

HOLLIS EDEN PHARMACEUTICALS INC /DE/
Form PRE 14A
April 18, 2003

SCHEDULE 14A INFORMATION

**Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to § 240.14a-11(c) or § 240.14a-12

Hollis-Eden Pharmaceuticals, Inc.

(Name of Registrant as Specified In Its Charter)

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

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Payment of Filing Fee (Check the appropriate box)

No fee required.

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1. Title of each class of securities to which transaction applies:

2. Aggregate number of securities to which transaction applies:

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

4. Proposed maximum aggregate value of transaction:

5. Total fee paid:

Fee paid previously with preliminary materials.

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

6. Amount Previously Paid:

7. Form, Schedule or Registration Statement No.:

8. Filing Party:

9. Date Filed:

HOLLIS-EDEN PHARMACEUTICALS, INC.

4435 Eastgate Mall, Suite 400

San Diego, CA 92121

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON JUNE 20, 2003

TO THE STOCKHOLDERS OF HOLLIS-EDEN PHARMACEUTICALS, INC.:

Notice Is Hereby Given that the Annual Meeting of Stockholders of **Hollis-Eden Pharmaceuticals, Inc.**, a Delaware corporation (the Company), will be held on Friday, June 20, 2003 at 2:00 p.m. local time at The Hyatt Regency La Jolla, 3777 La Jolla Village Drive, San Diego, California 92122 for the following purposes:

1. To elect two Class III directors to hold office until the 2006 Annual Meeting of Stockholders.
2. To approve the Company's 1997 Incentive Stock Option Plan, as amended, to increase the aggregate number of shares of Common Stock reserved for issuance under such plan by 650,000 shares.
3. To approve the Company's ability to make interest payments under its outstanding convertible debentures in the form of shares of Common Stock and to issue shares of Common Stock exceeding 20% of its outstanding shares under certain circumstances.
4. To ratify the selection of BDO Seidman, LLP as independent auditors of the Company for its fiscal year ending December 31, 2003.
5. To transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

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

The Board of Directors has fixed the close of business on April 23, 2003, as the record date for the determination of stockholders entitled to notice of and to vote at this Annual Meeting and at any adjournment or postponement thereof.

By Order of the Board of Directors

Richard B. Hollis

Chairman of the Board, President and Chief Executive Officer

San Diego, California

May xx, 2003

ALL STOCKHOLDERS ARE CORDIALLY INVITED TO ATTEND THE MEETING IN PERSON. WHETHER OR NOT YOU EXPECT TO ATTEND THE MEETING, PLEASE COMPLETE, DATE, SIGN AND RETURN THE ENCLOSED PROXY AS PROMPTLY AS POSSIBLE IN ORDER TO ENSURE YOUR REPRESENTATION AT THE MEETING. A RETURN ENVELOPE (WHICH IS POSTAGE PREPAID IF MAILED IN THE UNITED STATES) IS ENCLOSED FOR THAT PURPOSE. EVEN IF YOU HAVE GIVEN YOUR PROXY, YOU MAY STILL VOTE IN PERSON IF YOU ATTEND THE MEETING. PLEASE NOTE, HOWEVER, THAT IF YOUR SHARES ARE HELD OF RECORD BY A BROKER, BANK OR OTHER NOMINEE AND YOU WISH TO VOTE AT THE MEETING, YOU MUST OBTAIN FROM THE RECORD HOLDER A PROXY ISSUED IN YOUR NAME.

HOLLIS-EDEN PHARMACEUTICALS, INC.

4435 Eastgate Mall, Suite 400

San Diego, CA 92121

PROXY STATEMENT

FOR ANNUAL MEETING OF STOCKHOLDERS

June 20, 2003

INFORMATION CONCERNING SOLICITATION AND VOTING

General

The enclosed proxy is solicited on behalf of the Board of Directors of Hollis-Eden Pharmaceuticals, Inc., a Delaware corporation (the Company), for use at the Annual Meeting of Stockholders to be held on Friday, June 20, 2003 at 2:00 p.m. local time (the Annual Meeting), or at any adjournment or postponement thereof, for the purposes set forth herein and in the accompanying Notice of Annual Meeting. The Annual Meeting will be held at The Hyatt Regency La Jolla, 3777 La Jolla Village Drive, San Diego, California 92122. The Company intends to mail this proxy statement and accompanying proxy card on or about May 12, 2003, to all stockholders entitled to vote at the Annual Meeting.

Solicitation

The Company will bear the entire cost of solicitation of proxies, including preparation, assembly, printing and mailing of this proxy statement, the proxy and any additional information furnished to stockholders. Copies of solicitation materials will be furnished to banks, brokerage houses, fiduciaries and custodians holding in their names shares of Common Stock beneficially owned by others to forward to such beneficial owners. The Company may reimburse persons representing beneficial owners of Common Stock for their costs of forwarding solicitation materials to such beneficial owners. Original solicitation of proxies by mail may be supplemented by telephone, telegram or personal solicitation by directors, officers or other regular employees of the Company. No additional compensation will be paid to directors, officers or other regular employees for such services.

Voting Rights and Outstanding Shares

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Only holders of record of Common Stock at the close of business on April 23, 2003 will be entitled to notice of and to vote at the Annual Meeting. At the close of business on April 23, 2003, the Company had outstanding and entitled to vote 13,083,280 shares of Common Stock. Each holder of record of Common Stock on such date will be entitled to one vote for each share held on all matters to be voted upon at the Annual Meeting.

A quorum of stockholders is necessary to hold a valid meeting. A quorum will be present if at least a majority of the outstanding shares are represented by votes at the meeting or by proxy. All votes will be tabulated by the inspector of elections appointed for the meeting, who will separately tabulate affirmative and negative votes, abstentions and broker non-votes. Abstentions will be counted towards the tabulation of votes cast on proposals presented to the stockholders and will have the same effect as negative votes. Broker non-votes are counted towards a quorum, but are not counted for any purpose in determining whether a matter has been approved.

Revocability of Proxies

Any person giving a proxy pursuant to this solicitation has the power to revoke it at any time before it is voted. It may be revoked by filing with the Secretary of the Company at the Company's principal executive office, 4435 Eastgate Mall, Suite 400, San Diego, California 92121, a written notice of revocation or a duly executed proxy bearing a later date, or it may be revoked by attending the meeting and voting in person. Attendance at the meeting will not, by itself, revoke a proxy.

Delivery of this Proxy Statement

The Securities and Exchange Commission has adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery requirements for proxy statements with respect to two or more security holders sharing the same address by delivering a single proxy statement addressed to those security holders. This process, which is commonly referred to as householding, potentially means extra convenience for securityholders and cost savings for companies.

This year, the Company believes a number of brokers with account holders who are stockholders of the Company will be householding our proxy materials. A single proxy statement will be delivered to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once you have received notice from your broker or us that they will be householding communications to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time you no longer wish to participate in householding and would prefer to receive a separate proxy statement, please notify your broker.

Stockholders who currently receive multiple copies of the proxy statement at their address and would like to request householding of their communications should contact their broker.

Stockholder Proposals

The deadline for submitting a stockholder proposal for inclusion in the Company's proxy statement and form of proxy for the Company's 2004 Annual Meeting of Stockholders pursuant to Rule 14a-8 of the Securities and Exchange Commission is [January 9,] 2004. Unless a stockholder who wishes to bring a matter before the stockholders at the Company's 2004 Annual Meeting of Stockholders notifies the Company of such matter after March 22, 2004 but before April 21, 2004, management will have discretionary authority to vote all shares for which it has proxies in opposition to such matter.

Proposal 1

ELECTION OF DIRECTORS

The Company's Restated Certificate of Incorporation and Bylaws provide that the Board of Directors shall be divided into three classes, each class consisting, as nearly as possible, of one-third of the total number of directors, with each class having a three-year term. Vacancies on the Board may be filled only by persons elected by a majority of the remaining directors. A director elected by the Board to fill a vacancy (including a vacancy created by an increase in the size of the Board of Directors) shall serve for the remainder of the full term of the class of directors in which the vacancy occurred and until such director's successor is elected and qualified.

The Board of Directors is presently composed of seven members. The nominees for election to this class are currently directors of the Company, having been elected by the stockholders. If elected at the Annual Meeting, each of the nominees would serve until the 2006 Annual Meeting and until his successor is elected and has qualified, or until such director's earlier death, resignation or removal.

Mr. Salvatore J. Zizza, a current director in the class of directors whose term of office expires in 2004, has been nominated for election at this Annual Meeting with the class of directors whose term of office expires in 2003. Dr. Leonard Makowka, a current director in the class of directors whose term of office expires in 2003, will be stepping down as a director upon expiration of his term at this Annual Meeting, creating a vacancy in the Board.

Directors are elected by a plurality of the votes present in person or represented by proxy and entitled to vote at the meeting. Proxies cannot be voted for a greater number of persons than the number of nominees named. In the event that any nominee should be unavailable for election as a result of an unexpected occurrence, such shares will be voted for the election of such substitute nominee as management may propose.

Set forth below is biographical information for each person nominated and each person whose term of office as a director will continue after the Annual Meeting.

Nominees for Election for a Three-year Term Expiring at the 2006 Annual Meeting

Richard B. Hollis

Mr. Hollis, age 50, founded Hollis-Eden in August 1994. Mr. Hollis currently serves as our Chairman, President and Chief Executive Officer. Mr. Hollis has over 25 years experience in the health care industry in a variety of senior management positions. Prior to founding Hollis-Eden, Mr. Hollis served as Chief Operating Officer of Bioject Medical from 1991 to 1994 and as Vice President Marketing and Sales/General Manager for Instromedix from 1989 to 1991. From 1986 to 1989, Mr. Hollis served as a general manager of the Western business unit of Genentech, Inc., a manufacturer of biopharmaceuticals. Prior to joining Genentech, Mr. Hollis served as a divisional manager of Imed Corporation, Inc., a manufacturer of drug delivery systems. Mr. Hollis began his career in the health care industry with Baxter Travenol. Mr. Hollis received his B.A. in Psychology from San Francisco State University.

Salvatore J. Zizza

Mr. Zizza, age 57, has served as a director of the Company since March 1997. He served as Chairman of the Board, President and Treasurer of Initial Acquisition Corp., from 1992 until March 1997, at which time Initial Acquisition Corp. merged with the Company. Mr. Zizza is presently Chairman of Hallmark Electrical Supplies Corp. Mr. Zizza is also Chairman of Bethlehem Advanced Materials. Mr. Zizza was President and Chief Financial Officer of NICO Construction Company, Inc. until 1985, when NICO merged with The LVI Group, Inc. Prior to joining The LVI Group, Inc., Mr. Zizza was an independent financial consultant and had been a lending officer for Chemical Bank. Mr. Zizza's current and former directorships include: The Gabelli Equity

Trust (NYSE), The Gabelli Asset Fund, The Gabelli Growth Fund, The Gabelli Convertible Securities Fund, The Gabelli Utility Fund (NYSE), The Gabelli Global Multimedia Trust (NYSE), Gabelli Equity Series Fund, and St. David's school. Mr. Zizza received a B.S. in Political Science and a MBA from St. John's University.

THE BOARD OF DIRECTORS RECOMMENDS

A VOTE IN FAVOR OF EACH NAMED NOMINEE

Directors Continuing in Office Until the 2004 Annual Meeting

Paul Bagley

Mr. Bagley, age 60, has served as a director of the Company since March 1996. Mr. Bagley is a founding principal of Stone Pine Capital L.L.C., a group that provides mezzanine capital to fund acquisitions, buyouts, growth and recapitalizations, and is also associated with Stone Pine Advisors L.L.C., and Stone Pine Investment Banking L.L.C. Mr. Bagley was Chief Executive Officer of Laidlaw Holdings, Inc., an investment services company from January 1995 until November 1996. For more than twenty years, Mr. Bagley was engaged in investment banking activities with Shearson Lehman Hutton Inc. and its predecessor, E.F. Hutton & Company Inc. Mr. Bagley served in various capacities with Shearson and E.F. Hutton, including Executive Vice President and Director, Managing Director, Head of Direct Investment Origination and Manager of Corporate Finance. Mr. Bagley also serves as Chairman of the Board of Directors of Clariti Holdings, Inc., a privately held European telecommunications and technology company. Mr. Bagley is also a director of Hamilton Lane Advisors and Hamilton Lane Private Equity Partners, L.L.C., an Irish Stock Exchange listed investment partnership. Mr. Bagley graduated from the University of California at Berkeley with a B.Sc. in Business and Economics and from Harvard Business School with an MBA in Finance.

William H. Tilley

Mr. Tilley, age 63, has served as a director of the Company since March 1999. Mr. Tilley currently serves as Chairman and Chief Executive Officer of The Jacmar Companies, a holding company that has operations in equity investments, real estate management and restaurant and wholesale food service. Previously, Mr. Tilley was a senior partner at Tilley and Roth, Certified Public Accountants, which merged with KPMG Peat Marwick. Mr. Tilley holds a B.A. and an MBA from the University of Southern California. He has taught courses and lectured on finance-related topics at a number of universities, including USC and UCLA.

Directors Continuing in Office Until the 2005 Annual Meeting

Thomas Charles Merigan, Jr., M.D.

Dr. Merigan, age 69, became Scientific Advisor and a director of Hollis-Eden in March 1996 and acts as the Company's Medical Director for Infectious Diseases. Dr. Merigan has been George E. and Lucy Becker Professor of Medicine at Stanford University School of Medicine from 1980 to the present. Dr. Merigan has also been the Principal Investigator, NIAID Sponsored AIDS Clinical Trials Unit, from 1986 to the present and has been Director of Stanford University's Center For AIDS Research from 1988 to the present. Dr. Merigan is a member of various medical

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and honorary societies, has lectured extensively within and outside the United States, and authored numerous books and articles and has chaired and edited symposia relating to infectious diseases, including anti-viral agents, HIV and other retroviruses, and AIDS. From 1990 to the present, Dr. Merigan has been Chairman, Editorial Board of *HIV: Advances in Research and Therapy*. He is also a member of the editorial boards of *Aids Research and Human Retroviruses* (since 1983), *International Journal of Anti-Microbial Agents* (since 1990), and *The Aids Reader* (since 1991), among others. He is a co-recipient of ten patents, which, among other things, relate to synthetic polynucleotides, modification of hepatitis B virus infection, treatment of HIV infection, purified cytomegalovirus protein and composition and treatment for herpes simplex. Dr. Merigan has been Chair, Immunology AIDS Advisory Board, Bristol Myers Squibb Corporation from 1989 to 1995 and

Chair, Scientific Advisory Board, Sequel Corp. from 1993 to 1996. In 1994, Stanford University School of Medicine honored him with the establishment of the Annual Thomas C. Merigan Jr. Endowed Lectureship in Infectious Diseases, and, in 1996, Dr. Merigan was elected Fellow, American Association for the Advancement of Science. From 1966 to 1992, Dr. Merigan was Head, Division of Infectious Diseases, at Stanford School of Medicine. Dr. Merigan received his B.A., with honors, from the University of California at Berkeley and his M.D. from the University of California at San Francisco.

Brendan R. McDonnell

Mr. McDonnell, age 40, has served as a director of Hollis-Eden since August 1996. In 2003, Mr. McDonnell joined the law firm Preston Gates & Ellis LLP as an equity partner. From 1997 to 2003, Mr. McDonnell was of counsel and then a partner at Tonkon Torp LLP, a Northwest based law firm. Mr. McDonnell specializes in representing both private and public emerging growth companies, with focus on the high technology industry. Mr. McDonnell is the immediate past Chair of the Business Section of the Oregon State Bar and spent two years as an adjunct professor at the Northwestern School of Law of Lewis and Clark College. Mr. McDonnell holds a B.S. in accounting from Loyola Marymount University and a J.D. from the University of California at Davis. He is a member of the California and Oregon State Bar Associations.

Board Committees and Meetings

During the fiscal year ended December 31, 2002, the Board of Directors held five meetings. The Board has an Audit Committee and a Compensation Committee.

During the fiscal year ended December 31, 2002, each Board member attended 75% or more of the aggregate number of meetings of the Board and of the committees on which he served, held during the period for which he was a director or committee member, respectively.

The Compensation Committee makes recommendations to the Board concerning executive salaries and incentive compensation, administers the Company's 1997 Incentive Stock Option Plan and otherwise determines compensation levels and policies and performs such other functions regarding compensation as the Board may delegate. The Compensation Committee is composed of two non-employee directors: Messrs. McDonnell and Bagley. The Compensation Committee had two meetings in 2002.

The Audit Committee oversees the Company's corporate accounting and financial reporting process. For this purpose, the Audit Committee performs several functions. The Audit Committee evaluates the performance of and assesses the qualifications of the independent auditors; determines the engagement of the independent auditors; determines whether to retain or terminate the existing independent auditors or to appoint and engage new independent auditors; reviews and approves the retention of the independent auditors to perform any proposed non-permissible audit services; monitors the rotation of partners of the independent auditors on the Company engagement team as required by law; reviews the financial statements to be included in the Company's Annual Report on Form 10-K; and discusses with management and the independent auditors the results of the annual audit. The Audit Committee of the Company is composed of three independent directors and operates under a written charter adopted by the Company's Board of Directors. The members of the Audit Committee are Messrs. McDonnell, Bagley and Zizza. All members of the Company's Audit Committee are independent (as independence is defined in Rule 4200(a)(14) of the NASD listing standards). The Audit Committee had two meetings in 2002.

Report of the Audit Committee of the Board of Directors

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Management is responsible for the Company's internal controls and the financial reporting process. The independent accountants are responsible for performing an independent audit of the Company's financial statements in accordance with generally accepted auditing standards and to issue a report thereon. The Audit Committee's responsibility is to monitor and oversee these processes.

In this context, the Audit Committee has met and held discussions with management and the independent accountants. Management represented to the Audit Committee that the Company's financial statements were prepared in accordance with GAAP, and the Audit Committee has reviewed and discussed the financial statements with management and the independent accountants. The independent accountants discussed with the Audit Committee matters required to be discussed by Statement on Auditing Standards No. 61 (Communication with Audit Committees).

The Company's independent accountants also provided to the Audit Committee the written disclosures and the letter required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), and the Audit Committee discussed with the independent accountants that firm's independence.

Based on the Audit Committee's discussion with management and the independent accountants as well as the Audit Committee's review of the representation of management and the report of the independent accountants to the Audit Committee, the Audit Committee recommended that the Board of Directors include the audited financial statements in the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 filed with the Securities and Exchange Commission.

Respectfully submitted by:

AUDIT COMMITTEE

Brendan R. McDonnell, Chairman

Paul Bagley

Salvatore J. Zizza

Proposal 2

APPROVAL OF 1997 INCENTIVE STOCK OPTION PLAN, AS AMENDED

In February 1997, the Board of Directors adopted, and the stockholders subsequently approved, the Company's 1997 Incentive Option Stock Plan (the 1997 Plan) and reserved an aggregate of 1,000,000 shares of the Company's Common Stock for issuance thereunder to the Company's employees. The Board adopted the 1997 Plan so that the Company could grant stock options to employees, directors and consultants at levels determined appropriate by the Board and the Compensation Committee, and to allow the Company more flexibility in attracting and retaining qualified employees and promoting the success of the Company's business. In March 1998, the Board approved an amendment to the 1997 Plan to increase the number of shares authorized for issuance under the 1997 Plan from a total of 1,000,000 shares to 1,250,000 shares. In February 1999, the Board approved an amendment to the 1997 Plan to increase the number of shares authorized for issuance under the 1997 Plan from a total of 1,250,000 shares to 2,250,000 shares. In March 2000, the Board approved an amendment to the 1997 Plan to increase the number of shares authorized for issuance under the 1997 Plan from a total of 2,250,000 shares to 2,750,000 shares. In March 2001, the Board approved an amendment to the 1997 Plan to increase the number of shares authorized for issuance under the 1997 Plan from a total of 2,750,000 shares to 3,250,000 shares. In March 2002, the Board approved an amendment to the 1997 Plan to increase the number of shares authorized for issuance under the 1997 Plan from a total of 3,250,000 shares to 3,750,000 shares. Each of the amendments to the 1997 Plan were subsequently approved by the stockholders of the Company.

At March 31, 2003, options (net of canceled or expired options) covering an aggregate of 3,659,764 shares of the Company's Common Stock had been granted under the 1997 Plan, and 88,554 shares (plus any shares that might in the future be returned to the plans as a result of cancellations or expiration of options) remained available for future grant under the 1997 Plan. During the last fiscal year, under the 1997 Plan, the Company granted options to purchase an aggregate of 497,500 shares at an exercise price of \$9.91 to the Company's current executive officers and options to purchase an aggregate of 178,616 shares at exercise prices ranging from \$5.15 to \$10.10 per share to all other Company employees. Options to purchase an aggregate of 5,000 shares at an exercise price of \$5.75 were granted to the Company's consultants. Options to purchase an aggregate of 15,000 shares at an exercise price of \$5.75 were granted to directors (excluding executive officers).

In March 2003, the Board approved an amendment to the 1997 Plan to increase the number of shares authorized for issuance under the 1997 Plan from a total of 3,750,000 shares to 4,400,000. The Board adopted this amendment to ensure that the Company can continue to grant stock options to employees, directors and consultants at levels determined appropriate by the Board and the Compensation Committee to allow the Company flexibility in attracting and retaining qualified personnel.

Stockholders are requested in this Proposal 2 to approve the 1997 Plan, as amended. The affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the meeting will be required to approve the 1997 Plan, as amended. Abstentions will be counted toward the tabulation of votes cast on the proposal and will have the same effect as negative votes. Broker non-votes will be counted towards a quorum, but will not be counted in determining whether this matter has been approved.

THE BOARD OF DIRECTORS RECOMMENDS

A VOTE IN FAVOR OF PROPOSAL 2.

The essential features of the 1997 Plan are described below.

General

The following description of the 1997 Plan is a summary and is qualified in its entirety by reference to the 1997 Plan. On February 5, 1997, the Company's Board of Directors adopted the 1997 Plan, which was

subsequently approved by the Company's stockholders on March 26, 1997. The 1997 Plan was amended by the Board in March 1998, February 1999, March 2000, March 2001 and March 2002, which amendments were subsequently approved by the Company's stockholders on May 18, 1998, May 17, 1999, June 23, 2000, June 29, 2001 and June 21, 2002 respectively.

Purpose

The purpose of the 1997 Plan is to encourage management, employees, directors and consultants associated with the Company (including any successor) to acquire an equity interest in the Company's business, thereby strengthening their commitment to remain with, or to join, the Company. The 1997 Plan contemplates the grant to employees of incentive stock options (ISOs) under Section 422 of the Internal Revenue Code of 1986, as amended (the Code) and nonqualified stock options (NSOs) to such employees, directors and consultants as the Company's Compensation Committee deems appropriate.

The 1997 Plan is not subject to any of the requirements of the Employee Retirement Income Security Act of 1974, as amended, nor is it qualified or intended to be qualified under Section 401(a) of the Code.

Administration

Administration of the 1997 Plan was delegated to the Company's Compensation Committee, currently consisting of Mr. McDonnell and Mr. Bagley, each a disinterested person within the meaning of Rule 16(b)-3(c)(2)(i) of the Exchange Act. Subject to the terms of the 1997 Plan and such limitations as the Board of Directors may impose, the Compensation Committee shall be responsible for the overall management and administration of the 1997 Plan and shall have such authority as may be necessary or appropriate to carry out its responsibilities, including, without limitation, the authority to (i) determine the persons to whom, and the time or times at which, grants shall be made as well as the terms of ISOs and NSOs, (ii) interpret and construe the terms of the 1997 Plan and any instrument thereunder, and (iii) adopt rules and regulations, prescribe forms and take any other actions not inconsistent with the 1997 Plan as it may deem necessary or appropriate. In addition, the compensation committee and the Board of Directors have created a Non-Officer Stock Option Committee, with the authority to grant options to purchase Common Stock to employees at a level below director level, provided that such employees are not subject to Rule 16 of the Exchange Act, not to exceed 20,000 shares of Common Stock to any one person in any 12-month period and not to exceed 10,000 shares of Common Stock to any one person in any 12-month period without the consent of the Chairman of the Compensation Committee. Currently, the sole member of the Non-Officer Stock Option Committee is Mr. Hollis.

Stock Subject to the 1997 Plan

Subject to this proposal, an aggregate of 4,400,000 shares of Common Stock is reserved for issuance under the 1997 Plan. If options granted under the 1997 Plan expire or otherwise terminate without being exercised, the shares of Common Stock not acquired pursuant to such options again become available for issuance under the 1997 Plan. If the Company reacquires unvested stock issued under the 1997 Plan, the reacquired stock will again become available for reissuance under the 1997 Plan.

Eligibility

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Officers, employees and directors of the Company, as well as certain consultants who provide services to the Company, are eligible to participate in the 1997 Plan without regard to length of employment or service. Any such person who is not an employee of the Company, within the meaning of Section 422 of the Code, is not eligible to receive ISOs. No options will be granted after February 4, 2007, the date upon which the 1997 Plan will terminate if it is not terminated earlier by the Board.

Description Of Options

The exercise price of an option granted under the 1997 Plan and the period during which it may be exercised will be determined by the Compensation Committee at the time of grant, subject to the terms and conditions of the 1997 Plan. The exercise price of an ISO, however, shall not be less than the fair market value of the shares subject to such ISO on the date of grant (or 110% of such fair market value in the case of ISOs granted to an individual who is a 10% or greater stockholder of the Company or any parent or subsidiary of the Company).

In no event will options expire later than the expiration of ten years from the date of grant (or five years from the date of grant in the case of ISOs granted to an individual who is a 10% or greater stockholder of the Company or any parent or subsidiary of the Company). Options that are otherwise exercisable may be exercised in whole or in part.

Upon the occurrence of any of the following: (i) the merger or consolidation of the Company with or into another corporation (pursuant to which the Company's stockholders immediately prior to such merger or consolidation will not, as of the date of such merger or consolidation, own a beneficial interest in shares of voting securities of the corporation surviving such merger or consolidation having at least a majority of the combined voting power of such corporation's then outstanding securities) under circumstances where the agreement of merger or consolidation does not provide for (A) the continuance of the options granted under the 1997 Plan or (B) the substitution of new options for options granted under the 1997 Plan, or (C) the assumption of such options by the surviving corporation, (ii) the dissolution, liquidation, or sale of all or substantially all the assets of the Company to a person unrelated to the Company or to a direct or indirect owner of a majority of the voting power of the Company's then outstanding voting securities (such sale of assets being referred to as an Asset Sale) or (iii) a change in control of the Company, then the vesting and exercisability of options theretofore granted and still outstanding (and not otherwise expired) shall accelerate in full immediately prior to such event. All outstanding options that are not exercised prior to such event (other than a Change in Control as defined herein) shall be forfeited as of the effective time of such event.

For purposes of the 1997 Plan, a change in control of the Company shall be deemed to have occurred if any person (including any individual, firm, partnership or other entity) together with all Affiliates and Associates (as defined under Rule 12b-2 promulgated under the Securities Exchange Act of 1934 (the Exchange Act)) of such person (but excluding (i) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any subsidiary of the Company, (ii) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the Company, (iii) the Company or any subsidiary of the Company or (iv) a participant together with all Affiliates and Associates of such participant) is or becomes the Beneficial Owner (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 40% or more of the combined voting power of the Company's then outstanding securities. The provisions of clause (iv) of the foregoing sentence applies only with respect to the options held by the participant.

If the optionee's service with the Company terminates, options that are exercisable on such termination date shall remain exercisable until the expiration of three months from such termination date (extended to one year if such termination occurs due to the optionee's death or disability).

To the extent that the aggregate of (i) the fair market value (determined at the time an ISO is granted) of the shares of the Company's Common Stock subject to an ISO and (ii) the fair market value (determined as of the date(s) of grant of the options(s)) of all other shares of Common Stock subject to ISOs granted to an optionee that are exercisable for the first time by an optionee during a calendar year (under all stock option plans of the Company) exceeds \$100,000, such ISOs shall be treated as NSOs.

Payment For Shares

Payment for shares of the Company's Common Stock purchased upon exercise of an option must be made in full upon exercise, either in cash or check or in shares of outstanding Common Stock of the Company held for the required time period to avoid a charge to the Company's reported earnings. The proceeds received by the Company from the sale of shares of its Common Stock pursuant to the 1997 Plan shall be used for general corporate purposes.

Transfer Restrictions

Options other than NSOs are not transferable other than by will or the laws of descent and distribution or pursuant to a domestic relations order. During the lifetime of an optionee, an ISO shall be exercisable only by the optionee. An optionee is required to notify the Company if he disposes of shares of the Company's Common Stock acquired pursuant to the exercise of an ISO within two years of the date the ISO was granted or within one year of the date the ISO was exercised.

Amendment And Termination

The Board may amend or terminate the 1997 Plan at any time or from time to time; provided, however, that unless all required stockholder approvals have been received, no amendment will be made that would (i) increase the maximum number of shares as to which options may be granted, or (ii) reduce the minimum exercise price of an ISO, or (iii) materially modify the requirements as to eligibility for participation. No amendment is permitted which would alter or impair the rights of any optionee under an option granted prior to such amendment, unless the optionee consents thereto.

Federal Income Tax Consequences

The following is a general discussion of the federal income tax consequences to an optionee and the Company of the grant and exercise of an option pursuant to the 1997 Plan and the disposition of stock acquired upon exercise of any option. Because the consequences will vary for any number of reasons, the Company urges each optionee to consult his own tax advisor with respect to the tax consequences of such transactions. The following summary does not purport to be complete and does not take into account state or local tax implications.

Long-term capital gains currently are generally subject to lower tax rates than ordinary income or short-term capital gains. The maximum long-term capital gains rate for federal income tax purposes is currently 20% while the maximum ordinary income rate and short-term capital gains rate is effectively 39.6%. Slightly different rules may apply to optionholders who acquire stock subject to certain repurchase options or who are subject to Section 16(b) of the Exchange Act.

Incentive Stock Options

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Incentive stock options under the 1997 Plan are intended to be eligible for the favorable federal income tax treatment accorded incentive stock options under the Code. There generally are no federal income tax consequences to the optionholder or the Company by reason of the grant or exercise of an incentive stock option. However, the exercise of an incentive stock option may increase the optionholder's alternative minimum tax liability, if any.

If an optionholder holds stock acquired through exercise of an incentive stock option for at least two years from the date on which the option is granted and at least one year from the date on which the shares are transferred to the optionholder upon exercise of the option, any gain or loss on a disposition of such stock will be a long-term capital gain or loss. Generally, if the optionholder disposes of the stock before the expiration of either of these holding periods (a disqualifying disposition), then at the time of disposition the optionholder

will realize taxable ordinary income equal to the lesser of (i) the excess of the stock's fair market value on the date of exercise over the exercise price, or (ii) the optionholder's actual gain, if any, on the purchase and sale. The optionholder's additional gain or any loss upon the disqualifying disposition will be a capital gain or loss, which will be long-term or short-term depending on whether the stock was held for more than one year.

To the extent the optionholder recognizes ordinary income by reason of a disqualifying disposition, the Company will generally be entitled (subject to the requirement of reasonableness, the provisions of Section 162(m) of the Code and the satisfaction of a tax reporting obligation) to a corresponding business expense for tax purposes in the tax year in which the disqualifying disposition occurs.

Nonstatutory Stock Options

Nonstatutory stock options granted under the 1997 Plan generally have the following federal income tax consequences:

There are no tax consequences to the optionholder or the Company by reason of the grant of a nonstatutory stock option. Upon exercise of a nonstatutory stock option, the optionholder normally will recognize taxable ordinary income equal to the excess, if any, of the stock's fair market value on the date of exercise over the option exercise price. However, to the extent the stock is subject to certain types of vesting restrictions, the taxable event will be delayed until the vesting restrictions lapse unless the participant elects to be taxed on receipt of the stock. With respect to employees, the Company is generally required to withhold from regular wages or supplemental wage payments an amount based on the ordinary income recognized. Subject to the requirement of reasonableness, the provisions of Section 162(m) of the Code and the satisfaction of a tax reporting obligation, the Company will generally be entitled to a business expense deduction equal to the taxable ordinary income realized by the optionholder.

Upon disposition of the stock, the optionholder will recognize a capital gain or loss equal to the difference between the selling price and the sum of the amount paid for such stock plus any amount recognized as ordinary income upon exercise of the option (or vesting of the stock). Such gain or loss will be long-term or short-term depending on whether the stock was held for more than one year. Slightly different rules may apply to optionholders who acquire stock subject to certain repurchase options or who are subject to Section 16(b) of the Exchange Act.

Potential Limitation on Company Deductions

Section 162(m) of the Code denies a deduction to any publicly held corporation for compensation paid to certain covered employees in a taxable year to the extent that compensation to such covered employee exceeds \$1 million. It is possible that compensation attributable to stock options, when combined with all other types of compensation received by a covered employee from the Company, may cause this limitation to be exceeded in any particular year.

Certain kinds of compensation, including qualified performance-based compensation, are disregarded for purposes of the deduction limitation. In accordance with Treasury regulations issued under Section 162(m), compensation attributable to stock options will qualify as performance-based compensation if the award is: (i) granted by a compensation committee comprised solely of outside directors, (ii) the plan under which the award is granted states the maximum number of shares with respect to which awards may be granted during a specified period to any employee, (iii) the exercise of the award is no less than the fair market value of the stock on the date the award is granted, and (iv) prior to the grant (or exercise) of any award, the material terms of the plan under which such award will be granted are approved by the stockholders of the Company.

Compensation attributable to stock options with exercise prices of less than fair market value of the stock on the date of grant will qualify as performance-based compensation, provided that: (i) the award is granted by a

compensation committee comprised solely of outside directors, (ii) the award is granted on account of (or the vesting or exercisability of the award is contingent on) the achievement of an objective performance goal established in writing by the compensation committee while the outcome of the performance goal is substantially uncertain, (iii) the compensation committee certifies in writing prior to the granting (or exercisability) of the award that the performance goal has been satisfied, and (iv) prior to the granting (or exercisability) of the award, stockholders have been apprised of and have subsequently approved the material terms of the performance goal (including the class of employees eligible for such award, the business criteria on which the performance goal is based, and the maximum amount or formula used to calculate the amount payable upon attainment of the performance goal).

New Plan Benefits

The following table presents certain information with respect to options granted under the 1997 Plan for the fiscal year ended December 31, 2002 to (i) the Company's Chief Executive Officer, its other four most highly compensated executive officers in 2002 and one individual who became an executive officer in 2003, (ii) all executive officers as a group, (iii) all non-employee directors as a group and (iv) all non-executive officer employees as a group. This information regarding grants for the fiscal year ended December 31, 2002 is for illustration only and may not be indicative of grants that are made in the future under the 1997 plan. The dollar value of these awards cannot be determined because they depend on the market value of the Underlying Shares of Common Stock on the date of exercise.

NEW PLAN BENEFITS

1997 Stock Plan

Name and Position	Number of Shares Underlying Options
Mr. Richard B. Hollis	240,000
Chairman of the Board, President and Chief Executive Officer	
Mr. Daniel D. Burgess	50,000
Chief Financial Officer and Chief Operating Officer	
Dr. James M. Frincke	60,000
Chief Scientific Officer	
Mr. Eric J. Loumeau	25,000
Vice President, Corporate General Counsel	
Dr. Christopher L. Reading	60,000
Executive Vice President, Scientific Development	
Dr. Dwight R. Stickney	12,500
Medical Director, Oncology	
All Executive Officers as a Group	497,500
All Non-Employee Directors as a Group	15,000

Equity Compensation Plan Information

The following table provides information as of December 31, 2002 with respect to all of our compensation plans under which we are authorized to issue equity securities of the company.

<u>Plan Category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights</u>	<u>Weighted-average exercise price of outstanding options, warrants and rights</u>	<u>Number of securities remaining available for future issuance under equity compensation plans (excluding securities in the first column)</u>
Stock option equity compensation plans approved by security holders	2,969,092	\$ 10.98	778,726 (1)
Stock option equity compensation plans not approved by security holders	1,915,000	\$ 6.23	
Warrant equity compensation plans not approved by security holders	849,510	\$ 15.64	

(1) As of March 31, 2003, only 88,554 Securities remain available for future issuance under the 1997 Plan.

The material features of each compensation plan or arrangement adopted without the approval of securities holders is included in Note 9 (Stock Options Non-Plan Options) and Note 10 (Common Stock Purchase Warrants) in the Notes to Financial Statements included in our Annual Report on Form-10K for the year ended December 31, 2002.

Proposal 3

APPROVAL TO MAKE INTEREST PAYMENTS UNDER OUTSTANDING CONVERTIBLE DEBENTURES IN THE FORM OF SHARES OF COMMON STOCK AND

TO ISSUE SHARES OF COMMON STOCK EXCEEDING

20% OF THE OUTSTANDING SHARES UNDER CERTAIN CIRCUMSTANCES

Overview

On February 25, 2003, the Company completed the sale of \$10,000,080 aggregate principal amount of 7.5% Convertible Debentures (the Debentures) and warrants to purchase up to 701,760 shares of our Common Stock (the Financing Warrants), to certain institutional investors.

The Debentures were issued pursuant to a Securities Purchase Agreement, dated February 25, 2003. The Debentures mature on February 25, 2006, bear interest at the rate of 7.5% per annum and are convertible into 1,754,400 shares of Common Stock at a per share price of \$5.70 (the Conversion Price). The Company is entitled to force conversion of the Debentures to Common Stock in the event the Common Stock price exceeds \$14.25 per share for 15 consecutive trading days or in the event the Company completes a public offering of Common Stock of at least \$20.0 million at a price equal to at least \$11.40 per share.

The Conversion Price of the Debentures is subject to anti-dilution adjustments under certain circumstances. If certain changes occur to the Company's capitalization, such as a stock split, stock dividend of the Common Stock or other capital reorganization, then the Conversion Price will be adjusted appropriately. In addition, the Conversion Price can be adjusted downward if the Company issues securities at a per share price less than the Conversion Price (an Adjustment Event), excluding, among other things, issuances in connection with certain strategic investments and issuances of stock options to employees, officers and directors. If the Adjustment Event occurs on or prior to August 25, 2004, the new Conversion Price would equal the per share price of such issuance, provided that the new Conversion Price cannot be adjusted to a price lower than \$3.80 per share. If the Adjustment Event occurs after August 25, 2004, the new Conversion Price would be determined based on a weighted-average formula.

The Company is entitled to issue Common Stock in lieu of the cash payment of interest on the Debentures, subject to certain conditions. One of the conditions to being able to make interest payments in shares of Common Stock is that the Interest Conversion Rate (defined below) is at least \$5.70 per share, unless stockholder approval is obtained in advance. Interest Conversion Rate means 90% of the average of daily volume weighted average price of the Common Stock for the 15 trading days immediately prior to the applicable interest payment date.

The Financing Warrants are immediately exercisable and terminate on February 25, 2007. Financing Warrants to purchase up to 350,880 shares of Common Stock are exercisable at a price per share of \$6.17, and Financing Warrants to purchase up to 350,880 shares of Common Stock are exercisable at a price per share of \$6.71. The exercise prices of the Financing Warrants are subject to a weighted-average anti-dilution adjustment if the Company issues securities at a per-share price less than the applicable exercise price, excluding, among other things, issuances in connection with certain strategic investments and issuances of stock options to employees, officers and directors.

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SG Cowen Securities Corporation acted as placement agent in the financing. Pursuant to an Engagement Letter dated November 22, 2002 with SG Cowen, the Company issued SG Cowen a warrant to purchase up to 73,684 shares of Common Stock (the Cowen Warrant and, together with the Financing Warrants, the Warrants). The Cowen Warrant, which has an exercise price of \$5.99 per share, is exercisable beginning on August 25, 2003 and expires on February 25, 2008.

The Company entered into a Registration Rights Agreement, dated February 25, 2003, with the investors that purchased the Debentures, pursuant to which the Company agreed to file with the SEC within 45 days

following the sale of Debentures a registration statement covering the resale of the Common Stock underlying the Debentures and the Warrants. Accordingly, the Company filed a Registration Statement on Form S-3 on March 14, 2003, with respect to the resale of such shares from time to time. The Registration Statement was subsequently amended and was declared effective by the SEC on April 15, 2003.

A copy of the form of Debenture and a copy of the form of Financing Warrant were filed by the Company with the SEC as exhibits to a Form 8-K filed on February 26, 2003.

Reasons for Stockholder Approval

Companies listed on the Nasdaq National Market are required to comply with NASD rules with respect to the listing of additional shares with Nasdaq. Section 4350(i) of the NASD Manual requires Nasdaq listed companies to obtain stockholder approval prior to the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book value or market value of the stock (the 20% Rule). Prior to the February 25, 2003 transaction, the Company had 12,973,359 shares of Common Stock outstanding (the Outstanding Shares). Assuming no adjustments to the Conversion Price, the Debentures are convertible into 1,754,400 shares of Common Stock and the Warrants are exercisable into 775,444 shares of Common Stock. The total of 2,529,844 shares constitutes only 19.5% of the Outstanding Shares. In addition, neither the Conversion Price nor the exercise prices of the Warrants are less than the greater of book value or market value of the stock (as defined by Nasdaq). Accordingly, no stockholder vote was required in order to complete the financing. However, two potential scenarios may trigger the 20% Rule.

First, if the Company elects to make interest payments in shares of Common Stock rather than cash, and the Interest Conversion Rate (the price used to calculate the number of shares of Common Stock to be issued) is less than \$5.70, then the 20% Rule will be triggered. Second, if there is an Adjustment Event, the resulting downward adjustment to the Conversion Price means that the Debentures will be convertible into a greater number of shares of Common Stock, which would likely trigger the 20% Rule.

Absent a stockholder vote in favor of this proposal, the Company will not be able to make interest payments in shares of Common Stock unless the Interest Conversion Rate (the price used to calculate the number of shares of Common Stock to be issued) exceeds \$5.70 per share. In addition, absent a stockholder vote in favor of this proposal, upon conversion of Debentures after the occurrence of an Adjustment Event, after taking into account all of the shares of Common Stock already issued (i) upon exercise of the Warrants and (ii) as payment of interest on the Debentures, the Company will have the ability to issue only up to 19.999% of the Outstanding Shares (the Issuable Maximum). Any amount of the Debentures that holders of Debentures are unable to convert in excess of the Issuable Maximum will remain a cash liability of the Company, due and payable at maturity. In that event, the Company may be required to raise additional funds in order to meet such debt obligation. The Company may not be able to raise sufficient funds at such time, and even if the Company is able to raise sufficient funds, the terms of such financing may not be favorable to the Company.

A vote in favor of this Proposal 3 will authorize the Company to make interest payments on the Debentures in the form of shares of the Company's Common Stock, regardless of the Interest Conversion Rate or the market value of the Company's Common Stock on the date used to value the shares as determined in accordance with the Debentures. In addition, a vote in favor of this Proposal 3 will also authorize the Company, following any Adjustment Event, to issue the entire amount of shares of Common Stock issuable upon conversion of the Debentures and exercise of the Warrants in accordance with their terms, even if such issuance would otherwise exceed the Issuable Maximum.

Required Vote

The affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the meeting will be required to approve Proposal 3. Abstentions will be counted toward the tabulation of votes cast on the proposal and will have the same effect as negative votes. Broker non-votes are counted towards a quorum, but are not counted in determining whether this matter has been approved.

THE BOARD OF DIRECTORS RECOMMENDS

A VOTE IN FAVOR OF PROPOSAL 3.

Proposal 4

RATIFICATION OF SELECTION OF INDEPENDENT AUDITORS

The Audit Committee of the Board of Directors has selected BDO Seidman, LLP as the Company's independent auditors for the fiscal year ending December 31, 2003 and has further directed that management submit the selection of independent auditors for ratification by the stockholders at the Annual Meeting. BDO Seidman, LLP has audited the Company's financial statements since its inception. Representatives of BDO Seidman, LLP are expected to be present at the Annual Meeting, will have an opportunity to make a statement if they so desire and will be available to respond to appropriate questions.

Stockholder ratification of the selection of BDO Seidman, LLP as the Company's independent auditors is not required by the Company's Bylaws or otherwise. However, the Board is submitting the selection of BDO Seidman, LLP to the stockholders for ratification as a matter of good corporate practice. If the stockholders fail to ratify the selection, the Audit Committee and the Board will reconsider whether or not to retain that firm. Even if the selection is ratified, the Audit Committee in its discretion may direct the appointment of different independent auditors at any time during the year if they determine that such a change would be in the best interests of the Company and its stockholders.

The affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the Annual Meeting will be required to ratify the selection of BDO Seidman, LLP.

Audit Fees. For the fiscal year ended December 31, 2002, the Company paid BDO Seidman, LLP, \$33,500 for professional services rendered for the Company's audit of the annual financial statements and for reviews of the Company's financial statements included in the Company's quarterly reports on Form 10-Q files with the Securities and Exchange Commission (SEC). In fiscal year 2002, the Company also paid BDO Seidman, LLP, \$25,346 for assistance with and review of other documents filed with the SEC.

Tax Fees. For the fiscal year ended December 31, 2002, the Company paid BDO Seidman, LLP, \$6,000 for tax compliance services.

All Other Fees. During the fiscal year ended December 31, 2002, there were no other fees billed by BDO Seidman, LLP.

The Audit Committee has determined that the rendering of the non-audit services by BDO Seidman, LLP is compatible with maintaining the auditor's independence.

THE BOARD OF DIRECTORS RECOMMENDS

A VOTE IN FAVOR OF PROPOSAL 4.

EXECUTIVE OFFICERS AND SENIOR MANAGEMENT

The following table sets forth information regarding the Company's Executive Officers and Senior Management.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Richard B. Hollis	50	Chairman of the Board, President and Chief Executive Officer
Daniel D. Burgess	41	Chief Operating Officer and Chief Financial Officer
James M. Frincke, Ph.D.	52	Chief Scientific Officer
Eric J. Loumeau	40	Vice President, Corporate General Counsel