

AGENUS INC  
Form 424B3  
May 05, 2011  
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Filed Pursuant to Rule 424(b)(3) and Rule 424(c)

Registration No. 333-156556

May 5, 2011

**PROSPECTUS SUPPLEMENT NO. 40**

**5,929,212 SHARES OF COMMON STOCK**

**AGENUS INC.**

This prospectus supplement amends the prospectus dated March 18, 2009 (as supplemented on April 15, 2009, April 17, 2009, April 22, 2009, April 27, 2009, May 4, 2009, May 11, 2009, May 27, 2009, June 4, 2009, June 8, 2009, June 9, 2009, June 11, 2009, June 15, 2009, July 7, 2009, July 15, 2009, August 3, 2009, August 5, 2009, September 11, 2009, September 18, 2009, November 12, 2009, January 5, 2010, March 1, 2010, March 25, 2010, April 26, 2010, May 11, 2010, May 18, 2010, July 23, 2010, August 9, 2010, August 25, 2010, November 3, 2010, November 10, 2010, December 30, 2010, January 7, 2011, January 14, 2011, January 28, 2011, March 1, 2011, March 8, 2011, March 18, 2011, and April 18, 2011) that relates to the issuance of up to 5,929,212 shares of our common stock, par value \$0.01 per share ( common stock ), issuable upon the conversion of 5,250 shares of Series B2 Convertible Preferred Stock, par value \$0.01 per share ( Series B2 Convertible Preferred Stock ). If the shares of Series B2 Convertible Preferred Stock are converted through payment of cash consideration, if at all, we will receive the cash from such conversion.

This prospectus supplement is being filed to include the information set forth in our Proxy Statement filed on May 3, 2011, which is set forth below. This prospectus supplement should be read in conjunction with the prospectus dated March 18, 2009, Prospectus Supplement No. 1 dated April 15, 2009, Prospectus Supplement No. 2 dated April 17, 2009, Prospectus Supplement No. 3 dated April 22, 2009, Prospectus Supplement No. 4 dated April 27, 2009, Prospectus Supplement No. 5 dated May 4, 2009, Prospectus Supplement No. 6 dated May 11, 2009, Prospectus Supplement No. 7 dated May 27, 2009, Prospectus Supplement No. 8 dated June 4, 2009, Prospectus Supplement No. 9 dated June 8, 2009, Prospectus Supplement No. 10 dated June 9, 2009, Prospectus Supplement No. 11 dated June 11, 2009, Prospectus Supplement No. 12 dated June 15, 2009, Prospectus Supplement No. 13 dated July 7, 2009, Prospectus Supplement No. 14 dated July 15, 2009, Prospectus Supplement No. 15 dated August 3, 2009, Prospectus Supplement No. 16 dated August 5, 2009, Prospectus Supplement No. 17 dated September 11, 2009, Prospectus Supplement No. 18 dated September 18, 2009, Prospectus Supplement No. 19 dated November 12, 2009, Prospectus Supplement No. 20 dated January 5, 2010, Prospectus Supplement No. 21 dated March 1, 2010, Prospectus Supplement No. 23 dated March 25, 2010, Prospectus Supplement No. 24 dated April 26, 2010, Prospectus Supplement No. 25 dated May 11, 2010, Prospectus Supplement No. 26 dated May 18, 2010, Prospectus Supplement No. 27 dated July 23, 2010, Prospectus Supplement No. 28 dated August 9, 2010, Prospectus Supplement No. 29 dated August 25, 2010, Prospectus Supplement No. 30 dated November 3, 2010, Prospectus Supplement No. 31 dated November 10, 2010, Prospectus Supplement No. 32 dated December 30, 2010, Prospectus Supplement No. 33 dated January 7, 2011, Prospectus Supplement No. 34 dated January 14, 2011, Prospectus Supplement No. 35 dated January 28, 2011, Prospectus Supplement No. 36 dated March 1, 2011, Prospectus Supplement No. 37 dated March 8, 2011, Prospectus Supplement No. 38 dated March 18, 2011, and Prospectus Supplement No. 39 dated April 18, 2011, which are to be delivered with this prospectus supplement.

Our common stock is quoted on The NASDAQ Capital Market ( NASDAQ ) under the ticker symbol AGEN. On May 3, 2011, the last reported closing price per share of our common stock was \$0.94 per share.

**Investing in our securities involves a high degree of risk. Before investing in any of our securities, you should read the discussion of material risks in investing in our common stock. See Risk Factors on page 1 of the prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

**THE DATE OF THIS PROSPECTUS SUPPLEMENT NO. 40 IS MAY 5, 2011**

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**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 ☒ x

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))

☒ x Definitive Proxy Statement

☐ " Definitive Additional Materials

☐ " Soliciting Material Pursuant to §240.14a-12

**Agenus Inc.**

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*(Name of Registrant as Specified In Its Charter)*

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

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

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

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

(2) Aggregate number of securities to which transaction applies:

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

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(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

.. Fee paid previously with preliminary materials:

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously paid:

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

(3) Filing Party:

(4) Date Filed:

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**AGENUS INC.**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

<b>Date</b>	June 15, 2011
<b>Time</b>	5:00 P.M., Eastern Time
<b>Place</b>	Agenus Inc., 3 Forbes Road, Lexington, Massachusetts 02421
<b>Webcast</b>	Go to <a href="http://www.agenusbio.com/investors">http://www.agenusbio.com/investors</a> starting at 5:00 P.M., Eastern Time on June 15, 2011. The webcast will be archived on our website for at least three months after the date of the 2011 Annual Meeting.
<b>Proposals</b>	<ol style="list-style-type: none"><li>1. To elect Garo H. Armen, PhD, Tom Dechaene, and John Hatsopoulos as Class II directors, each for a term of three years expiring in 2014.</li><li>2. To approve an amendment to our Amended and Restated Certificate of Incorporation to effect a reverse stock split of the Company's common stock at the discretion of the Board of Directors.</li><li>3. To approve an amendment to our Director's Deferred Compensation Plan (as amended) to increase the number of shares authorized for issuance under such plan.</li><li>4. To ratify the appointment of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011.</li><li>5. To approve, in a non-binding advisory vote, the compensation of the Company's named executive officers.</li><li>6. To hold an advisory vote on the frequency of future advisory votes on compensation of the Company's named executive officers.</li><li>7. To consider any other business as may properly come before the 2011 Annual Meeting of Stockholders or any postponement or adjournment of the meeting.</li></ol>

**Record**

**Date** You are entitled to vote if you were a stockholder of record on April 18, 2011.

A list of stockholders entitled to vote will be open for examination by any stockholder for any purpose germane to the 2011 Annual Meeting of Stockholders for ten days before the meeting during ordinary business hours at our principal offices at 3 Forbes Road, Lexington, Massachusetts 02421.

**It is important that your shares be represented at the 2011 Annual Meeting of Stockholders. Therefore, whether or not you plan to attend the meeting, please complete your proxy and return it to us. If you attend the meeting and wish to vote in person, your proxy will not be used. Stockholders may also vote their shares over the internet or by telephone. Instructions for internet or telephonic voting are printed on your proxy card.**

We are pleased to take advantage of Securities and Exchange Commission rules that allow us to furnish these proxy materials and our Annual Report on Form 10-K to stockholders on the internet. We believe that posting these materials on the internet enables us to provide stockholders with the information that they need more quickly, while lowering our costs of printing and delivery and reducing the environmental impact of our annual meetings of stockholders.

By order of the Board of Directors,

Karen Higgins Valentine, *Secretary*

May 3, 2011

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**AGENUS INC.**

3 Forbes Road

Lexington, Massachusetts

Telephone: (781) 674-4400

**PROXY STATEMENT**

**MAY 3, 2011**

This proxy statement contains information about the 2011 Annual Meeting of Stockholders of Agenus Inc. (the 2011 Annual Meeting ), including any postponements or adjournments of the meeting. The 2011 Annual Meeting will be held at Agenus Inc., 3 Forbes Road, Lexington, Massachusetts 02421 on June 15, 2011 at 5:00 P.M., Eastern Time.

In this proxy statement, we refer to Agenus Inc. as Agenus, us , we or the Company.

In accordance with the e-proxy rules approved by the Securities and Exchange Commission ( SEC ) and in connection with the solicitation of proxies by our Board of Directors, we first sent a Notice of Internet Availability of Proxy Materials on or about May 3, 2011 and provided access to our proxy materials (consisting of this proxy statement, our Annual Report on Form 10-K for the year ended December 31, 2010 and a form of proxy) over the internet, beginning on May 3, 2011, to each stockholder entitled to vote at the 2011 Annual Meeting. We intend to mail to requesting stockholders full sets of our proxy materials (consisting of this proxy statement, our Annual Report on Form 10-K for the year ended December 31, 2010 and a form of proxy) on or about May 3, 2011.

**Our Annual Report on Form 10-K for the year ended December 31, 2010 is also available on the Investors section of our corporate website at <http://www.agenusbio.com/investors> and through the SEC s EDGAR system at <http://www.sec.gov>. To request a printed copy of our Annual Report on Form 10-K, which we will provide to you without charge, write to Investor Relations, Agenus Inc., 3 Forbes Road, Lexington, MA 02421. No material on our website is part of this proxy statement.**

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**VOTING PROCEDURES**

**YOUR VOTE IS IMPORTANT. PLEASE TAKE THE TIME TO VOTE.** Stockholders have a choice of voting over the internet, by telephone, by mail using a proxy card, or in person at the 2011 Annual Meeting. Please refer to the proxy card or other voting instructions included with these proxy materials for information on the voting methods available to you. **If you vote over the internet, by telephone, or in person at the 2011 Annual Meeting, you do not need to return your proxy card.**

**Who can vote?**

Each share of our common stock that you owned as of the close of business on April 18, 2011, the record date, entitles you to one vote on each matter to be voted upon at the 2011 Annual Meeting. On the record date, there were 113,337,624 shares of Agenus common stock issued, outstanding, and entitled to vote.

**Why did I receive a one- page notice in the mail regarding the internet availability of proxy materials instead of a full set of printed proxy materials?**

Pursuant to the notice and access rules adopted by the SEC, we provide stockholders access to our proxy materials over the internet. Accordingly, we sent a Notice of Internet Availability of Proxy Materials ( Notice ) to all of our stockholders as of the record date. The Notice includes instructions on how to access our proxy materials over the internet and how to request a printed copy of these materials. In addition, by following the instructions in the Notice, stockholders may request to receive proxy materials in printed form by mail or electronically by email on an ongoing basis.

Choosing to receive your future proxy materials by email will save us the cost of printing and mailing documents to you and will reduce the impact of our annual meetings of stockholders on the environment. If you choose to receive future proxy materials by email, you will receive an email next year with instructions containing a link to those materials and a link to the proxy voting site. Your election to receive proxy materials by email will remain in effect until you terminate it.

**How do I vote?**

**If your shares are registered directly in your name, you may vote:**

**Over the internet.** Go to the website of our tabulator, Broadridge Financial Solutions, Inc. ( Broadridge ), at <http://www.proxyvote.com> and follow the instructions you will find there. You must specify how you want your shares voted or your internet vote cannot be completed and you will receive an error message. Your shares will be voted according to your instructions. If you vote over the internet, your vote must be received by 11:59 P.M. Eastern Time on June 14, 2011.

**By telephone.** Dial 1-800-690-6903 using any touch-tone telephone and follow the instructions. Your shares will be voted according to your instructions. If you vote over the telephone, your vote must be received by 11:59 P.M. Eastern Time on June 14, 2011.

**By mail.** Complete and sign the enclosed proxy and mail it in the enclosed postage prepaid envelope to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY, 11717. Your shares will be voted according to your instructions. If you do not specify how you want your shares voted, they will be voted as recommended by our Board of Directors.



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**In person at the 2011 Annual Meeting.** If you attend the 2011 Annual Meeting in person, you may deliver your completed proxy card in person or you may vote by completing a ballot, which will be available at the meeting.

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**What is the difference between holding shares directly in my name and holding shares in street name ?** If your shares are registered directly in your name with our transfer agent, American Stock Transfer & Trust Company, you are considered the stockholder of record. The Notice was sent directly to you by Broadridge on behalf of Agenesis.

If your shares are held for you in an account by a broker, bank, or other nominee, you are considered the beneficial owner of shares held in street name. As the beneficial owner, you have the right to direct your broker, bank, or nominee how to vote your shares by using the voting instruction card included in the mailing, or by following their instructions for voting over the internet or by telephone.

**How can I change my vote?** **If your shares are registered directly in your name,** you may revoke your proxy and change your vote at any time before the 2011 Annual Meeting. To do this, you must do one of the following:

Vote over the internet as instructed above. Only your latest internet vote is counted.

Vote by telephone as instructed above. Only your latest telephonic vote is counted.

Sign a new proxy and submit it as instructed above.

Attend the 2011 Annual Meeting and vote in person. **Attending the meeting will not revoke your proxy unless you specifically request it.**

**If your shares are held in street name,** you may submit new voting instructions by contacting your broker, bank, or nominee. You may also vote in person at the 2011 Annual Meeting if you deliver a legal proxy as described in the answer to the How do I vote? question above.

**Will my shares be voted if I do not return my proxy?** **If your shares are registered directly in your name,** your shares will not be voted if you do not vote over the internet, vote by telephone, return your proxy, or vote by ballot at the 2011 Annual Meeting.

**If your shares are held in street name,** your brokerage firm, under certain circumstances, may vote your shares for you if you do not return your proxy. Brokerage firms have authority to vote customers' unvoted shares on some routine matters. If you do not give a proxy to your brokerage firm to vote your shares, your brokerage firm may either vote your shares on routine matters, or leave your shares unvoted. Proposal 4 (to ratify the appointment of KPMG LLP as our independent registered public accounting firm) is the only proposal that is considered a routine matter for this purpose. Your brokerage firm cannot vote your shares with respect to non-routine matters unless they receive your voting instructions. We encourage you to provide voting instructions to your brokerage firm by giving them your proxy. This ensures your shares will be voted at the 2011 Annual Meeting according to your instructions. You should receive directions from your brokerage firm about how to submit your proxy to them at the time you receive this proxy statement.

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### **What does it mean if I receive more than one proxy card?**

It means that you have more than one account, which may be at the transfer agent or brokers. Please vote over the internet or by telephone, or complete and return all proxies for each account to ensure that all of your shares are voted.

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### **How many shares must be present to hold the 2011 Annual Meeting?**

A majority of our outstanding shares of common stock as of the record date must be present at the 2011 Annual Meeting to hold the meeting and conduct business. This is called a quorum. Shares are counted as present at the meeting if the shares are voted in person or by proxy at the meeting. Shares that are present that vote to abstain or do not vote on one or more of the matters to be voted upon are counted as present for establishing a quorum.

If a quorum is not present, we expect that the 2011 Annual Meeting will be adjourned until we obtain a quorum.

### **What vote is required to approve each matter and how are votes counted?**

#### **Proposal 1 To elect three Class II directors, each for a term of three years.**

The three nominees for director receiving the highest number of votes FOR election will be elected as directors. This is called a plurality. Abstentions and broker non-votes are not counted for purposes of electing directors. If your shares are held by your broker in street name and if you do not vote your shares or instruct your broker how to vote with respect to this item, your unvoted shares will be counted as broker non-votes. You may vote FOR all of the nominees, WITHHOLD your vote from all of the nominees or WITHHOLD your vote from any one of the nominees. Votes that are withheld will not be included in the vote tally for the election of directors and will have no effect on the results of the vote.

#### **Proposal 2 To reapprove the Reverse Stock Split.**

To approve Proposal 2, stockholders holding a majority of the outstanding shares of Agenus common stock must vote FOR Proposal 2. Abstentions and broker non-votes will have the same effect as a vote AGAINST the proposal.

#### **Proposal 3 To approve an amendment to our Directors Deferred Compensation Plan (as amended) to increase the number of shares authorized for issuance under such plan.**

To approve Proposal 3, stockholders holding a majority of Agenus common stock present or represented by proxy at the 2011 Annual Meeting and voting on the matter must vote FOR Proposal 3. Abstentions and broker non-votes will not be counted as votes cast or shares voting on Proposal 3 and will have no effect on the vote.

#### **Proposal 4 To ratify the appointment of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011.**

To approve Proposal 4, a majority of the votes cast by stockholders present in person or by proxy and voting on the matter must vote FOR Proposal 4. If your shares are held by your broker in street name, and you do not vote your shares, your brokerage firm has authority to vote your unvoted shares on Proposal 4. If the broker does not vote your unvoted shares, there will be no effect on the vote because these broker non-votes are not considered to be voting on the matter. Abstentions and broker non-votes will not be counted as votes cast or shares voting on Proposal 4 and will have no effect on the vote.



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**Proposal 5 To approve, in a non-binding advisory vote, the compensation of the Company's named executive officers.**

To approve Proposal 5, stockholders holding a majority of Agenesis common stock present or represented by proxy at the 2011 Annual Meeting and voting on the matter must vote FOR Proposal 5. Abstentions and broker non-votes will not be counted as votes cast or shares voting on Proposal 5 and will have no effect on the vote.

**Proposal 6 To hold an advisory vote on the frequency of future advisory votes on the compensation of the Company's named executive officers.**

For Proposal 6, the option of one year, two years, or three years that receives the highest number of votes cast by stockholders will be considered by the Board of Directors when determining the frequency of future advisory votes on executive compensation. Abstentions and broker non-votes will not be counted as votes cast or shares voting on Proposal 6 and will have no effect on the vote.

**How does the Board of Directors recommend that I vote?**

Our Board of Directors recommends that you vote:

FOR Proposal 1 To elect the three nominated Class II directors, each for a term of three years.

FOR Proposal 2 To reapprove an amendment to our Amended and Restated Certificate of Incorporation to effect a reverse stock split of the Company's common stock at the discretion of the Board of Directors.

FOR Proposal 3 To approve an amendment to our Directors Deferred Compensation Plan (as amended) to increase the number of shares authorized for issuance under such plan.

FOR Proposal 4 To ratify the appointment of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011.

FOR Proposal 5 To approve, in a non-binding advisory vote, the compensation of the Company's named executive officers.

Proposal 6 To vote in favor of future advisory votes on the compensation of the Company's named executive officers every three years.

**Are there other matters to be voted on at the 2011 Annual Meeting?**

We do not know of any other matters that may come before the 2011 Annual Meeting. If any other matters are properly presented to the meeting, the persons named in the accompanying proxy intend to

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vote, or otherwise act, in accordance with their judgment.

**Where do I find the voting results of the 2011 Annual Meeting?**

We will report the voting results in a Form 8-K within four business days after the end of the 2011 Annual Meeting.

**Who bears the costs of soliciting these proxies?**

We will bear the costs of soliciting proxies. In addition to the mailing of these proxy materials, our directors, officers, and employees may solicit proxies by telephone, e-mail, and in person, without additional compensation. We reserve the right to retain other outside agencies for the purpose of soliciting proxies. Upon request, we will also reimburse brokerage houses and other custodians, nominees, and fiduciaries for their reasonable out-of-pocket expenses for distributing proxy materials to stockholders.

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**How can I receive future proxy statements and annual reports over the internet instead of receiving printed copies in the mail?**

This proxy statement and our Annual Report on Form 10-K for the year ended December 31, 2010 are available on our website at <http://www.agenusbio.com/investors>. Most stockholders can elect to view future proxy statements and annual reports over the internet instead of receiving printed copies in the mail. If you are a stockholder of record, you can choose this option when you vote over the internet and save us the cost of producing and mailing these documents. If you are a stockholder of record and choose to view future proxy statements and annual reports over the internet, you will receive a proxy card in the mail next year with instructions containing the internet address to access those documents. Your election to receive proxy materials by email will remain in effect until you terminate it. If you choose to receive future proxy materials by email, you will receive an email next year with instructions containing a link to those materials and a link to the proxy voting site. If your shares are held through a broker or other nominee, you should check the information provided by them for instructions on how to elect to view future proxy statements and annual reports over the internet. No material on our website is part of this proxy statement.



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### PROPOSAL 1 ELECTION OF DIRECTORS

*The Board of Directors, upon recommendation of our Corporate Governance and Nominating Committee, has nominated the three people listed below for election as Class II directors. Each nominee currently serves as a Class II director.*

Our Board of Directors (the Board) is divided into three classes. One class is elected each year and members of each class hold office for three-year terms. The Board currently is fixed at eight members and consists of eight members. Three current members are Class II directors, with terms expiring at the 2011 Annual Meeting. Two current members are Class III directors, with terms expiring at the 2012 Annual Meeting of Stockholders. Three current members are Class I directors, with terms expiring at the 2013 Annual Meeting of Stockholders. The Board, upon the recommendation of our Corporate Governance and Nominating Committee, has nominated Garo H. Armen, PhD, Tom Dechaene, and John Hatsopoulos, all current Class II directors, for re-election to a term expiring at the 2014 Annual Meeting of Stockholders.

For more information on nomination of directors, see Corporate Governance and Nominating Committee below in the section entitled Our Corporate Governance Committees of the Board.

Your vote is requested in favor of Garo H. Armen, PhD, Tom Dechaene, and John Hatsopoulos, the three nominees listed below, as Class II directors. All of the nominees have indicated their willingness to serve, if elected, but if any of them should be unable or unwilling to serve, proxies may be voted for a substitute nominee designated by the Board.

There are no family relationships between or among any of our executive officers, directors, or nominees for directors.

Below are the names and certain information about each member of the Board, including the nominees for election as Class II directors:

#### CLASS I DIRECTORS TERMS TO EXPIRE IN 2013

*Brian Corvese*

Age: 53

President and Founder of

Vencor Capital

*Director since 2007*

*(a) Audit and Finance Committee*

*(Chair)*

*(b) Compensation Committee*

Brian Corvese is President and Founder of Vencor Capital, a private equity firm with telecommunications and technology investments in the Middle East and Mediterranean regions. Prior to working at Vencor, Mr. Corvese worked on investments in the U.S. and global equity markets as a Managing Director and partner at Soros Fund Management, the largest hedge fund in the world at the time. From 1988 to 1996, Mr. Corvese was a partner at Chancellor Capital Management (Chancellor), a \$25 billion money management firm. While at Chancellor, Mr. Corvese was a Portfolio Manager with responsibility for investments made in basic industries, restructurings, and special situations, corporate governance investments, as well as founded and managed his own hedge fund. From 1981 to 1988, Mr. Corvese was with Drexel Burnham Lambert (Drexel) as an equity analyst following the chemical and specialty chemical industries and participated in a significant number of merger and acquisition activities. While at Drexel, Mr. Corvese was a member of the top chemical and specialty chemical research team, as ranked by Institutional Investor. Mr. Corvese currently serves on the Board of Directors of the National Telecommunications Corporation, based in Cairo, Egypt. Mr. Corvese earned degrees in finance and political science from The University of Rhode Island and attended New York University Graduate School. With over 25 years of experience in the financial industry, Mr. Corvese brings substantial financial expertise to our Board of Directors.

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*Timothy Rothwell*

Age: 60

*Director since 2009*

*Research and Development  
Committee*

Mr. Rothwell recently retired as Chairman of Sanofi-Aventis U.S. Mr. Rothwell brings substantial industry experience to our Board of Directors, having spent 37 years in the pharmaceutical industry, including many years spent in leadership positions with major pharmaceutical companies. Mr. Rothwell joined Sanofi-Synthelabo in 2003 as U.S. President and Chief Executive Officer. In 2004, he was instrumental in the formation and leadership of Sanofi-Aventis U.S., an affiliate of the Sanofi-Aventis Group, where he served from 2004 to 2009 as President, Chief Executive Officer, and Chairman. Prior to Sanofi-Aventis U.S. and Sanofi-Synthelabo, Mr. Rothwell served in various capacities at Pharmacia, including Executive Vice President and President for Pharmacia's global prescription business and Executive Vice President of Pharmacia Corporation. From 1972 to 1995, he held senior management positions with leading pharmaceutical companies, including Sandoz, Squibb, and Rhone-Poulenc Rorer. Mr. Rothwell holds a bachelor of arts from Drew University in New Jersey and a law degree from Seton Hall University in New Jersey. Presently, Mr. Rothwell serves on the Board of Directors of Emisphere Technologies, New American Therapeutics LLC, and the Pheo-Para Alliance, a non-profit 501(c)(3) organization.

*Timothy R. Wright*

Age: 53

*Director since 2006, Lead*

*Director since 2009*

*(a) Compensation Committee  
(b) Corporate Governance and  
Nominating Committee*

*(Chair)*

*(c) Research and Development  
Committee*

Mr. Wright recently resigned as President of the Imaging Solutions and Pharmaceutical Products Sector of Covidien. Covidien is a \$10 billion global leader in medical devices and supplies, diagnostic imaging agents, pharmaceuticals, and other healthcare products. Mr. Wright brings to the Agenesis Board of Directors over 25 years of pharmaceutical industry experience in general management, product development, and commercialization as well as business restructuring and transaction experience. Beginning in April 2004, Mr. Wright was interim CEO, President and a member of the Board of Directors of AAI Pharma, a hybrid pharmaceutical, drug delivery/manufacturing, and global clinical research organization. Upon the sale of AAI Pharma's pharmaceutical assets to Xanodyne Pharmaceuticals Inc., Mr. Wright transitioned to Chief Operating Officer at Xanodyne Pharmaceuticals Inc., a role he maintained until May 2006. Mr. Wright was also President of Elan Bio-Pharmaceuticals and has held several senior management positions with Cardinal Health Inc. and Dupont Merck Pharmaceutical Company. Mr. Wright has served on several Boards of Directors, including those for AAI Pharma and CeNes Pharmaceuticals. Mr. Wright earned his bachelor's degree from Ohio State University.

### **NOMINEES FOR CLASS II DIRECTORS TERMS TO EXPIRE IN 2014**

*Garo H. Armen, Ph.D*

Age: 58

Founder, Chairman, and Chief  
Executive Officer of Agenesis Inc.

*Director since 1999*

Dr. Armen is Chairman and Chief Executive Officer of Agenesis Inc., the biotechnology company he co-founded with Pramod Srivastava in 1994. Dr. Armen brings to our Board a deep historical and practical knowledge of the business of the Company and its technologies, as well as years of expertise in the financial and biopharmaceutical arenas. From mid-2002 through 2004, he was Chairman of the Board of Directors for the biopharmaceutical company Elan Corporation, plc. Dr. Armen currently serves on the Board of Directors of Protagenic Therapeutics, Inc., a privately held biotechnology company. Dr. Armen served as Senior Vice President of Research for Dean Witter Reynolds (1986-1989), focusing on the chemical and pharmaceutical industries, and with E.F. Hutton & Company as first Vice President (1981-1986). Dr. Armen is also the founder and President of the Children of Armenia Fund, a charitable organization established in 2000 that is dedicated to the positive development of the children and youth of Armenia.

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*Tom Dechaene*

Age: 51

Director, Transics N.V.

*Director since 1999,*

*Lead Director 2006-2009*

*(a) Audit and Finance Committee*

*(b) Corporate Governance and  
Nominating Committee*

*John N. Hatsopoulos*

Age: 77

Chief Executive Officer of American  
DG Energy Inc.

Chief Executive Officer

of Tecogen Inc.

*Director since 2007*

*Audit and Finance*

*Committee*

Mr. Dechaene is an advisor to various TMT (telecom, media, and technology) and life sciences companies. Mr. Dechaene brings to our Board of Directors substantial financial expertise and international business experience. Since 2007, Mr. Dechaene has served on the Board of Directors and is a member of the audit committee of Transics NV, a company listed on NYSE Euronext and which develops and markets fleet management solutions for the transport and logistics sector. Since 2010, Mr. Dechaene has served on the Board of Directors of Brown Hall International Limited, a private IVF health company headquartered in Cyprus. Mr. Dechaene was a director of Telindus N.V., listed on Euronext, from 2005 until its acquisition by Belgacom in 2006. Since 2006, Mr. Dechaene has been a director of the Telindus Foundation in the Netherlands. From 2000 to 2002, Mr. Dechaene was the Chief Financial Officer of SurfCast Inc., a software development company. He was with Deutsche Bank from 1991 through 1999, most recently as a director in the principal investments group within the equity capital markets division. Mr. Dechaene holds a law degree from the Central Exam Commission, Belgium; a masters degree in applied economics from the University of Antwerp; and an MBA from INSEAD, France.

Mr. Hatsopoulos is Chief Executive Officer of American DG Energy Inc. Headquartered in Waltham, Massachusetts, American DG Energy is a leading on-site utility offering electricity, heat, hot water, and cooling to commercial, institutional, and industrial facilities. Mr. Hatsopoulos is also Chief Executive Officer of Tecogen Inc., a leading manufacturer of natural gas, engine-driven commercial and industrial cooling and cogeneration systems. In addition, Mr. Hatsopoulos is Chairman of GlenRose Instruments Inc., a company that provides radiological and environmental services, as well as managing partner of Alexandros Partners LLC, a financial advisory firm. Mr. Hatsopoulos is one of the founders of Thermo Electron Corp. (currently Thermo Fisher Scientific) and the retired President and Vice Chairman of its Board of Directors. Thermo Fisher Scientific is a leading provider of analytical and monitoring instruments used in a broad range of applications, from life sciences research to telecommunications, food, drug, and beverage production. Mr. Hatsopoulos graduated from Athens College in Athens, Greece, in 1953. He holds a BS in history and mathematics from Northeastern University, together with honorary doctorates in business administration from Boston College and Northeastern University. He served on the Board of Directors of the American Stock Exchange from 1994 through 2000 and the AMEX Nominating Committee from 1990 to 1994. Mr. Hatsopoulos has been a member of the Board of Directors of AmericanCare Source Holdings Inc., an ancillary benefits management company, since 2006. He is also a member of the Board of Directors of TEI BioSciences Inc., and a Member of the Corporation for Northeastern University. Mr. Hatsopoulos brings to our Board of Directors years of extensive financial and senior executive experience.

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### CLASS III DIRECTORS TERMS TO EXPIRE IN 2012

*Wadih Jordan*

Age: 76

President of Near East

Pharma

*Director since 2003*

*Compensation Committee*

*(Chair)*

*Hyam I. Levitsky, M.D.*

Age: 53

Professor, Johns Hopkins

University Medical Center

*Director since 2006*

*(a) Corporate Governance and  
Nominating Committee*

*(b) Research and Development  
Committee*

*(Chair)*

***Vote Required***

Mr. Jordan is President of NearEast Pharma, a company marketing pharmaceuticals in Near East markets, including Lebanon, Turkey, Saudi Arabia, Egypt, and the Gulf countries, and has served in such position since 1996. From 1993 to 1995, Mr. Jordan served as a Vice President of Cyanamid International, a research-based life sciences company, and from 1976 to 1993, Mr. Jordan served as a Managing Director within Cyanamid International. Since December 2005, Mr. Jordan has served as a member of the Board of Directors at Pollex S.A.L., a company that specializes in the distribution and marketing of BASF products in the Middle East and North Africa. Since December 2003, Mr. Jordan has been a trustee of the Board of Directors of the Lebanese American University, located in Beirut, Lebanon, and incorporated under the Board of Regents in New York State. Mr. Jordan received a bachelor's degree in agriculture at the American University of Beirut, Lebanon, and a certificate in international business from Columbia University. Mr. Jordan brings to our Board of Directors years of expertise in both the biotechnology/pharmaceutical and international arenas.

As a practicing and teaching doctor in the Oncology field, Dr. Levitsky brings to our Board of Directors valuable scientific and medical experience and guidance. Dr. Levitsky is Professor of Oncology, Medicine & Urology at The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins. Dr. Levitsky has been a professor at Johns Hopkins since 1991, and his laboratory research has focused on basic studies of antigen processing and presentation, T-cell co-stimulation,

T-cell priming versus tolerance, and the evolution of tumor-specific immunity during immune reconstitution. Dr. Levitsky's work has been translated into the creation of novel therapeutic agents that are being tested in patients with multiple myeloma, acute and chronic myelogenous leukemia, B cell lymphomas, prostate cancer, and lung cancer. His work on manipulating immune reconstitution has led to pivotal trials of tumor vaccines in the context of autologous stem cell transplantation, and he has served as scientific director of the George Santos Bone Marrow Transplant Program at Johns Hopkins. Dr. Levitsky received his undergraduate degree in engineering from the University of Pennsylvania in 1980, and his medical degree from the Johns Hopkins University School of Medicine in 1984. He did his internship and residency in internal medicine at Johns Hopkins Hospital, and his fellowship at the Johns Hopkins Oncology Center.

The three nominees for director receiving the highest number of votes FOR election will be elected as directors. This is called a plurality. Abstentions and broker non-votes are not counted for purposes of electing directors. If your shares are held by your broker in street name and if you do not vote your shares or instruct your broker how to vote with respect to this item, your unvoted shares will be counted as broker non-votes. You may vote FOR all of the nominees, WITHHOLD your vote from all of the nominees, or WITHHOLD your vote from any one of the nominees. Votes that are withheld will not be included in the vote tally for the election of directors and will have no effect on the results of the vote.

***The Board of Directors recommends a vote FOR Proposal 1.***

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**OUR CORPORATE GOVERNANCE**

***Our Commitment to Good Corporate Governance***

We believe that good corporate governance and an environment of high ethical standards are important for Agenus to achieve business success and to create value for our stockholders. Our Board of Directors is committed to high governance standards and to continually working to improve them. We continue to review our corporate governance practices in light of ongoing changes in applicable law and evolving best practices.

***Role of Our Board of Directors***

Our Board of Directors is currently fixed at eight members. There have been no changes in the Board since the 2010 Annual Meeting of Stockholders.

The Board monitors overall corporate performance, the integrity of our financial controls, risk management, and legal compliance procedures. It elects senior management and oversees succession planning and senior management's performance and compensation. The Board also oversees our short- and long-term strategic and business planning, and reviews with management its business plan, financing plans, budget, and other key financial and business objectives.

Members of the Board keep informed about our business through discussions with the Chief Executive Officer and other members of our senior management team, by reviewing materials provided to them by the Company on a regular basis and in preparation for Board and committee meetings, and by participating in meetings of the Board and its committees. We regularly review key portions of our business with the Board. These practices afford the Board members the opportunity to actively participate in risk management assessment and raise questions and engage in discussions with management regarding areas of potential risk. The Audit and Finance Committee of the Board reviews the risk management practices of the Company and both the Corporate Governance and Nominating Committee and the Audit and Finance Committee receives a report at least annually from the Company's Chief Compliance Officer outlining areas of compliance focus and proposed recommendations. Additionally, the Compensation Committee reviews the Company's executive compensation program and the incentives created by the executive compensation program, to assess whether our compensation arrangements encourage excessive risk taking by our executives.

We introduce our executives and other employees to the Board so that the Board can become familiar with our key talent. Timothy R. Wright, our Lead Director, engages with each new Board member to introduce each new member to our Corporate Governance policies and their responsibilities to the Company as a director. Each Board member receives a Board of Directors handbook that provides them with a summary of these practices and policies.

In 2010, the Board met six times, and acted by written consent four times. During 2010, each of our directors, except for Mr. Hatsopoulos and Dr. Levitsky, attended at least 75% of the total number of meetings of the Board held during the period during which the director served, and all meetings of committees of the Board on which the director served during the periods the director served. We expect our Board members to attend our annual meetings of stockholders; in 2010 all of our then current Board members attended our annual meeting of stockholders.

***Governance Guidelines***

The Board is guided by our Guidelines on Significant Corporate Governance (our Governance Guidelines). We believe our Governance Guidelines demonstrate our continuing commitment to good corporate governance. The Board reviews these Governance Guidelines from time to time, as needed. The Governance Guidelines are posted on the corporate governance section of our website at <http://www.agenusbio.com/investors/corporate>. No material on our website is part of this proxy statement.

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### ***Performance of Our Board***

We consider it important to continually evaluate and improve the effectiveness of the Board, its committees and its individual members. We do this in various ways. Each year, the Lead Director surveys the Board members to assess the effectiveness of the Board and its committees. Using these surveys, the Lead Director assesses the Board's performance and the performance of individual members, and reports his conclusions to the full Board. The assessment also evaluates the Board's effectiveness in reviewing executive management, conducting appropriate oversight and adding value to Agenus. Each of the Board's standing committees also conducts annual self-evaluations.

At each Board meeting, each Board member has the opportunity to assess the effectiveness of the materials presented and the conduct of the meeting, and to offer suggestions for improvement at future meetings.

### ***Code of Business Conduct and Ethics***

The Board originally adopted our Code of Business Conduct and Ethics (the Code of Ethics) in 2003. The Board reviewed, revised, and updated the Code of Ethics most recently in January 2011. The Code of Ethics applies to all members of the Board and all employees of Agenus, including our Chief Executive Officer, Chief Financial Officer, Principal Accounting Officer or controller, or persons performing similar functions. Our Code of Ethics prohibits the members of the Board and all employees of Agenus from buying or selling our securities while in possession of material, non-public information about the Company. Our Code of Ethics is posted on the corporate governance section of our website at <http://www.agenusbio.com/investors/corporate>. No material on our website is part of this proxy statement. We intend to post on our website all disclosures that are required by law or NASDAQ stock market listing standards concerning any amendments to, or waivers from, our Code of Ethics. Stockholders may request a free copy of our Code of Ethics by writing to Investor Relations, Agenus Inc., 3 Forbes Road, Lexington, MA 02421.

### ***Independence of Directors***

Our Governance Guidelines provide that a majority of the Board should be composed of independent directors. The Corporate Governance and Nominating Committee annually reviews the independence of the directors and reports to the Board which directors it recommends that the Board determine are independent. The Board then makes the final determination. The Board takes into account NASDAQ stock market listing standards, applicable laws and regulations, and other factors in making its determinations including potential conflicts of interest, transactions, and other relationships that would reasonably be expected to compromise a director's independence. The Board has determined that Mr. Corvese, Mr. Dechaene, Mr. Hatsopoulos, Mr. Jordan, Dr. Levitsky, Mr. Rothwell, and Mr. Wright are currently independent directors. Dr. Armen is currently not an independent director because he is employed as Chief Executive Officer. In making independence determinations with regard to other directors, the Board considered transactions between us and a director or a director's affiliates and any positions a director holds with entities with commercial relationships with us. In particular, with respect to Dr. Levitsky, the Board considered his roles as a consultant and member of the Company's Medical Advisory Committee, and with respect to Mr. Wright, the Board considered his services assisting the Company's business development and partnering efforts as described below.

### ***Executive Sessions of Independent Directors***

Our independent directors typically meet in executive session without management present immediately prior to regularly scheduled Board meetings. Five such meetings were held during 2010.

### ***Leadership Structure of the Board***

Mr. Wright, an independent director, serves as the Lead Director of the Board and as Chair of the Corporate Governance and Nominating Committee. Mr. Wright also serves on the Compensation Committee and the Research and Development Committee. In addition to the duties of all directors, the specific responsibilities of

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the Lead Director include: (i) acting as chair of the Corporate Governance and Nominating Committee; (ii) developing the agenda for and presiding over all executive sessions of the independent directors; (iii) acting as principal liaison between the independent directors and the Chief Executive Officer on sensitive issues and raising at any meeting of the Board of Directors items that are not appropriately or best put forward by the Chief Executive Officer; and (iv) communicating to the Chief Executive Officer the independent directors' annual evaluation of the Chief Executive Officer. In addition to the above, we expanded the role of Mr. Wright on an interim basis with respect to providing services to assist the management of the Company with business development and partnering efforts. The Company's Chief Executive Officer serves as the Chairman of the Board. We believe that the Company's Chief Executive Officer is best situated to serve as Chairman because he is the director most familiar with the Company's business, and most capable of effectively identifying strategic priorities and leading the discussion and execution of our Company's strategy. Our independent directors and management have different perspectives and roles in strategy development. The Company's independent directors bring experience, oversight, and expertise from outside the Company and from inside and outside the Company's industry, while the Chief Executive Officer brings Company-specific experience and expertise. To assure effective independent oversight, the Company has adopted a number of governance practices, including:

a strong, independent, clearly-defined lead director role (as described above);

executive sessions of the independent directors held prior to quarterly board meetings; and

an annual performance evaluation of the Chairman/Chief Executive Officer by the independent directors.

While there may be circumstances in the future that would lead the Company to separate the offices of Chairman and Chief Executive Officer, we do not believe this is currently necessary due to the nature and size of the operations for our early-stage biotechnology company, the overall independence of the Board of Directors from management, and the strength of the Lead Director's role on the Board.

### ***Committees of the Board***

The Board currently has four standing committees: the Audit and Finance Committee, the Compensation Committee, the Corporate Governance and Nominating Committee, and the Research and Development Committee. The Board also appoints from time to time ad hoc committees to address specific matters.

#### ***Audit and Finance Committee***

##### ***Members:***

***Meetings in 2010: 9***

***Brian Corvese, Chair***

***Tom Dechaene***

***John Hatsopoulos***

The Audit and Finance Committee consists entirely of independent directors within the meaning of the NASDAQ stock market listing standards and the requirements contemplated by Rule 10A-3 of the Securities Exchange Act of 1934, as amended (the "1934 Act"). The Board has determined that Brian Corvese, Chair of the Committee, Tom Dechaene, and John Hatsopoulos each qualify as audit committee financial experts. For the entirety of 2010, the Audit and Finance Committee consisted of Mr. Corvese (Chair), Mr. Dechaene, and Mr. Hatsopoulos.

The Audit and Finance Committee's primary function is to assist the Board in monitoring the integrity of our consolidated financial statements and our system of internal control. The Audit and Finance Committee has direct responsibility for the appointment, independence, and monitoring of the performance of our independent registered public accounting firm. The committee is responsible for pre-approving any engagements of our independent registered public accounting firm. The committee also reviews our risk management practices, strategic tax planning, preparation of quarterly and annual financial reports, and compliance processes.





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The Audit and Finance Committee members meet regularly with our independent registered public accounting firm without management present and with members of management in separate private sessions, to discuss any matters that the committee or these individuals believe should be discussed privately with the committee, including any significant issues or disagreements concerning our accounting practices or consolidated financial statements. The committee also reviews the Code of Ethics annually, and periodically meets with our Chief Compliance Officer. The committee conducts a meeting each quarter to review the consolidated financial statements prior to the public release of earnings. The committee has the authority to engage special legal, accounting or other consultants to advise the committee. The Audit and Finance Committee charter is posted on the corporate governance section of our website at <http://www.agenusbio.com/investors/corporate>. No material on our website is part of this proxy statement. Please also see the Report of the Audit and Finance Committee on page 57.

### ***Compensation Committee***

#### ***Members:***

***Meetings in 2010: 8***

***Wadih Jordan, Chair***

***Brian Corvese***

***Timothy R. Wright***

During the entirety of 2010, Mr. Jordan and Mr. Wright were members of our Compensation Committee. Mr. Corvese joined the Compensation Committee on March 10, 2010. Our Compensation Committee consists entirely of independent directors within the meaning of applicable NASDAQ stock market listing standards. The committee's primary responsibilities are to address our executive officers' and key employees' development, retention, and performance and to oversee compensation and benefit matters. It reviews and approves compensation policies for Agenus to ensure that our compensation strategy supports organizational objectives and stockholder interests and does not create incentives for inappropriate risk-taking. The committee determines the compensation of the Chief Executive Officer, and reviews and approves the compensation of all other executive officers and certain key employees. It also reviews and recommends compensation for members of the Board. Additionally, the committee approves and recommends, and suggests material changes to, any employee incentive compensation or retirement plans and any director compensation plans.

The Compensation Committee considers appropriate companies for compensation comparison purposes and retains an outside compensation consultant, Oyster Pond Associates, to provide market reference information for compensation and benefits. The committee has the authority to retain special legal, accounting, or other consultants to advise the committee. The committee also has the authority to delegate to subcommittees any responsibilities of the full committee. The Compensation Committee charter is posted on the corporate governance section of our website at <http://www.agenusbio.com/investors/corporate>. No material on our website is part of this proxy statement. Please also see the Compensation Discussion and Analysis starting on page 17, and the accompanying Compensation Committee Report on page 29.

### ***Corporate Governance and Nominating Committee***

#### ***Members:***

***Timothy R. Wright, Chair***

***Tom Dechaene***

***Hyam Levitsky, MD***