For proposals other than the election of directors, the affirmative vote of a majority of the shares present or represented by proxy at the Annual Meeting and entitled to vote on the matter is required for approval. With regard to these proposals, abstentions will be counted in tabulations of the votes cast on a proposal presented to stockholders and will have the same effect as a vote against the proposal, whereas broker non-votes will not be counted for purposes of determining whether a proposal has been approved and accordingly will have no effect on the outcome of the vote on such proposal. Unless otherwise designated, each proxy submitted by a stockholder will be voted:

FOR each of the seven nominees named below for election as directors;

FOR ratification of the selection by the Audit Committee of the Board of Directors of Ernst & Young LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2010; and

FOR the adoption of the 2010 Equity Incentive Plan.

Any stockholder has the power to revoke his or her proxy at any time before it is voted at the Annual Meeting by submitting a written notice of revocation to the Secretary of the Company or by timely filing a duly executed proxy bearing a later date. The proxy will not be voted if the stockholder who executed it is present at the Annual Meeting and elects to vote in person the shares represented by the proxy. Attendance at the Annual Meeting will not by itself revoke a proxy.

**PROPOSAL 1**  
**ELECTION OF DIRECTORS**

**Nominees for Election**

Our directors are elected at each annual meeting of stockholders. At the Annual Meeting, seven directors will be elected to serve until the next annual meeting of stockholders and until their successors are elected and qualified. The nominees receiving the greatest number of votes (up to seven directors) at the Annual Meeting will be elected. **Our Board of Directors recommends that the stockholders vote FOR the seven nominees named below for the Board of Directors.**

Each of the nominees set forth below for election as a director is an incumbent director. Each of the nominees has consented to serve as a director if elected. Unless authority to vote for any director nominee is withheld in a proxy, it is intended that each proxy will be voted FOR each of the nominees. If, before the Annual Meeting, any of the nominees for director should become unable to serve if elected, it is intended that shares represented by proxies will be voted for such substitute nominees, if any, as may be recommended by our existing Board of Directors, unless other directions are given in the proxies.

Name of Nominee	Age	Principal Occupation	Director Since
Thomas D. Brown	61	Retired Senior Vice President and President of the Diagnostics Division of Abbott Laboratories	2004
Douglas C. Bryant	52	President and Chief Executive Officer, Quidel Corporation	2009
Kenneth F. Buechler, Ph.D.	56	Founder and former President and Chief Scientific Officer of Biosite, Inc.	2007
Rod F. Dammeyer	69	President of CAC, L.L.C., a private company providing capital investment and management advisory services	2006
Mary Lake Polan, M.D., Ph.D., M.P.H.	66	Professor and Chair Emeritus, Department of Gynecology and Obstetrics, Stanford University School of Medicine	1993
Mark A. Pulido	57	Chairman of the Board, Quidel Corporation	2002
Jack W. Schuler	69	Co-founder, Crabtree Partners, LLC, a private investment company	2006

**Biographical Information**

**THOMAS D. BROWN** was appointed to our Board of Directors in December 2004. Prior to his retirement in 2002, Mr. Brown had a 28-year career in the healthcare industry where he held various sales, marketing and executive positions within Abbott Laboratories, a broad-based healthcare company. From 1998 to 2002, Mr. Brown was Senior Vice President and President of the Diagnostics Division. From 1993 to 1998, Mr. Brown was Corporate Vice President Worldwide Commercial Operations. From 1992 to 1993, Mr. Brown was Divisional Vice President Worldwide Commercial Operations. From 1987 to 1992, Mr. Brown was Divisional Vice President and General Manager, Western Hemisphere Commercial Operations. From 1986 to 1987, Mr. Brown was Divisional Vice President U.S. Sales and, from 1985 to 1986, was Director of Sales. Mr. Brown currently serves on the Board of Directors of Cepheid, a molecular diagnostics company, and Stericycle, Inc., a medical waste management and healthcare compliance services company. Mr. Brown also served on the Board of Directors of Ventana Medical Systems, Inc. until its acquisition in 2008. Mr. Brown holds a Bachelor of Arts degree from the State University of New York at Buffalo.

**DOUGLAS C. BRYANT** was appointed to our Board of Directors on February 2, 2009 and became our President and Chief Executive Officer on March 1, 2009. Prior to joining us, Mr. Bryant served as Executive Vice President and Chief Operating Officer at Luminex Corporation, managing its Bioscience Group, Luminex Molecular Diagnostics (Toronto), manufacturing, R&D, technical operations, and commercial operations. From 1983 to 2007, Mr. Bryant

held various worldwide commercial operations positions with Abbott Laboratories including, among others: Vice President of Abbott Vascular for Asia/Japan, Vice President of Abbott Molecular Global Commercial Operations and Vice President of Abbott Diagnostics Global Commercial Operations. Earlier in his career with Abbott, Mr. Bryant was Vice President of Diagnostic Operations in Europe, the Middle East and Africa, and Vice President of Diagnostic Operations Asia Pacific. Mr. Bryant has over 25 years of industry experience in sales and marketing, product development, manufacturing and service and support in both the diagnostics and life sciences markets. Mr. Bryant holds a B.A. in Economics from the University of California at Davis.

**KENNETH F. BUECHLER, Ph.D.** was appointed to our Board of Directors in November 2007. Dr. Buechler was a founder of Biosite, Inc., a diagnostic products and antibody development company. Dr. Buechler served as a Director at Biosite from June 2003 through July 2007 and was President and Chief Scientific Officer of Biosite from October 2004 to July 2007. From March 2003 to October 2004, Dr. Buechler was Biosite's Senior Vice President, Research and Development, and from April 2001 to March 2003, Dr. Buechler was Biosite's Vice President, Research and Development. From January 1994 to April 2001, Dr. Buechler was Biosite's Vice President, Research and was Director of Chemistry from April 1988 to January 1994. Before founding Biosite, Dr. Buechler was a Senior Scientist in the Diagnostics Research and Development Group at Hybritech Incorporated. Dr. Buechler received a B.S. in Chemistry and Ph.D. in Chemistry from Indiana University. Dr. Buechler also serves on the Board of Directors of Sequenom Inc., Sotera Wireless Inc., Adavance Inc., and Astute Medical Inc.

**ROD F. DAMMEYER** was appointed to our Board of Directors in February 2006. Mr. Dammeyer is the President of CAC, L.L.C., a private company providing capital investment and management advisory services, and is the retired Vice Chairman of Anixter International, where he served from 1985 until February 2001, and retired managing partner of corporate investments of Equity Group Investments, L.L.C., where he served from 1995 until June 2000. Mr. Dammeyer currently serves as a director of Stericycle, Inc., a medical waste management and healthcare compliance services company. Mr. Dammeyer has also served on the Board of Directors of Ventana Medical Systems, Inc. and GATX Corporation within the past five years. He also serves as a trustee of Van Kampen Investments, Inc. He received a B.S. degree in accounting from Kent State University.

**MARY LAKE POLAN, M.D., Ph.D., M.P.H.** has served on our Board of Directors since 1993. She is a Professor and Chair Emeritus of the Department of Gynecology and Obstetrics at Stanford University School of Medicine where she served from 1990 to 2005. Dr. Polan received a Bachelor of Arts Degree from Connecticut College, a Ph.D. in Molecular Biophysics and Biochemistry and an M.D. from Yale University School of Medicine and her Masters in Public Health from the University of California, Berkeley. Dr. Polan remained at Yale New Haven Hospital for her residency in Obstetrics and Gynecology, followed by a Reproductive Endocrine Fellowship. Dr. Polan was on the faculty at Yale University until 1990, when she joined Stanford University. She is currently an Adjunct Professor in the Department of Obstetrics and Gynecology at Columbia University School of Medicine. Dr. Polan is a practicing clinical Reproductive Endocrinologist with a research interest in ovarian function and granulosa cell steroidogenesis. More recently, Dr. Polan's interests have been in the interaction between the immune and endocrine systems: the role of monokines in reproductive events and gene expression in stress urinary incontinence as well as brain activation in human sexual function. Dr. Polan also served on the Board of Directors of Wyeth, a research-based global pharmaceutical and health care products company, until its acquisition in 2009.

**MARK A. PULIDO** was appointed to our Board of Directors in August 2002. Mr. Pulido has been Chairman of the Company's Board of Directors since May 2004. Prior to his retirement in June 2002, Mr. Pulido served as the Chairman of the Board of BenefitPoint, Inc., an employee benefits technology company, where he also served as its President and Chief Executive Officer. From May 1996 to July 1999, Mr. Pulido was President and Chief Executive Officer of McKesson Corporation, a healthcare services and information technology company. Previously, Mr. Pulido served as President and Chief Executive Officer of Novartis Pharmaceuticals Corporation (formerly Sandoz Pharmaceuticals Corporation), a research-based pharmaceutical manufacturer, and RedLine Healthcare Corporation (previously owned by Novartis and now a subsidiary of McKesson Corp.), a medical surgical distribution company, during the period from January 1990 to April 1996. Mr. Pulido is an affiliated executive with Freeman Spogli, a private equity firm, and serves on the Board of Directors of Smile Brands Group, a dental practice management company and Winebow, a leading importer and distributor of premium wines, both Freeman Spogli portfolio companies. Mr. Pulido holds a B.S. degree in Pharmacy from the University of Arizona, College of Pharmacy, and an M.S. degree in Pharmacy Administration from the University of Minnesota.

**JACK W. SCHULER** was appointed to our Board of Directors in February 2006. Mr. Schuler has been on the Board of Directors of Stericycle, Inc., a medical waste management and healthcare compliance services company, since March 1989 and currently serves as Lead Director. Mr. Schuler is also a co-founder of Crabtree Partners, LLC, a Chicago-based venture capital firm which was formed in 1995. Prior to 1990, Mr. Schuler held various executive positions at Abbott Laboratories, a broad-based healthcare company, from December 1972 through August 1989, most

recently serving as President and Chief Operating Officer. Mr. Schuler also currently serves on the Board of Directors of Medtronic Inc. and Elan Corporation. Mr. Schuler also served on the Board of Directors of Ventana Medical Systems, Inc. until its acquisition in 2008. Mr. Schuler holds a B.S. in Mechanical Engineering from Tufts University and an M.B.A. from Stanford University.

**Vote Required and Board Recommendation**

The nominees for election as directors will be elected by a plurality of the votes of the shares present in person or represented by proxy and entitled to vote on the proposal at the Annual Meeting.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR EACH OF THE NAMED NOMINEES IN PROPOSAL 1.**

**PROPOSAL 2**

**RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Audit Committee of the Board of Directors has selected the firm of Ernst & Young LLP, independent registered public accounting firm, to audit our consolidated financial statements for the fiscal year ending December 31, 2010, and to perform other appropriate accounting and tax services. We are asking our stockholders to ratify the selection of Ernst & Young LLP as our independent registered public accounting firm for 2010. Although ratification is not required by our bylaws or otherwise, the Board of Directors is submitting the selection of Ernst & Young LLP to our stockholders as a matter of good corporate practice. If the stockholders do not ratify the appointment of Ernst & Young LLP, the selection of the Company's independent registered public accounting firm will be reconsidered by the Audit Committee. Even if the selection is ratified, the Audit Committee in its discretion may direct the appointment of a different independent registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of the Company and its stockholders.

One or more representatives of Ernst & Young LLP are expected to be at the Annual Meeting. They will have an opportunity to make a statement, if they so desire, and will be available to respond to appropriate questions.

**Vote Required and Board Recommendation**

The affirmative vote of a majority of the shares present in person or represented by proxy and entitled to vote on the proposal at the Annual Meeting is required to ratify the selection of Ernst & Young LLP as our independent registered public accounting firm for 2010.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE RATIFICATION OF THE SELECTION OF ERNST & YOUNG LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDING DECEMBER 31, 2010.**

**PROPOSAL 3**  
**ADOPTION OF THE 2010 EQUITY INCENTIVE PLAN**

**General**

At the Annual Meeting, the stockholders will be asked to approve the Quidel Corporation 2010 Equity Incentive Plan (the 2010 Plan ). The 2010 Plan was unanimously approved by the Board of Directors on February 23, 2010, subject to the approval of stockholders at the Annual Meeting. We continue to rely heavily upon equity compensation to recruit, retain, motivate and reward our employees, management, directors and other qualified persons, and to align their interests with the interests of our stockholders, and approval of Proposal 3 will enable us to continue to use equity compensation for these purposes.

Our equity compensation program is currently operated under the Quidel Corporation 2001 Equity Incentive Plan, as amended (the 2001 Plan ). As of March 19, 2010, a total of 8,050,000 shares were authorized for issuance under the 2001 Plan, and only 1,251,008 shares remained available for future issuance. In addition, as of March 19, 2010, there were 3,129,771 stock options outstanding under the Company s equity compensation plans with a weighted average exercise price of \$12.18 and weighted average remaining term of 8.29 years. Further, as of March 19, 2010, there were 468,502 full-value awards outstanding under the Company s equity compensation plans. Other than the foregoing, no other awards under the Company s equity compensation plans were outstanding as of March 19, 2010. Upon approval of the 2010 Plan by stockholders, the 2001 Plan will be frozen with respect to new awards effective as of the date of the Annual Meeting. As such, if the 2010 Plan is approved by stockholders, no further awards will be made under the 2001 Plan after the date of the Annual Meeting.

**Section 162(m) of the Code**

The Board of Directors believes that it is in the best interests of the Company and its stockholders to provide for an equity incentive plan under which compensation awards made to the Company s executive officers can qualify for deductibility by the Company for federal income tax purposes. Accordingly, the 2010 Plan has been structured in a manner such that awards granted under it can satisfy the requirements for performance-based compensation within the meaning of Section 162(m) of the Internal Revenue Code of 1986 (the Code ). In general, under Section 162(m), in order for the Company to be able to deduct compensation in excess of \$1,000,000 paid in any one year to our Chief Executive Officer or any of our three other most highly compensated executive officers (other than our chief financial officer), such compensation must qualify as performance-based. One of the requirements of performance-based compensation for purposes of Section 162(m) is that the material terms of the performance goals under which compensation may be paid be disclosed to and approved by the Company s stockholders. For purposes of Section 162(m), the material terms include (i) the employees eligible to receive compensation, (ii) a description of the business criteria on which the performance goal is based and (iii) the maximum amount of compensation that can be paid to an employee under the performance goal. With respect to the various types of awards under the 2010 Plan, each of these aspects is discussed below, and stockholder approval of the 2010 Plan will be deemed to constitute approval of each of these aspects of the 2010 Plan for purposes of the approval requirements of Section 162(m).

**Summary of the 2010 Plan**

The following summary of the 2010 Plan, as proposed to be adopted, is qualified in its entirety by the terms of the 2010 Plan, a copy of which, as proposed to be adopted, is attached hereto as Appendix A.

*Purpose.* The purpose of the 2010 Plan is to promote our and our stockholders interests by using investment interests in the Company to attract, retain and motivate our directors, management, employees and other persons, to encourage and reward their contributions to our performance and to align their interests with the interests of our stockholders.

*Administration, Amendment and Termination.* The 2010 Plan is currently administered by the Compensation Committee of our Board of Directors (the administrator ). The administrator has the power to:

select the eligible persons to whom, and the times at which, awards will be granted, the nature of each award and the terms and conditions of each award;



interpret the 2010 Plan and the rights of recipients of awards granted under the 2010 Plan;

discontinue, suspend or amend the 2010 Plan in any manner, insofar as permitted by applicable law, rule or regulation and subject to stockholder approval where such approval is required by the 2010 Plan, applicable law, rule or regulation;

accelerate or extend the vesting or exercise period of any award, and make such other modifications in the terms and conditions of an award as it deems advisable; *provided, however*, that the administrator may not, other than in connection with a change in capitalization, reprice or otherwise reduce the exercise or base price of a stock option or stock appreciation right (including by the cancellation of the stock option or stock appreciation right in exchange for cash, other awards, or a new stock option or stock appreciation right at such reduced exercise or base price or by amendment of the stock option or stock appreciation right) without stockholder approval; and

change the number of shares or vesting periods associated with non-employee director options, and suspend and reactivate the 2010 Plan provisions regarding automatic grants of non-employee director options.

Any amendment of the 2010 Plan shall, in the discretion of the administrator, apply to and govern awards granted under the 2010 Plan prior to the date of such amendment; *provided, however*, that the consent of an award holder is required if such amendment would alter, impair or diminish in any material respect any rights or obligations under any award or cause the award to cease to qualify as an incentive stock option. Awards may be granted under the 2010 Plan until May 12, 2020, unless earlier terminated.

*Securities Subject to the 2010 Equity Incentive Plan.* The aggregate number of shares of common stock issuable pursuant to the 2010 Plan may not exceed 950,000 shares, plus (i) any shares that were authorized for issuance under the 2001 Plan that, as of the date of the Annual Meeting, remain available for issuance under the 2001 Plan (not including any shares that are subject to outstanding awards under the 2001 Plan or any shares that previously were issued pursuant to awards granted under the 2001 Plan) and (ii) any shares subject to outstanding awards under the 2001 Plan as of the date of the Annual Meeting that on or after such date cease for any reason to be subject to such awards (other than by reason of exercise or settlement of the awards to the extent they are exercised for or settled in vested and nonforfeitable shares), subject to adjustment upon a change in capitalization.

As noted above, as of March 19, 2010, 1,251,008 shares remained available for issuance under future awards that could be granted under the 2001 Plan (which shares will cease to be available for issuance under the 2001 Plan upon stockholder approval of the 2010 Plan). As such, if the 2010 Plan is approved by stockholders, approximately 2,201,008 shares will initially be available for awards under the 2010 Plan consisting of 950,000 new shares and approximately 1,251,008 shares previously authorized for issuance under the 2001 Plan.

The 2010 Plan provides that each share issued under awards other than options or stock appreciation rights ( full-value awards ) will count against the number of shares available under the Plan as 1.5 shares. Shares issued under options or stock appreciation rights count against the shares available under the Plan as 1 share. The Board of Directors believes that this formula-based limit will allow for the issuance of a sufficient number of full-value awards to satisfy projected grants thereof, while providing the flexibility to change the mix of option and full-value awards to the extent the Board of Directors determines a different mix than currently provided is in the best interests of the Company and stockholders.

In addition, in order to address potential stockholder concerns regarding the number of shares subject to options and other awards that the Company intends to grant in a given year, the Board of Directors commits to stockholders that over the Company's 2010, 2011 and 2012 fiscal years the Company will not grant a number of shares subject to options or other awards to employees or non-employee directors at an average rate greater than 4.02% of the number of shares of common stock that the Company believes will be outstanding over such three year period. For purposes of calculating the number of shares granted in a year, each share subject to a full-value award will count as equivalent to 1.5 shares. The 4.02% was calculated as the average of the 2009 and 2010 Risk Metrics Group thresholds for our industry.

We may issue common stock under the 2010 Plan from authorized but unissued shares of common stock or from previously issued shares of common stock that we reacquired, including shares purchased on the open market. For purposes of calculating the aggregate number of shares issued under the 2010 Plan, we will count only the number of shares issued upon exercise or settlement of an award and not returned to us upon expiration, termination or cancellation of any awards. However, if an award holder pays the exercise price or withholding taxes relating to an award with shares of our common stock, or if we withhold shares in satisfaction of the exercise price or withholding taxes payment, then we will reduce the number of shares of common stock available for issuance under the 2010 Plan by the gross number of shares for which the award is exercised or for which it vests, as applicable. In addition, upon the exercise of a stock appreciation right,

the number of shares of common stock available for issuance under the 2010 Plan will be reduced by the gross number of shares for which the award is exercised and not by the net number of shares issued to the holder in settlement thereof.

The 2010 Plan provides that the administrator shall appropriately and proportionately adjust the maximum number and kind of shares subject to the 2010 Plan, the number and kind of shares or other securities subject to then outstanding awards, the price for each share or other unit of any other securities subject to, or measurement criteria applicable to, then outstanding awards, and/or the number and kind of shares or other securities to be issued as non-employee director options if our common stock is affected through any of the following:

merger;

consolidation;

sale or exchange of assets;

recapitalization;

reclassification;

combination;

stock dividend;

extraordinary cash dividend;

stock split;

reverse stock split;

spin off; or

similar transaction.

*Awards Under the 2010 Plan.* We may grant the following types of awards under the 2010 Plan:

stock options;

performance awards;

restricted stock;

stock appreciation rights;

stock payments;

dividend equivalents;

stock bonuses;

stock sales;

phantom stock; and

other stock-based benefits.

Stock options granted under the 2010 Plan may be incentive stock options intended to qualify under the provisions of Section 422 of the Code or non-qualified stock options that do not so qualify. However, the aggregate fair market value of stock with respect to which any employee's incentive stock options first become exercisable during any calendar year (under

all our plans and those of any subsidiary corporation) may not exceed \$100,000 (as determined on the grant date), and may be further limited by other requirements in the Internal Revenue Code. If this \$100,000 limitation is exceeded, the excess incentive stock options will be treated as non-qualified stock options.

In each calendar year no participant may be granted awards under the 2010 Plan (other than performance awards payable in cash) relating up to more than 1,800,000 shares. In addition, in each calendar year no participant may be granted performance awards payable in cash that exceed \$1,000,000. The forgoing limitations will not apply if it is not required in order for the compensation attributable to awards under the 2010 Plan to qualify as performance-based compensation under Section 162(m).

*Eligibility.* Our directors, officers, employees, consultants and advisors, and those of our affiliated entities, are eligible to receive awards under the 2010 Plan, except that only non-employee directors may receive non-employee director options, as described below. As of March 19, 2010, 580 persons (not including consultants and advisors) were eligible for selection to receive awards under the 2010 Plan, consisting of: 567 employees other than executive officers, 7 executive officers and 6 non-employee directors.

*Terms and Conditions of Non-Employee Director Options.* In May 2004, the Board of Directors suspended automatic grants for directors under the 2001 Plan. Similar to the 2001 Plan, the 2010 Plan provides for automatic grants to non-employee directors, however, these automatic grants remain suspended. Prior to May 2004, immediately following each annual meeting of stockholders, each non-employee director who had served as a director since his or her election or appointment and who had been re-elected as a director at such annual meeting automatically received an option to purchase up to 10,000 shares of common stock. In addition, each non-employee director who was appointed or elected other than at an annual meeting of stockholders (whether by replacing a director who retired, resigned or otherwise terminated his or her service as a director prior to the expiration of his or her term or otherwise) automatically received an option to purchase shares of our common stock as of the date of such appointment or election, consisting of a number of shares of common stock determined by multiplying 10,000 by a fraction, the numerator of which was the number of days from the date of grant to the date of the next scheduled annual meeting of stockholders and the denominator of which was 365 (exclusive of fractional shares). The automatic non-employee director option grants vested and became exercisable 100% on the day prior to the date of the next annual meeting of stockholders following the grant date, *provided*, that the recipient remained a director for the entire period from the date of grant to such vesting date.

All automatic non-employee director option grants had a term of 10 years and an exercise price equal to the fair market value on the date of grant. Unless provided otherwise in an agreement with the Company, if a recipient of a non-employee director option ceased to be a director, all non-employee director options granted to the recipient remained exercisable, only to the extent already exercisable at the date the director ceases to be a director, for a period of 365 days after that date (or, if sooner, until the expiration of the option according to its terms), and would then terminate.

Apart from these automatic non-employee director options, non-employee directors are eligible to receive other grants of awards under the 2010 Plan, including non-qualified stock options other than the automatic non-employee director options, at the discretion of the administrator. To the extent not inconsistent with the provisions of the 2010 Plan governing non-employee director options, the terms of general stock option awards under the 2010 Plan apply to non-employee director options.

*Terms and Conditions of Other Awards.* The administrator will select the recipients of awards (other than with respect to automatic non-employee director options) granted under the 2010 Plan from the pool of eligible persons and will set the terms of the awards.

*Award Pricing.* The administrator will determine the exercise or purchase price of awards (other than the automatic non-employee director options) granted under the 2010 Plan; which, with respect to options and stock appreciation rights, will be no less than the fair market value of the shares underlying the award as of the grant date. In addition, the exercise price for an incentive stock option must comply with the provisions of Section 422 of the Code. Section 422 currently provides that the exercise price must not be less than the fair market value of the common stock on the date of grant and not less than 110% of the fair market value as of the date of grant in the case of a grant to a person owning more than 10% of the total combined voting power of all classes of the issuer's stock or the stock of

any parent or any subsidiary corporations. On March 19, 2010, the closing price of our common stock on the Nasdaq Global Market was \$12.93 per share.

*Award Vesting and Term.* The administrator will determine the date or dates on which awards (other than the automatic non-employee director options) granted under the 2010 Plan vest and become exercisable. The term of each stock option or stock appreciation right granted will expire no later than ten (10) years after the date the stock option or stock appreciation right is granted and may be subject to earlier termination as described below. In addition, the term for an incentive stock option must comply with the provisions of Section 422 of the Code. Section 422 currently provides that

the incentive stock option may not be exercisable after the expiration of 10 years from the date of grant, or five years in the case of an incentive stock option granted to a person owning more than 10% of the total combined voting power of all classes of stock of the issuer, or of its parent or any subsidiary corporations.

Awards granted under the 2010 Plan may be exercised at any time after they vest and before the expiration date determined by the administrator, provided that an award is generally exercisable following an award holder's termination of employment only to the extent that the award had become exercisable on or before the date of termination and to the extent that the award is not forfeited under the terms of the 2010 Plan. Furthermore, in the absence of a specific agreement to the contrary, stock options will generally expire and become unexercisable immediately upon termination of the recipient's employment with us for just cause (as defined in the 2010 Plan); 90 days after termination of the recipient's employment with us for any reason other than just cause, death or permanent disability; or one year after termination of the recipient's employment with us due to death or permanent disability, in each case unless the term of the options provides for an earlier expiration. If the employment of a recipient of restricted stock is terminated for any reason, any such restricted stock that remains subject to restrictions on the date of such termination will be repurchased by the Company at the purchase price, if any, paid by the recipient, or returned to the Company without consideration, *provided, however*, that the administrator may in its discretion determine otherwise.

*Other Award Provisions.* The administrator will determine any applicable performance criteria, restrictions or conditions of any award. The administrator may establish performance criteria and level of achievement versus such criteria that will determine the number of shares to be granted, retained, vested, issued or issuable under or in settlement of or the amount payable pursuant to an award, which criteria may be based on qualifying performance criteria (as described below) or other standards of financial performance and/or personal performance evaluations. In addition, the administrator may specify that an award or a portion of an award is intended to satisfy the requirements for performance-based compensation under Section 162(m) of the Code, provided that the performance criteria for such award or portion of an award that is intended by the administrator to satisfy the requirements for performance-based compensation under Section 162(m) of the Code will be a measure based on one or more qualifying performance criteria selected by the administrator and specified at the time the award is granted. The administrator will certify the extent to which any qualifying performance criteria has been satisfied, and the amount payable as a result thereof, prior to payment, settlement or vesting of any award that is intended to satisfy the requirements for performance-based compensation under Section 162(m) of the Code. Notwithstanding satisfaction of any performance goals, the number of shares issued under or the amount paid under an award may be reduced, but not increased, by the administrator on the basis of such further considerations as the administrator in its sole discretion may determine.

For purposes of the 2010 Plan, the term *qualifying performance criteria* means any one or more of the following performance criteria, or derivations of such performance criteria, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit or affiliated entity, either individually, alternatively or in any combination, and measured either annually (or over such shorter period) or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years' results or to a designated comparison group, in each case as specified by the administrator: (a) cash flow, (b) earnings and earnings per share (including earnings before interest, taxes, and amortization), (c) return on equity, (d) total stockholder return, (e) return on capital, (f) return on assets or net assets, (g) aggregate product price and other product measures; (h) market share or market penetration with respect to specific designated products and/or geographic areas; (i) revenues, income or net income, (j) operating income or net operating income, (k) operating margin and (l) return on operating revenue.

*Award Payments.* A holder of an award may pay cash or any other consideration deemed acceptable by the administrator to pay the exercise price for the award, if any. The administrator may, in its discretion, allow an award holder to pay the exercise price for an award by delivering our common stock.

*Non-Assignability of Awards.* Awards are generally not transferable by the recipient during the life of the recipient. Awards are generally exercisable during the life of a recipient only by the recipient.

*Award Documentation.* Each award must be evidenced by an award document setting forth such terms and conditions applicable to the award as the administrator may in its discretion determine.

*Rights With Respect to Stock Ownership.* No recipient of an award under the 2010 Plan or other person will have any right, title or interest in or to any shares of common stock subject to any award or any rights as a stockholder unless the award is duly exercised pursuant to the terms of the 2010 Plan and/or the shares of common stock subject to the award are issued to the recipient.



*Provisions Regarding Changes in Control.* As of the effective time and date of any change in control (as defined in the 2010 Plan), the 2010 Plan and any of the then outstanding awards (whether or not vested) will automatically terminate unless:

provision is made in writing in connection with such change in control transaction for the continuance of the 2010 Plan and for the assumption of such awards, or for the substitution for such awards of new awards covering the securities of a successor entity or an affiliate thereof with appropriate adjustments as to the number and kind of securities and exercise prices, in which event the 2010 Plan and such outstanding awards will continue or be replaced, as the case may be, in the manner and under the terms so provided; or

our Board of Directors otherwise provides in writing for such adjustments as it deems appropriate in the terms and conditions of the then outstanding awards (whether or not vested), including without limitation accelerating the vesting of outstanding awards and/or providing for the cancellation of awards and their automatic conversion into the right to receive the securities, cash or other consideration that a holder of the shares underlying such awards would have been entitled to receive upon consummation of such change in control had such shares been issued and outstanding immediately prior to the effective date and time of the change in control (net of the appropriate option exercise prices).

If, pursuant to these provisions, the 2010 Plan and the awards terminate by reason of the occurrence of a change in control without provision for any of the actions described in the paragraph above, then any recipient holding outstanding awards will have the right, at such time immediately prior to the consummation of the change in control as our Board of Directors will designate, to exercise the recipient's awards to the full extent not theretofore exercised, including any installments that have not yet become vested.

#### **Tax Information**

The following summary of certain federal income tax consequences of the receipt and exercise of awards we grant is based on the laws and regulations in effect as of the date of this Proxy Statement and does not purport to be a complete statement of the law in this area. Furthermore, the discussion below does not address the tax consequences of the receipt and exercise of awards under foreign, state and local tax laws, and such tax laws may not correspond to the federal income tax treatment described herein. The exact federal income tax treatment of transactions under the 2010 Plan will vary depending upon the specific facts and circumstances involved.

*Incentive Stock Options.* Except as discussed below, under federal income tax law, a recipient of an incentive stock option generally will not owe tax on the grant or the exercise of the option if the recipient exercises the option while the recipient is our employee (or an employee of any parent or subsidiary corporation) or within three months following termination of the recipient's employment (or within one year, if termination was due to a permanent and total disability).

If the recipient of the incentive stock option sells the shares acquired upon the exercise of the option at any time within one year after the date we issue the shares to the recipient or within two years after the date we grant the incentive stock option to the recipient, then:

if the recipient's sales price exceeds the purchase price the recipient paid for the shares upon exercise of the incentive stock option, the recipient will recognize capital gain equal to the excess, if any, of the sales price over the fair market value of the shares on the date of exercise, and will recognize ordinary income equal to the excess, if any, of the lesser of the sales price or the fair market value of the shares on the date of exercise over the purchase price paid for the shares upon exercise of the incentive stock option; or

if the recipient's sales price is less than the purchase price paid for the shares upon exercise of the incentive stock option, the recipient will recognize a capital loss equal to the excess of the purchase price paid for the shares upon exercise of the incentive stock option over the sales price of the shares.

If the recipient sells shares acquired upon exercise of an incentive stock option at any time after the recipient has held the shares for at least one year after the date we issue the shares to the recipient pursuant to the recipient's exercise of the incentive stock option and at least two years after the date we grant the recipient the incentive stock option, then the recipient will recognize capital gain or loss equal to the difference between the sales price and the purchase price

paid for the shares upon exercise of the incentive stock option.

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The amount by which the fair market value of shares the recipient acquires upon exercise of an incentive stock option (determined as of the date of exercise) exceeds the purchase price paid for the shares upon exercise of the incentive stock option will be included as a positive adjustment in the calculation of the recipient's alternative minimum taxable income in the year of exercise.

In the case of an early disposition of shares by a recipient that results in the recognition of ordinary income, we will be entitled to a deduction equal to the amount of such ordinary income. If the recipient holds the shares for the requisite period described above and therefore solely recognizes capital gain upon the sale of such shares, we are not entitled to any deduction.

*Non-qualified Stock Options.* Our grant of a non-qualified stock option to a recipient is generally not a taxable event for the recipient. Upon the exercise of a non-qualified stock option, the recipient will generally recognize ordinary income equal to the excess of the fair market value of the shares the recipient acquires upon exercise (determined as of the date of exercise) over the purchase price paid for the shares upon exercise of the non-qualified stock option. We generally will be entitled to deduct as a compensation expense the amount of such ordinary income. Provided the shares are held as a capital asset, the recipient's subsequent sale of the shares generally will give rise to capital gain or loss equal to the difference between the sale price and the sum of the purchase price paid for the shares plus the ordinary income recognized with respect to the shares, and such capital gain or loss will be taxable as long term or short term capital gain or loss depending upon the recipient's holding period after exercise.

*Stock Appreciation Rights and Phantom Stock.* Generally, the holder of a stock appreciation right or phantom stock award will recognize ordinary income equal to the value we pay (whether in cash, stock or a combination thereof) under either arrangement on the date the holder receives payment. If we place a limit on the amount that will be payable under a stock appreciation right, the holder may recognize ordinary income equal to the value of the holder's right under the stock appreciation right at the time the value of such right equals such limit and the stock appreciation right is exercisable. We will generally be entitled to a deduction in an amount equal to the ordinary income recognized by the holder.

*Stock Purchase Rights Restricted Stock.* Under the 2010 Plan, we are authorized to grant rights to purchase our restricted common stock subject to a right to repurchase such stock at the price paid by the participant if the participant's employment or service relationship with us terminates prior to the lapse of such repurchase right. In general, there will be no tax consequences to a participant upon the grant of a right to purchase such restricted stock or upon purchase of such restricted stock. Instead, the participant will be taxed at ordinary income rates at the time our repurchase rights expire or are removed on an amount equal to the excess of the fair market value of the stock at that time over the amount the participant paid to acquire such stock. A participant who acquires restricted stock, however, may make an election under Section 83(b) of the Code with respect to such stock. If such an election is made within 30 days after the participant's acquisition of the stock, the participant is taxed at ordinary income rates in the year in which the participant acquires the restricted stock. The ordinary income the participant must recognize is equal to the excess of the fair market value of the stock at the time of the participant's acquisition of the stock (determined without regard to the restrictions) over the amount that the participant paid to acquire such stock. If a participant makes a timely election under Section 83(b) of the Code with respect to restricted stock, the participant generally will not be required to report any additional income with respect to such restricted stock until he or she disposes of such stock, at which time he or she will generally recognize capital gain or loss (provided the shares are held as a capital asset) equal to the difference between the sales price and the fair market value of the stock at the time of the participant's acquisition of the stock (determined without regard to restrictions). In the event that a participant forfeits (as a result of our repurchase) restricted stock with respect to which an election under Section 83(b) of the Code has been made, the participant ordinarily will not be entitled to recognize any loss for federal income tax purposes (except to the extent the amount realized by the participant at the time of such forfeiture is less than the participant's purchase price for such stock). We generally will be entitled to a deduction equal to the amount of ordinary income (if any) recognized by a participant.

*Other Awards.* In addition to the types of awards described above, the 2010 Plan authorizes certain other awards that may include payments in cash, our common stock, or a combination of cash and common stock. The tax consequences of such awards will depend upon the specific terms of such awards. Generally, however, a participant

who receives an award payable in cash will recognize ordinary income, and we will be entitled to a deduction, with respect to such award at the earliest time at which the participant has an unrestricted right to receive the amount of the cash payment. In general, the sale or grant of stock to a participant under the 2010 Plan will be a taxable event at the time of the sale or grant if such stock at that time is not subject to a substantial risk of forfeiture or is transferable within the meaning of Section 83 of the Code in the hands of the participant. For such purposes, stock is ordinarily considered to be transferable if it can be transferred to another person who takes the stock free of any substantial risk of forfeiture. In such case, the participant will recognize ordinary income, and we will be entitled to a deduction, equal to the excess of the fair market value of such stock on the date of the sale or grant over the amount, if any, that the participant paid for such stock. Stock that at the time of receipt by a participant

is subject to restrictions that constitute a substantial risk of forfeiture and that is not transferable within the meaning of Internal Revenue Code Section 83 generally will be taxed under the rules applicable to restricted stock as described above.

*Withholding.* In the event that an optionee or other recipient of an award under the 2010 Plan is our employee, we ordinarily will be required to withhold applicable federal income taxes with respect to any ordinary income recognized by such optionee or other award recipient in connection with stock options or other awards under the 2010 Plan.

*Certain Additional Rules Applicable to Awards.* The terms of awards granted under the 2010 Plan may provide for accelerated vesting in connection with a change in control. In that event and depending upon the individual circumstances of the recipient, certain amounts with respect to such awards may constitute excess parachute payments under the golden parachute provisions of the Code. Under these provisions, a participant will be subject to a 20% excise tax on any excess parachute payments and we will be denied any deduction with respect to such excise tax payment.

**Participation in the 2010 Plan by Executive Officers, Directors and Other Employees; Interest of Certain Persons in Matters to be Acted Upon**

Each of our current directors, executive officers and employees is eligible to receive awards under the 2010 Plan. The administrator has the discretion to determine which eligible persons will receive awards under the 2010 Plan, except to the extent that non-employee directors may again receive the automatic non-employee director options in accordance with the 2010 Plan. As a result, and except for any future automatic option awards to non-employee directors, the amount and timing of such awards are not determinable at this time. If our stockholders approve Proposal 3, approximately 2,201,008 shares (as of March 19, 2010) will be available for grant of awards to eligible persons under the 2010 Plan.

**Vote Required and Board Recommendation**

The affirmative vote of a majority of the shares present in person or represented by proxy and entitled to vote on the proposal at the Annual Meeting is required to approve the 2010 Plan.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE APPROVAL OF OUR 2010 EQUITY INCENTIVE PLAN.**

## **CORPORATE GOVERNANCE**

### **Board Leadership Structure and Risk Oversight**

The Board of Directors believes that separate individuals should hold the positions of Chairman of the Board and Chief Executive Officer, and that the Chairman should not be an employee of the Company. Under our corporate governance principles, the Chairman of the Board is responsible for coordinating Board activities, including the scheduling of meetings and executive sessions of the non-employee directors and the relevant agenda items in each case (in consultation with the Chief Executive Officer as appropriate). The Board of Directors believes this leadership structure enhances the Board's oversight of and independence from our management and the ability of the Board to carry out its roles and responsibilities on behalf of our stockholders.

The Company takes a comprehensive approach to risk management. We believe risk can arise in every decision and action taken by the Company, whether strategic or operational. The Company, therefore, seeks to include risk management principles in all of its management processes and in the responsibilities of its employees at every level. Our comprehensive approach is reflected in the reporting processes by which our management provides timely and comprehensive information to the Board of Directors to support the Board's role in oversight, approval and decision-making.

The Board of Directors closely monitors the information it receives from management and provides oversight and guidance to our management team concerning the assessment and management of risk. The Board approves the Company's high level goals, strategies and policies to set the tone and direction for appropriate risk taking within the business. The Board and its committees then emphasize this tone and direction in its oversight of management's implementation of the Company's goals, strategies and policies.

Our senior executives provide the Board and its committees with regular updates about the Company's strategies and objectives and the risks inherent within them at Board and committee meetings and in regular reports. Board and committee meetings also provide a venue for directors to discuss issues with management. The Board and committees call special meetings when necessary to address specific issues. In addition, our directors have access to Company management at all levels to discuss any matters of interest, including those related to risk. Those members of management most knowledgeable of the issues often attend Board meetings to provide additional insight into items being discussed, including risk exposures.

The Board has delegated oversight for matters involving certain specific areas of risk exposure to its three standing committees. Each committee reports to the Board of Directors at regularly scheduled Board meetings, and more frequently if appropriate, with respect to matters and risks for which the committee provides oversight. The specific responsibilities of each of our Board committees are more fully described below under the headings "Audit Committee", "Compensation Committee" and "Nominating and Corporate Governance Committee".

### **Board of Directors Meetings, Committees of the Board and Related Matters**

The Board of Directors currently has a standing Audit, Nominating and Corporate Governance, and Compensation Committee. The Board of Directors and its committees held an aggregate of 21 meetings during the year ended December 31, 2009, of which nine were full Board meetings. All directors attended 75% or more of the aggregate of all meetings of the Board of Directors and its committees, if any, upon which the directors served during the year ended December 31, 2009.

### **Director Independence**

Our Board of Directors has determined that each of Mr. Brown, Dr. Buechler, Mr. Dammeyer, Dr. Polan, Mr. Pulido (Chairman of the Board of Directors) and Mr. Schuler is independent within the meaning of Nasdaq Marketplace Rule 5605(a)(2) as adopted by The Nasdaq Stock Market LLC ( "Nasdaq"). Mr. Bryant who serves as our President and Chief Executive Officer is not deemed to be independent because of his employment with us.

### **Audit Committee**

The Audit Committee is responsible for assisting the Board of Directors in overseeing our accounting and financial reporting processes and the audits of our financial statements. In addition, the Audit Committee assists the Board of Directors in its oversight of our compliance with legal and regulatory requirements. Under the Audit Committee's written charter, the specific duties of the Audit Committee include, among others: monitoring the integrity of our financial process and systems



of internal controls regarding finance, accounting and legal compliance; selecting our independent registered public accounting firm; monitoring the independence and performance of our independent registered public accounting firm; and providing an avenue of communication among the independent registered public accounting firm, our management and our Board of Directors. The Audit Committee has the authority to conduct any investigation appropriate to fulfilling its responsibilities, and it has direct access to all of our employees and to the independent registered public accounting firm. The Audit Committee also has the ability to retain, at our expense and without further approval of the Board of Directors, special legal, accounting or other consultants or experts that it deems necessary in the performance of its duties.

The Audit Committee met five times during 2009. The members of the Audit Committee currently include Mr. Dammeyer (Chairman), Mr. Brown and Dr. Polan. The Audit Committee has been established in accordance with applicable Nasdaq and Securities and Exchange Commission rules and regulations, and our Board of Directors has determined that each of Mr. Dammeyer, Mr. Brown and Dr. Polan is independent within the meaning of Nasdaq Rule 5605(a)(2) as well as the enhanced independence standards contained in Nasdaq Rule 5605(c)(2)(A) and Rule 10A-3 under the Securities Exchange Act of 1934 that relate specifically to members of audit committees. Our Board of Directors has also determined that both Mr. Dammeyer and Mr. Brown qualify as audit committee financial experts within the meaning of the Securities and Exchange Commission's rules and regulations.

#### **Compensation Committee**

The Compensation Committee is responsible for assisting the Board of Directors in discharging its responsibilities regarding the compensation of our employees and directors. Under the Compensation Committee's written charter, the specific duties of the Compensation Committee include, among other matters: reviewing and approving (or recommending to the Board of Directors for approval) corporate goals and objectives relevant to executive compensation; evaluating our executive officers' performance in light of such goals and objectives; determining (or recommending to the Board of Directors for determination) the compensation levels of our executive officers based on such evaluations; administering our incentive compensation plans, including our equity-based incentive plans; and making recommendations to our Board of Directors regarding our overall compensation structure, policies and programs.

Design of the compensation program for 2009 was completed without the assistance of an independent outside compensation consultant, although in prior years the Compensation Committee has engaged third party compensation consultants to assist in structuring and reviewing the Company's compensation programs, including competitiveness of base salaries, short-term cash incentives, and both short-term and long-term equity incentive programs. Our Compensation Committee considers market data from a variety of sources, including the annual Radford Global Life Sciences Survey and a comparative group of publicly-traded companies. Our Compensation Committee utilizes management (and from time to time independent compensation consultants) to gather such market data and provide appropriate analyses. In addition, the Compensation Committee considers the recommendations