

LA JOLLA PHARMACEUTICAL CO

Form PRE 14A

March 30, 2005

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
(RULE 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES
EXCHANGE ACT OF 1934 (AMENDMENT NO.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to § 240.14a-12

LA JOLLA PHARMACEUTICAL COMPANY

(Name of Registrant as Specified In Its Charter)

N/A

(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):

(4) Proposed maximum aggregate value of transaction:

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o 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:

LA JOLLA PHARMACEUTICAL COMPANY
6455 Nancy Ridge Drive
San Diego, California 92121
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
To Be Held on Thursday, May 19, 2005

The annual meeting of stockholders of La Jolla Pharmaceutical Company, a Delaware corporation, will be held at our offices at 6455 Nancy Ridge Drive, San Diego, California 92121 on Thursday, May 19, 2005, at 10:00 a.m. (local time) for the following purposes:

1. To elect one Class III director to serve until the 2008 annual meeting of stockholders and to elect one Class II director to serve until the 2007 annual meeting of stockholders.
2. To vote on a proposal to amend our certificate of incorporation to increase the authorized number of shares of common stock by 75,000,000.
3. To vote on a proposal to amend the La Jolla Pharmaceutical Company 2004 Equity Incentive Plan to increase the number of shares of our common stock that may be issued under the plan by 2,800,000.
4. To vote on a proposal to amend the La Jolla Pharmaceutical Company 1995 Employee Stock Purchase Plan to increase the number of shares of our common stock that may be issued under the plan by 700,000.
5. To ratify the selection of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2005.
6. To transact such other business that may properly come before the meeting or any adjournment thereof.

Our board of directors unanimously recommends that you vote FOR the two nominees named in the accompanying proxy statement and FOR the other four proposals.

By order of the board of directors,

Steven B. Engle
Chairman and Chief Executive Officer

San Diego, California
March 30, 2005

YOUR VOTE IS IMPORTANT

Our board of directors has fixed the close of business on March 24, 2005 as the record date for determining the stockholders entitled to notice of, and to vote at, the annual meeting. All stockholders are invited to attend the annual meeting. You are urged to sign, date and complete the enclosed proxy card and return it as soon as possible, even if you plan to attend the meeting in person. If you attend the meeting and wish to vote your shares in person, you may do so even if you have signed and returned your proxy card. 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.

LA JOLLA PHARMACEUTICAL COMPANY
6455 Nancy Ridge Drive
San Diego, California 92121
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
To Be Held on Thursday, May 19, 2005
INFORMATION CONCERNING THE SOLICITATION

This proxy statement is furnished in connection with the solicitation of proxies by the board of directors of La Jolla Pharmaceutical Company, a Delaware corporation, to be used at our 2005 annual meeting of stockholders to be held on Thursday, May 19, 2005 at 10:00 a.m. (local time) and at any and all postponements and adjournments of the meeting. The meeting will be held at our offices at 6455 Nancy Ridge Drive, San Diego, California 92121. This proxy statement and the accompanying proxy card will be first mailed to stockholders on or about April 11, 2005.

We will pay for the cost of preparing, assembling and mailing the proxy materials and the cost of soliciting proxies. We will pay brokers and other persons holding stock in their names or the names of their nominees for the reasonable expenses of forwarding soliciting material to their principals. We and our employees may solicit proxies in person or by telephone, facsimile or other electronic means. Our employees will not receive any additional compensation for such solicitation. In addition, we have engaged MacKenzie Partners, Inc. to assist us in soliciting proxies. We will pay the proxy solicitor a fee of approximately \$25,000 for such solicitation and will reimburse it for reasonable out-of-pocket expenses.

VOTING

Our board of directors has fixed March 24, 2005 as the record date for determining the stockholders entitled to notice of, and to vote at, the annual meeting. As of March 24, 2005, we had 73,758,850 shares of common stock outstanding held by 353 record holders in addition to approximately 9,500 stockholders who do not hold shares in their own name. Each share is entitled to one vote on any matter that may be presented for consideration and action by the stockholders at the meeting. The holders of a majority of the outstanding shares of our common stock on the record date and entitled to be voted at the meeting, present in person or represented by proxy, will constitute a quorum for the transaction of business at the meeting and any adjournments and postponements thereof. Shares abstained or subject to a broker non-vote are counted as present for the purpose of determining the presence or absence of a quorum for the transaction of business.

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

With regard to Proposal 2, the affirmative vote of a majority of the shares outstanding is required for approval. With regard to this proposal, abstentions and broker non-votes will be counted in tabulations of the votes cast on a proposal and both will have the same effect as a vote against the proposal.

With regard to Proposals 3, 4, and 5, the affirmative vote of a majority of the shares present in person or represented by proxy and entitled to vote at the meeting is required for approval. With regard to these proposals, abstentions will be counted in tabulations of the votes cast on a proposal and will have the same effect as a vote against the proposal, whereas broker non-votes will be entirely excluded from the vote and will have no effect on its outcome.

Each proxy submitted by a stockholder will, unless otherwise directed by such stockholder, be voted FOR:

Proposal 1 The election of the two director nominees named in this proxy statement.

Proposal 2 The proposal to amend our certificate of incorporation to increase the authorized number of shares of common stock by 75,000,000.

Proposal 3 The proposal to amend the La Jolla Pharmaceutical Company 2004 Equity Incentive Plan to increase the number of shares of our common stock that may be issued under the plan by 2,800,000.

Proposal 4 The proposal to amend the La Jolla Pharmaceutical Company 1995 Employee Stock Purchase Plan to increase the number of shares of our common stock that may be issued under the plan by 700,000.

Proposal 5 The ratification of the selection of Ernst & Young LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2005.

In addition, the persons acting as proxies will cast their votes in their discretion for any additional matters that are properly raised for consideration at the meeting. If you submit a proxy, your shares will be voted according to your direction. You have the power to revoke your proxy at any time before it is voted at the annual meeting by submitting a written notice of revocation to our corporate secretary or by timely providing us with a valid proxy bearing a later date. Your proxy will not be voted if you attend the annual meeting and elect to vote your shares in person. Our board of directors reserves the right to withhold any proposal described in this proxy statement from a vote at the annual meeting if it deems that a vote on such proposal to be contrary to our and our stockholders' best interests. In that event, the proposal withheld will be neither adopted nor defeated.

PROPOSAL 1 ELECTION OF DIRECTORS

Our Board of Directors

Our certificate of incorporation provides for a board of directors that is divided into three classes. The terms for each class are three years, staggered over time. This year, the term of the directors in Class III, Mr. Engbers and Dr. Fildes, expire. Mr. Engbers has notified the Company that, after many years of service, he will not be standing for re-election to our board of directors. Mr. Engbers has agreed to complete his term as a Class III director and will continue to serve in his capacity as our Lead Independent Director, chairman of the audit committee, and the audit committee financial expert until the annual meeting of stockholders. In addition, Dr. Smith joined the board of directors in 2004 as a Class II director and will stand for election for a two year term that expires when the term of the other Class II director expires. Accordingly, two directors will be elected at the annual meeting.

Our board of directors is currently composed of six members. If all of the nominees are elected at the annual meeting of stockholders, the composition of our board of directors will be as follows: Class I Dr. Adams and Mr. Engle; Class II Dr. Smith and Mr. Martin; and Class III Dr. Fildes. Therefore, in compliance with our certificate of incorporation, our board of directors has by resolution decreased the total number of directors to five members, effective as of the 2005 annual meeting of stockholders.

All of the nominees for election as directors at the meeting set forth below are incumbent directors. These nominees have consented to serve as a director if elected and management has no reason to believe that any nominee will be unable to serve. Unless authority to vote for any of the nominees is withheld in a proxy, shares represented by proxies will be voted FOR all such nominees. In the event that any of the nominees for director becomes unavailable for re-election as a result of an unexpected occurrence, such shares will be voted for the

election of such substitute nominee, if any, as the board of directors may propose. Proxies cannot be voted for more than two directors, the number of nominees identified herein.

Nominees for Director

Class III

The person listed below is nominated for election to Class III of the board of directors, to serve a three year term ending at the 2008 annual meeting and until his successor is elected and qualified. **Our board of directors recommends that you vote for the following nominee.**

Robert A. Fildes, Ph.D., 66, has been a director since 1991. Since January 1998, Dr. Fildes has served as President of SB2, Inc., a privately held company that licenses antibody technology. From June to December 1998, Dr. Fildes served as Chief Executive Officer of Atlantic Pharmaceuticals, a publicly held company in the field of biotechnology. From 1993 to 1997, Dr. Fildes was the Chairman and Chief Executive Officer of Scotgen Biopharmaceuticals, Inc., a privately held company in the field of human monoclonal antibody technology. From 1990 to 1993, Dr. Fildes was an independent consultant in the biopharmaceutical industry. He was the President and Chief Executive Officer of Cetus Corporation, a publicly held biotechnology company, from 1982 to 1990. From 1980 to 1982, Dr. Fildes was the President of Biogen, Inc., a publicly held biopharmaceutical company, and from 1975 to 1980, he was the Vice President of Operations for the Industrial Division of Bristol-Myers Squibb Company. From April 2002 to April 2003, Dr. Fildes was a director of Polymerat Pty. Ltd. (now Bio-Layer Pty. Ltd.), a privately held company that develops surfaces for carrying out biological reactions. Dr. Fildes is currently a director of Inimex Pharmaceuticals, Inc., a privately held Canadian biotechnology company and Twinstrand Therapeutics, a privately held Canadian biopharmaceutical company focused on discovering and developing targeted produgs. Dr. Fildes holds a D.C.C. degree in Microbial Biochemistry and a Ph.D. in Biochemical Genetics from the University of London.

Class II

The person listed below is nominated for election to Class II of the board of directors, to serve a two year term ending at the 2007 annual meeting and until his successor is elected and qualified. **Our board of directors recommends that you vote for the following nominee.**

Craig R. Smith, M.D., 59, joined our board of directors in 2004. From 1993 to 2004, Dr. Smith served as the Chairman, President and Chief Executive Officer of Guilford Pharmaceuticals, Inc., a publicly held pharmaceutical company. He joined Guilford at its inception in 1993 and led its growth into a fully integrated pharmaceutical company with two marketed products and two products in Phase 3 clinical trials. From 1988 to 1993, Dr. Smith was Senior Vice President of Business and Market Development at Centocor, Inc., a publicly held biotechnology company. From 1975 to 1988, he served on the faculty of the Department of Medicine at Johns Hopkins Medical School. He also serves on the boards of the Maryland Chapter of the Cystic Fibrosis Foundation, the Greater Baltimore Committee and the Greater Baltimore High Tech Council. Dr. Smith is the Chair of the Advisory Council for the Institute of Basic Biomedical Sciences at Johns Hopkins University and a member of the board of directors of Guilford Pharmaceuticals, Inc., Depomed, Inc., a publicly held specialty pharmaceutical company, and Excigen, Inc., a privately held company that focuses on gene therapy treatments. Dr. Smith holds an M.D. from the State University of New York at Buffalo and trained in Internal Medicine at Johns Hopkins Hospital from 1972 to 1975.

Continuing Directors

Class I: Currently Serving Until the 2006 Annual Meeting

Thomas H. Adams, Ph.D., 62, has been a director since 1991. Dr. Adams is the founder and Chairman Emeritus of Genta, Inc., a publicly held biotechnology company in the field of antisense technology, and, since September 1998, has been chairman of the board of directors and Chief Executive Officer of Leucadia Technologies, a privately held company in the field of medical devices. From 1989 to 1997, Dr. Adams served as Chief Executive Officer of Genta, Inc. In 1984, Dr. Adams founded Gen-Probe, Inc., a publicly held

company that develops and manufactures diagnostic products, and served as its Chief Executive Officer and Chairman until its acquisition by Chugai Biopharmaceuticals, Inc. in 1989. From 1980 to 1984, Dr. Adams was Senior Vice President of Research and Development at Hybritech, which was later acquired by Eli Lilly and Company in 1986. Dr. Adams has also held management positions at Technicon Instruments and the Hyland Division of Baxter Travenol, and served as a director of Biosite Diagnostics, Inc., a publicly held medical research firm, from 1989 to 1998. In addition, Dr. Adams served as a director of XiFin, Inc., a privately held application service provider focusing on the financial management needs of laboratories, and Bio-Mems, a privately held company. Dr. Adams currently serves as a director of Xenomics, Inc., a publicly held development stage molecular diagnostics company. Dr. Adams holds a Ph.D. in Biochemistry from the University of California at Riverside.

Steven B. Engle, 50, has been a director since 1994 and currently serves as Chairman of the board of directors and Chief Executive Officer. He joined us in 1993 as Executive Vice President and Chief Operating Officer, assumed the offices of President and Secretary in 1994, became Chief Executive Officer in 1995, and Chairman of the board of directors in 1997. From 1991 to 1993, Mr. Engle served as Vice President of Marketing at Cygnus Inc., a publicly held company that develops drug-delivery systems for therapeutic drugs, including Nicotrol®, a smoking cessation transdermal patch. From 1987 to 1991, he was Chief Executive Officer of Quantum Management Company, a privately held management consulting firm serving pharmaceutical and other industries. From 1984 to 1987, he was Vice President of Marketing and Divisional General Manager for Micro Power Systems, Inc., a privately held company that manufactures high technology products, including medical devices. From 1979 to 1984, he was a management consultant at Strategic Decisions Group and SRI International, where he advised pharmaceutical, high technology and other companies. Mr. Engle is a former Chairman of BIOCUM, a regional trade association for the biotechnology and medical device industries. Mr. Engle holds an M.S.E.E. and a B.S.E.E. with a focus in biomedical engineering from the University of Texas.

Class II: Currently Serving Until the 2007 Annual Meeting

Stephen M. Martin, 58, has been a director since 2000. In June 2001, Mr. Martin retired from CIBA Vision Corporation, a Novartis Company engaged in the research, manufacture and sale of contact lenses, lens care products and ophthalmic pharmaceuticals. Mr. Martin founded CIBA Vision in 1980. Mr. Martin was President of CIBA Vision Corporation, USA from 1995 to 1998 and President of CIBA Vision Ophthalmics, USA, the company's ophthalmic pharmaceutical division, which he founded, from 1990 until 1998. He served as CIBA Vision's Vice President of Venture Opportunities from 1998 until his retirement in 2001. Mr. Martin is currently CEO Partner of Hi Tech Partners, LLC, a privately held consulting firm for executive management of early stage technology businesses, and is Managing Partner of Merritt Capital Services, a privately held firm that assists entrepreneurs in finding venture capital. Mr. Martin currently serves as a director and a member of the audit and compensation committees of Alimera Sciences, Inc., a privately held ophthalmic pharmaceutical company. From 1997 to 2000, Mr. Martin served as a director of CareLinc Corporation, a privately held developer of clinical information management systems. Mr. Martin is the inventor on six issued U.S. patents and a number of European patents. Mr. Martin holds a B.A. degree from Wake Forest University and attended the Woodrow Wilson College of Law.

PROPOSAL 2
PROPOSAL TO INCREASE THE NUMBER OF
AUTHORIZED SHARES OF OUR COMMON STOCK

Our certificate of incorporation currently provides that we are authorized to issue two classes of stock, consisting of 100,000,000 shares of common stock and 8,000,000 shares of preferred stock. Our board of directors is authorized to establish and designate the rights, terms, and preferences of any series of preferred stock. On March 24, 2005, our board of directors approved and adopted an amendment to the certificate of incorporation, subject to stockholder approval, to increase the authorized number of shares of common stock to 175,000,000 shares. The proposed amendment to our certificate of incorporation does not change the

authorized number of shares of our preferred stock. The text of the proposed amendment to our certificate of incorporation is attached to this proxy statement as Appendix A and is incorporated herein by reference. Our board of directors recommends that stockholders approve the proposed amendment to our certificate of incorporation.

Purpose and Effect of Amendment

As of March 24, 2005:

there were 73,758,850 shares of common stock issued and outstanding;

there were 8,854,866 options to purchase shares of common stock outstanding, and the same number of shares of common stock reserved for issuance upon exercise of such options;

there were 686,982 shares of common stock reserved for issuance upon the exercise of awards not yet granted under the La Jolla Pharmaceutical Company 2004 Equity Incentive Plan; and

there were 209,591 shares of common stock reserved for issuance under the La Jolla Pharmaceutical Company 1995 Employee Stock Purchase Plan.

Accordingly, as of March 24, 2005, there were an aggregate of 83,510,289 shares outstanding or reserved for issuance. In addition, pursuant to Proposals 3 and 4, we are seeking to increase the number of shares available for issuance under the La Jolla Pharmaceutical Company 2004 Equity Incentive Plan and the La Jolla Pharmaceutical Company 1995 Employee Stock Purchase Plan by an aggregate of 3,500,000 shares. If both proposals pass, there will be approximately 87,010,289 shares of common stock outstanding, or reserved for future issuance. Accordingly, if both Proposals 3 and 4 are approved, as of March 24, 2005, there will only be 12,989,711 shares of authorized common stock that are not outstanding or subject to an equity award or plan. The principal purpose of the proposed charter amendment is, therefore, to authorize additional shares of common stock in order to ensure that there is a sufficient number of shares of authorized common stock available to us in the future in the event the board of directors determines that it is necessary or appropriate to raise additional capital through the sale of securities, to establish strategic relationships with corporate partners, to provide equity incentives to employees, officers or directors, or to pursue other matters.

As of the date of this proxy statement, other than upon the exercise of outstanding options or issuances under our equity incentive and stock purchase plans, our board of directors has no agreement, arrangement or intention to issue any of the shares for which approval is sought. If the proposed amendment to the certificate of incorporation is approved by the stockholders, our board of directors does not intend to solicit further stockholder approval prior to the issuance of any additional shares of common stock, except as may be required by applicable law, rules of The Nasdaq Stock Market, Inc. or other applicable stock exchange requirements.

Potential Effect of the Proposed Amendment on the Holders of Common Stock

Although the increase in the authorized number of shares of common stock will not, in and of itself, have any immediate effect on the rights of our stockholders, any future issuance of additional shares of common stock could affect our stockholders in a number of respects, including by diluting the voting power of the current holders of our common stock at such time and diluting the earnings per share and book value per share of outstanding shares of our common stock at such time.

In addition, the proposed amendment could, under certain circumstances, have an anti-takeover effect, although this is not the intention of this proposal. In December 1998, we distributed rights to the holders of our outstanding shares of common stock pursuant to an arrangement designed to protect stockholders from proposed takeovers which the board of directors believes are not in the best interests of the stockholders, by providing stockholders with certain rights to acquire our capital stock upon the occurrence of certain events. Although the rights provide for the issuance of our Series A Junior Participating Preferred Stock in the event rights become exercisable, we may, under certain circumstances, be required to issue a substantial number of shares of common stock with respect to the rights. An increase in the number of authorized shares of common

stock could, therefore, make a change in control more difficult by facilitating the issuance of additional shares of common stock pursuant to the rights. We may also issue shares of preferred stock without further stockholder approval and upon terms that our board of directors may determine in the future. The issuance of preferred stock that is convertible into a significant number of shares of common stock could have the effect of making it more difficult for a third party to acquire a majority of our outstanding stock.

Accordingly, the proposed amendment may have the effect of permitting our current management, including our current board of directors, to retain its position, and place it in a better position to resist changes that stockholders may wish to make if they are dissatisfied with the conduct of our business. However, the board of directors is not aware of any attempt to take control of us, and the board of directors has not presented this proposal with the intent that it be utilized as a type of anti-takeover device.

Implementing Proposed Amendment

If approved by the stockholders at the annual meeting, the proposed amendment to our certificate of incorporation will become effective upon the filing of a certificate of amendment with the Secretary of State of the State of Delaware. Although our board of directors intends to file the certificate of amendment as soon as practicable after the annual meeting, if, in the judgment of our board of directors, any circumstances exist that would make consummation of the proposed amendment inadvisable, then, in accordance with Delaware law, and notwithstanding approval of the proposed amendment to the certificate of incorporation by the stockholders, our board of directors may abandon the proposed amendment, either before or after approval and authorization thereof by the stockholders, at any time prior to the effectiveness of the filing of the certificate of amendment.

Vote Required and Recommendation of the Board of Directors

The affirmative vote of stockholders having a majority of the voting power of all outstanding shares of our capital stock entitled to vote at the meeting is required to approve the amendment to the certificate of incorporation to increase our authorized shares of common stock. Proxies solicited by the board of directors will be voted for Proposal 2, unless you specify otherwise in your proxy. **Our board of directors recommends that you vote for Proposal 2.**

PROPOSAL 3 AMENDMENT TO THE 2004 EQUITY INCENTIVE PLAN

General

The maximum number of shares of our common stock that may be issued pursuant to awards under the La Jolla Pharmaceutical Company 2004 Equity Incentive Plan (the 2004 Plan) is currently 2,000,000. As of March 24, 2005, options covering a total of 1,313,018 shares are outstanding under the 2004 Plan and no shares have been previously issued upon the exercise of options. Accordingly, only 686,982 shares remain available for new grants. We rely heavily on the 2004 Plan to recruit, retain and reward qualified employees and directors. On March 24, 2005, our board of directors unanimously approved, subject to approval by our stockholders, an amendment of the 2004 Plan to make available an additional 2,800,000 shares of our common stock for awards under the 2004 Plan. Our board of directors recommends that you vote for Proposal 3.

The following is a summary of the principal features of the 2004 Plan. The summary below is qualified in its entirety by the terms of the 2004 Plan, a copy of which, as it is proposed to be amended, is attached hereto as Appendix B and is incorporated by reference herein.

Summary of the 2004 Plan

Purpose. The purpose of the 2004 Plan is to advance our and our stockholders' interests by providing eligible persons with financial incentives to promote the success of our business objectives, by increasing

eligible persons' proprietary interest in us and by giving us a means to attract and retain employees and directors of appropriate experience and stature.

Administration, Amendment and Termination. The 2004 Plan is administered by the compensation committee of our board of directors. The compensation committee has the authority: to interpret the 2004 Plan and any agreements defining the rights and obligations of recipients of awards granted under the 2004 Plan; to determine the terms and conditions of awards; to prescribe, amend and rescind the rules and regulations under the 2004 Plan; and to make all other determinations necessary or advisable for the administration of the 2004 Plan.

The compensation committee, in its discretion, selects from the class of eligible persons those individuals to whom awards will be granted and determines the nature, dates, amounts, exercise prices, vesting periods and other relevant terms of such awards. The compensation committee may, with the consent of the recipient of an award, modify the terms and conditions of such award. However, outstanding options may not be repriced without stockholder approval. In addition, the compensation committee has no authority or discretion with respect to the recipients, timing, vesting, underlying shares or exercise price of Nonemployee Director's Options (as defined below) because these matters are specifically governed by the provisions of the 2004 Plan. Awards may be granted under the 2004 Plan until the earlier of the tenth anniversary of the adoption of the 2004 Plan or its termination.

Eligibility. Our directors, employees and consultants, and the directors, employees and consultants of any affiliated company, if any, are eligible to receive grants of stock options, restricted stock, stock appreciation rights, stock payments, performance awards of cash and/or stock and dividend equivalents under the 2004 Plan (Incentive Awards). As of March 24, 2005, 153 people were eligible for selection to receive awards under the 2004 Plan, consisting of 138 employees other than executive officers, 10 executive officers (one of whom is also a director), and five non-employee directors. In addition to being eligible to receive Incentive Awards, each of our non-employee directors is entitled to receive an automatic, one-time grant of an option upon becoming a director and an annual grant of an additional option upon each re-election as a director or upon continuing as a director after the annual meeting without being re-elected as a result of the classification of the board of directors (all of such options are referred to as Nonemployee Director's Options).

Securities Subject to the 2004 Plan. Currently, no more than 2,000,000 shares of our common stock may be issued and outstanding or subject to outstanding awards granted under the 2004 Plan. If Proposal 3 is approved, the number of shares of our common stock that may be issued and outstanding or subject to outstanding awards granted under the 2004 Plan will increase by 2,800,000 shares to 4,800,000. Shares of common stock subject to unexercised portions of any award that expire, terminate or are canceled, and shares of common stock issued pursuant to an award that we reacquire pursuant to the terms of the award under which the shares were issued, will again become eligible for the grant of further awards under the 2004 Plan. The shares to be issued under the 2004 Plan are made available either from authorized but unissued shares of our common stock or from previously issued shares of our common stock that we reacquire, including shares purchased on the open market.

Adjustments. The number and kind of shares of common stock or other securities available under the 2004 Plan in general, as well as the number and kind of shares of common stock or other securities subject to outstanding awards and the price per share of such awards, may be proportionately adjusted to reflect stock splits, stock dividends and other capital stock transactions. If we are the surviving corporation in any merger or consolidation, each outstanding and vested option will entitle the optionee to receive the same consideration received by holders of the same number of shares of our common stock in such merger or consolidation.

Section 162(m) of the Internal Revenue Code Limitations. In general, Section 162(m) of Internal Revenue Code of 1986, as amended (the Internal Revenue Code), imposes a \$1 million limit on the amount of compensation that we may deduct in any tax year with respect to our Chief Executive Officer and each of our other four most highly compensated officers, including any compensation relating to an award granted under the 2004 Plan. The 2004 Plan is designed to allow us to grant awards that are not subject to the \$1 million limit imposed by Section 162(m). No single employee may be granted any awards with respect to

more than 1,000,000 shares of common stock or, in the case of a performance award, in excess of \$1 million in any one calendar year; provided, however, that this limitation does not apply if it is not required in order for the compensation attributable to such awards to qualify as performance-based compensation as described in Section 162(m) and the regulations issued thereunder. Furthermore, if Section 162(m) would otherwise apply and if the amount of compensation a person would receive under an award is not based solely upon an increase in the value of the underlying shares of our common stock after the date of grant or award, the compensation committee is authorized to condition the grant, vesting, or exercisability of such an award on the attainment of a pre-established objective performance goal. The 2004 Plan defines a pre-established objective performance goal to include one or more of the following performance criteria: cash flow; earnings per share (including earnings before interest, taxes and amortization); return on equity; total stockholder return; return on capital; return on assets or net assets; income or net income; operating margin; return on operating revenue; attainment of stated goals related to our research and development or clinical trial programs; attainment of stated goals related to our capitalization, costs, financial condition or results of operations; and any other similar performance criteria.

Change in Control. Unless the compensation committee provides otherwise in a written agreement, in the event of a change in control (as defined in the 2004 Plan), the compensation committee will provide that all options (other than Nonemployee Director's Options) either: vest in full immediately preceding the change in control and terminate upon the change in control; be assumed or continued in effect in connection with the change in control transaction; be cashed out for an amount equal to the consideration per share offered in connection with the change in control transaction less the exercise price; or be substituted for similar awards of the surviving corporation. The compensation committee will determine the effect that a change in control has on an award (other than an option) outstanding at the time such a change in control occurs. Immediately prior to a change in control, all outstanding Nonemployee Director's Options will vest in full.

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

Stockholder Rights. No recipient or permitted transferee of an award under the 2004 Plan has any rights as a stockholder with respect to any shares issuable or issued in connection with the award until we receive all amounts payable in connection with exercise of the award and performance by the recipient of all obligations under such award.

Award Types

Stock Options. Stock options granted under the 2004 Plan may be incentive stock options (Incentive Stock Options), which are intended to qualify under the provisions of Section 422 of the Internal Revenue Code, or nonqualified stock options (Nonqualified Stock Options), which do not so qualify.

The exercise price for each option (other than Nonemployee Director's Options) is determined by the compensation committee at the date of grant and may not be set below the fair market value of the underlying common stock on the date of grant, subject to permissible discounts of up to 15% from fair market value on the date of grant for Nonqualified Stock Options in lieu of salary or bonus. Notwithstanding the foregoing, in no event may the exercise price be less than the par value of the shares of common stock subject to the option, and the exercise price of an Incentive Stock Option may not be less than 100% of the fair market value on the date of grant. Fair market value is equal to the closing price of our common stock on the date of grant. On March 24, 2005, the fair market value of our common stock was \$0.61 per share.

The exercise price of any option may be paid in cash or by other consideration deemed by the compensation committee to be acceptable, including delivery of our capital stock (surrendered by or on behalf of the optionee) or surrender of other awards previously granted to the recipient exercising the option. The compensation committee may allow exercise in a broker-assisted transaction in which the exercise price will not be received until after exercise if the exercise of the option is followed by an immediate sale of all or a portion of the underlying shares and a portion of the sales proceeds is dedicated to full payment of the exercise price.

Options (other than Nonemployee Director's Options) granted under the 2004 Plan vest, become exercisable and terminate as determined by the compensation committee. All options granted under the 2004 Plan may be exercised at any time after they vest and before their expiration date or earlier termination; provided, however, that no option may be exercised more than 10 years after the date of its grant; and provided, further, that the exercise period may be less than 10 years if required by the Internal Revenue Code. In the absence of a specific written agreement to the contrary, and in each case subject to earlier termination on the option's original expiration date, options will generally terminate: immediately upon termination of the recipient's employment with us for just cause; 12 months after death or permanent disability; 24 months after normal retirement; and, with respect to termination of employment for any reason other than just cause, disability or retirement, three months in the case of Incentive Stock Options and six months in the case of Nonqualified Stock Options. Notwithstanding the foregoing, the compensation committee may designate shorter or longer periods after termination of employment to exercise any option (other than a Nonemployee Director's Option) if provided for in the instrument evidencing the grant of the options or if agreed upon in writing by the recipient. Options cease to vest upon termination of employment, but the compensation committee may accelerate the vesting of any or all options that had not become exercisable on or prior to the date of such termination. In the event that a nonemployee director ceases to be a director, an option granted to such director (other than a Nonemployee Director's Option) is exercisable, to the extent exercisable at that date, for a period of five years after that date or longer if permitted by the compensation committee.

Other Awards. In addition to options, the compensation committee may also grant performance awards, restricted stock, stock appreciation rights (SARs), stock payments and dividend equivalents. Performance awards entitle the recipient to a payment in cash or shares of our common stock upon the satisfaction of certain performance criteria. Shares of restricted stock may be granted by the compensation committee to recipients who may not transfer the restricted shares until the restrictions are removed or expire. These restrictions will be for a period of at least one year for performance-based grants and three years for non-performance-based grants. SARs, either related or unrelated to options, entitle the recipient to payment (in the form of cash, stock or a combination thereof) of the difference between the fair market value of a share of common stock as of a specified date and the exercise price of the related option or initial base amount, multiplied by the number of shares as to which such SAR is exercised. The compensation committee may also approve stock payments of our common stock to any eligible person and may also grant dividend equivalents payable in cash, common stock or other awards to recipients of options, SARs or other awards denominated in shares of common stock. For all such awards, the compensation committee will generally determine the relevant criteria, terms and restrictions.

Nonemployee Director's Options. Under the 2004 Plan, each of our nonemployee directors automatically receives, upon becoming a nonemployee director, a one-time grant of a Nonqualified Stock Option to purchase up to 40,000 shares of our common stock at an exercise price equal to the fair market value of a share of the common stock on the date of grant. These Nonemployee Director's Options have a term of 10 years and vest with respect to 25% of the underlying shares on the grant date and with respect to an additional 25% of the underlying shares on the date of each of the first three anniversaries of such grant, but only if the director has remained a director for the entire period from the date of grant to such date.

In addition, each nonemployee director, upon re-election to our board of directors or upon continuing as a director after an annual meeting without being re-elected due to the classification of the board of directors, automatically receives a grant of an additional Nonqualified Stock Option to purchase up to 10,000 shares of our common stock. These additional Nonemployee Director's Options have a term of 10 years and vest and become exercisable upon the earlier to occur of the first anniversary of the grant date or immediately prior to the annual meeting of stockholders next following the grant date, provided that the director has remained a director for the entire period from the grant date to such earlier date. The exercise price for these additional Nonemployee Director's Options is the fair market value of our common stock on the date of their grant. Finally, all outstanding Nonemployee Director's Options vest in full immediately prior to any change in control.

Federal Income Tax Consequences

The following summary of certain federal income tax consequences of the receipt and exercise of awards granted by us is based upon the laws and regulations in effect as of the date of this proxy statement and does not purport to be a complete statement of the law in this area. Furthermore, the discussion below does not address the tax consequences of the receipt and exercise of awards under foreign, state and local tax laws, and such tax laws may not correspond to the federal income tax treatment described herein. The exact federal income tax treatment of transactions under the 2004 Plan will vary depending upon the specific facts and circumstances involved and participants are advised to consult their personal tax advisors with regard to all consequences arising from the grant or exercise of awards and the disposition of any acquired shares.

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

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

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

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

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

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

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

Nonqualified Stock Options. The grant of a Nonqualified Stock Option to a recipient is generally not a taxable event for the recipient. Upon the exercise of a Nonqualified Stock Option, the recipient will generally recognize ordinary income equal to the excess of the fair market value of the shares the recipient acquires upon exercise (determined as of the date of exercise) over the purchase price paid for the shares upon exercise of the Nonqualified Stock Option. Under recently enacted tax laws, the time for recognizing ordinary income may occur prior to exercise if the option's exercise price is less than the underlying stock on the date the Nonqualified Stock Option is granted or the Nonqualified Stock Option is granted in tandem with a Stock Appreciation Right. We generally will be entitled to deduct as a compensation expense the amount of such

ordinary income. Provided the shares are held as a capital asset, the recipient's subsequent sale of the shares generally will give rise to capital gain or loss equal to the difference between the sale price and the sum of the purchase price paid for the shares plus the ordinary income recognized with respect to the shares, and such capital gain or loss will be taxable as long term or short term capital gain or loss depending upon the recipient's holding period after exercise.

Stock Appreciation Rights (SARs). Generally, the holder of a SAR will recognize ordinary income equal to the value we pay (whether in cash, stock or a combination thereof) pursuant to the SAR on the date the holder receives payment. If we place a limit on the amount that will be payable under a SAR, the holder may recognize ordinary income equal to the value of the holder's right under the SAR at the time the value of such right equals such limit and the SAR is exercisable. In addition, under recently enacted tax laws, the holder of a SAR with certain features may be required to recognize ordinary income on the date the SAR becomes exercisable. We will generally be entitled to a deduction in an amount equal to the ordinary income recognized by the holder.

Stock Purchase Rights - Restricted Stock. Under the 2004 Plan, we are authorized to grant rights to purchase shares of restricted common stock subject to a right to repurchase such stock at the price paid by the participant if the participant's employment relationship with us terminates prior to the lapse of such repurchase right. In general, there will be no tax consequences to a participant upon the grant of a right to purchase such restricted stock or upon purchase of such restricted stock. Instead, the participant will be taxed at ordinary income rates at the time our repurchase rights expire or are removed on an amount equal to the excess of the fair market value of the stock at that time over the amount the participant paid to acquire such stock. A participant who acquires restricted stock, however, may make an election under Section 83(b) of the Internal Revenue Code with respect to such stock. If such an election is made within 30 calendar days after the participant's acquisition of the stock, the participant is taxed at ordinary income rates in the year in which the participant acquires the restricted stock. The ordinary income the participant must recognize is equal to the excess of the fair market value of the stock at the time of the participant's acquisition of the stock (determined without regard to the restrictions) over the amount that the participant paid to acquire such stock. If a participant makes a timely election under Section 83(b) of the Internal Revenue Code with respect to restricted stock, the participant generally will not be required to report any additional income with respect to such restricted stock until he or she disposes of such stock, at which time he or she will generally recognize capital gain or loss (provided the shares are held as a capital asset) equal to the difference between the sales price and the fair market value of the stock at the time of the participant's acquisition of the stock (determined without regard to the restrictions). In the event that a participant forfeits (as a result of a repurchase) restricted stock with respect to which an election under Section 83(b) of the Internal Revenue Code has been made, the participant ordinarily will not be entitled to recognize any loss for federal income tax purposes (except to the extent the amount realized by the participant at the time of such forfeiture is less than the participant's purchase price for such stock). We generally will be entitled to a deduction equal to the amount of ordinary income, if any, recognized by a participant.

Other Awards. In addition to the awards described above, the 2004 Plan authorizes certain other types of awards that may include payments in cash, our common stock or a combination of cash and our common stock. The tax consequences of such awards will depend upon the specific terms of such awards. Generally, however, a participant who receives an award payable in cash will recognize ordinary income, and we will be entitled to a deduction, with respect to such award at the earliest time at which the participant has an unrestricted right to receive the amount of the cash payment. In general, the sale or grant of stock to a participant under the 2004 Plan will be a taxable event at the time of the sale or grant if such stock at that time is not subject to a substantial risk of forfeiture or is transferable within the meaning of Section 83 of the Internal Revenue Code in the hands of the participant. For such purposes, stock is ordinarily considered to be transferable if it can be transferred to another person who takes the stock free of any substantial risk of forfeiture. In such case, the participant will recognize ordinary income, and we will be entitled to a deduction, equal to the excess of the fair market value of such stock on the date of the sale or grant over the amount, if any, that the participant paid for such stock. Stock that, at the time of receipt by a participant, is subject to restrictions that constitute a substantial risk of forfeiture and that is not transferable within the meaning of

Section 83 of the Internal Revenue Code generally will be taxed under the rules applicable to restricted stock as described above.

Withholding. In the event that an optionee or other recipient of an award under the 2004 Plan is our employee, we generally will be required to withhold applicable federal income taxes with respect to any ordinary income recognized by such optionee or other award recipient in connection with stock options or other awards under the 2004 Plan.

Certain Additional Rules Applicable to Awards. The terms of awards granted under the 2004 Plan may provide for accelerated vesting in connection with a change in control. In that event, and depending upon the individual circumstances of the recipient, certain amounts with respect to such awards may constitute excess parachute payments under the golden parachute provisions of the Internal Revenue Code. Under these provisions, a participant will be subject to a 20% excise tax on any excess parachute payments and we will be denied any deduction with respect to such parachute payment.

We generally are entitled to a deduction equal to the ordinary income recognized by a recipient in connection with an award. However, our deduction (including the deduction related to ordinary income recognized by a recipient) for compensation paid to our Chief Executive Officer and each our other four most highly compensated officers may be limited to \$1 million per person annually. Depending on the nature of the award, all or a portion of the ordinary income attributable to certain awards granted under the 2004 Plan may be included in the compensation subject to such deduction limitation.

Interest of Certain Persons in Matters to Be Acted Upon

Each of our current directors, executive officers and employees is eligible to receive Incentive Awards under the 2004 Plan. Other than automatic option awards to nonemployee directors, the compensation committee has the discretion to determine which eligible persons will receive Incentive Awards under the 2004 Plan. As a result, future participation in the 2004 Plan by executive officers, directors and other employees is not determinable. On May 19, 2005, each of Dr. Fildes and Dr. Smith, if re-elected as a director at the annual meeting, along with each continuing nonemployee director, will each automatically receive a Nonemployee Director's Option to purchase up to 10,000 shares of our common stock. On the dates of future annual meetings, each continuing and re-elected nonemployee director will automatically receive an additional Nonemployee Director's Option to purchase up to 10,000 shares of our common stock.

Vote Required and Recommendation of the Board of Directors

The affirmative vote of a majority of the shares present in person or represented by proxy and entitled to vote at the annual meeting, at which a quorum is present, is required to approve Proposal 3. Proxies solicited by the board of directors will be voted for Proposal 3, unless you specify otherwise in your proxy. **Our board of directors recommends that you vote for Proposal 3.**

PROPOSAL 4 AMENDMENT TO THE 1995 EMPLOYEE STOCK PURCHASE PLAN

General

The maximum number of shares of our common stock that may be issued under the La Jolla Pharmaceutical Company 1995 Employee Stock Purchase Plan (the Purchase Plan) is currently 1,500,000 shares. As of March 24, 2005, 1,290,409 shares have been issued under the Purchase Plan and 209,591 shares remain available for future issuance. The Purchase Plan permits qualifying employees to purchase shares of our common stock every three months at a price that is 85% of the fair market value of the common stock at specified dates. We use the Purchase Plan as an incentive to employees and to encourage employee ownership of our common stock. By increasing employee stock ownership, we hope to align the interests of our employees with the interests of our stockholders. Our board of directors has unanimously approved, subject to stockholder approval, an amendment to the Purchase Plan to make available an

additional 700,000 shares of our common stock for issuance to qualifying employees. Our board of directors recommends that you vote for Proposal 4.

Summary of the 1995 Employee Stock Purchase Plan

The following is a summary of the principal features of the Purchase Plan. The summary below is qualified in its entirety by the terms of the Purchase Plan, a copy of which, as it is proposed to be amended, is attached hereto as Appendix C and is incorporated by reference herein.

Purpose and Eligibility. The purpose of the Purchase Plan is to maintain competitive equity compensation programs and to provide our employees with an opportunity and incentive to acquire a proprietary interest in us through the purchase of common stock, thereby more closely aligning the interests of our employees and stockholders. The Purchase Plan, including the right of participants to make purchases of our common stock thereunder, is intended to qualify under the provisions of Section 423 of the Internal Revenue Code. Subject to certain limitations imposed by Section 423 of the Internal Revenue Code, any employee or, in the discretion of the Purchase Plan's administrator, any employee of a subsidiary, whose customary employment is for more than five months per calendar year and for more than 20 hours per week, is eligible to participate in the Purchase Plan (each, an Eligible Employee).

As of March 24, 2005, there were 156 employees eligible to participate in the Purchase Plan, including 10 executive officers (one of whom is also a director). Participation in the Purchase Plan is voluntary and depends upon each Eligible Employee's election to participate and his or her determination as to the level of payroll deductions to be allocated to the purchase of common stock under the Purchase Plan. Accordingly, future purchases by executive officers and other employees under the Purchase Plan are not determinable.

Offering Dates and Grants of Options. The Purchase Plan is implemented by a series of consecutive and overlapping Offering Periods commencing on each January 1, April 1, July 1 and October 1 during the term of the Purchase Plan. Offering Periods generally last for 24 months each, provided that the administrator of the Purchase Plan may alter the duration of the Offering Periods without stockholder approval if the change is announced at least 15 days before the commencement of the first Offering Period to be affected. The first day of each Offering Period is referred to as an Enrollment Date. Each Offering Period is generally composed of eight three-month Purchase Periods. The last day of each Purchase Period, *i.e.*, each March 31, June 30, September 30 and December 31, is referred to as an Exercise Date under the Purchase Plan.

Eligible Employees desiring to participate in the Purchase Plan may enroll in an Offering Period by submitting a subscription agreement to us at least five business days prior to the Enrollment Date for that Offering Period. The subscription agreement specifies a whole number percentage from 1% to 10% of the Eligible Employee's base salary or hourly compensation and any cash bonus to be deducted from the Eligible Employee's paychecks during the Offering Period and applied to the purchase of common stock under the Purchase Plan. The Eligible Employee then receives an Option to purchase on each Exercise Date during the Offering Period up to that number of shares of common stock determined by dividing \$6,250 by the fair market value of a share of common stock on the Enrollment Date (the Periodic Exercise Limit).

Notwithstanding the foregoing, no participant may receive an Option (a) if immediately after such grant, the participant would own stock and/or outstanding options to purchase stock amounting to five percent or more of the total combined voting power of all classes of our stock or of any subsidiary or (b) which permits the participant's rights to purchase stock under all of our employee stock purchase plans and any of our subsidiaries to accrue at a rate in excess of \$25,000 worth of stock (determined at the fair market value of the stock at the time such Option is granted) in any calendar year. Eligible Employees may participate in only one Offering Period at a time. A participant's subscription agreement remains in effect for successive Offering Periods unless the participant withdraws as described below.

Payroll Deductions, Exercise and Purchase Price. During the Offering Period, we deduct from a participant's paychecks the amount specified in the participant's subscription agreement, and such deducted amounts are credited to a Plan Account that we maintain for the participant. A participant may increase or decrease (subject to such limits as the administrator may impose) the rate of his or her payroll deductions

during any Purchase Period by providing us with a new subscription agreement authorizing such a change in the payroll deduction rate. A participant may not make additional payments into his or her Plan Account. No interest accrues on payroll deductions under the Purchase Plan, and we may use all payroll deductions for any corporate purpose with no obligation to segregate such amounts.

Unless a participant withdraws from the Offering Period as described below, such participant's Option will be exercised automatically on each Exercise Date of the Offering Period to purchase the maximum number of shares of common stock that can be purchased at the applicable Purchase Price with the payroll deductions accumulated in the participant's Plan Account and not yet applied to the purchase of shares under the Purchase Plan, subject to the Periodic Exercise Limit. If, due to the Periodic Exercise Limit, there remains in a participant's Plan Account immediately following exercise of such participant's Option on an Exercise Date any cash accumulated during the Purchase Period immediately preceding such Exercise Date and not applied to the purchase of shares under the Purchase Plan, such cash will be promptly returned to the participant.

The Purchase Price of the Option on each Exercise Date is an amount equal to 85% of the fair market value of a share of our common stock as of the close of business on the Exercise Date or as of the open of business on the Enrollment Date for the Offering Period in which such Exercise Date occurs, whichever is lower. If the fair market value of the common stock as of the close of business on any Exercise Date is lower than the fair market value of the common stock as of the open of business on the Enrollment Date for the Offering Period in which such Exercise Date occurs, then all participants in such Offering Period will be automatically withdrawn from such Offering Period immediately after the exercise of their Options on such Exercise Date and automatically re-enrolled in the immediately following Offering Period as of the first day thereof.

Withdrawal; Termination of Employment. A participant may withdraw from an Offering Period by giving written notice to us at least five business days before the next Exercise Date. On or promptly following the effective date of any withdrawal, all (but not less than all) of the withdrawing participant's payroll deductions credited to his or her Plan Account and not yet applied to the purchase of shares under the Purchase Plan will be paid to such participant. On the effective date of such withdrawal, the participant's Option for the Offering Period will be automatically terminated and no further payroll deductions for the purchase of shares will be made unless the participant delivers to us a new subscription agreement with respect to a subsequent Offering Period.

Promptly after a participant ceases to be an Eligible Employee for any reason, the payroll deductions credited to the participant's Plan Account and not yet applied to the purchase of shares under the Purchase Plan will be returned to the participant or, in the case of his or her death, to the participant's designated beneficiary.

Administration, Amendment and Termination of Plan. The Purchase Plan will be administered by the compensation committee of the board of directors, which has the authority to interpret the Purchase Plan, prescribe rules and regulations and make all other determinations necessary or advisable for the administration of the Purchase Plan. The compensation committee is entitled to amend the Purchase Plan to the extent necessary to comply with and qualify under Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act), and Section 423 of the Internal Revenue Code, change the Purchase Periods and Offering Periods, limit the frequency and number of changes in payroll deductions during Purchase Periods and Offering Periods, and establish such other limitations or procedures as the compensation committee determines in its sole discretion to be advisable and which are consistent with the Purchase Plan.

The compensation committee may, at any time and for any reason, terminate or amend the Purchase Plan. To the extent necessary to comply with or qualify under Rule 16b-3 under the Exchange Act or Section 423 of the Internal Revenue Code, such amendments will be subject to stockholder approval. The Purchase Plan will remain in effect until the earlier of the 20th anniversary of the adoption of the Purchase Plan or its termination in accordance with the terms of the Purchase Plan.

The compensation committee will consist of three or more members of our board of directors, each of whom shall be disinterested within the meaning of Rule 16b-3; provided, however, that the number of members of the compensation committee may be reduced or increased from time to time by our board of directors to the number required or allowed by Rule 16b-3. Our board of directors may from time to time in its discretion exercise any responsibilities or authority allocated to the compensation committee under the Purchase Plan.

Capital Changes. Subject to any required action by our stockholders, the number of shares subject to outstanding Options and the number of shares remaining available under the Purchase Plan, as well as the Purchase Price, Periodic Exercise Limit and other characteristics of the Options, will be appropriately and proportionately adjusted for any increase or decrease or exchange in the issued shares of common stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the common stock, exchange or any other increase or decrease in the number of shares of common stock effected without receipt of consideration by us. The compensation committee may, if it so determines in the exercise of its sole discretion, adjust the number of shares subject to outstanding Options and the number of shares remaining available under the Purchase Plan, as well as the Purchase Price, Periodic Exercise Limit and other characteristics of the Options, in the event we effect one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of shares of our outstanding common stock.

In the event we propose to dissolve or liquidate, unless otherwise provided by the administrator, all pending Offering Periods will terminate immediately prior to the consummation of such proposed action, and all Plan Account balances will be paid to participants as appropriate and consistent with applicable law.

In the event we propose to sell all or substantially all of our assets, or merge or enter into another business with or into another entity, each Option will be assumed or an equivalent option will be substituted by such successor entity or a parent or subsidiary of such successor entity, unless the administrator determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, to shorten the Offering Periods then in progress by setting a new Exercise Date, in which case each participant's Option will be exercised automatically on the new Exercise Date unless, at least five business days prior to such date, the participant has withdrawn from the Offering Period. An Option will be deemed to be assumed if the Option confers the right to purchase, for each share of stock subject to the Option, the consideration received by holders of common stock for each share of common stock held on the effective date of the transaction.

Nontransferability, Compliance With Law, Withholding. Neither payroll deductions credited to a participant's Plan Account nor any rights with regard to the exercise of an Option or to receive shares under the Purchase Plan nor any Option itself may be assigned or otherwise transferred or disposed by the participant in any way other than by will or the laws of descent and distribution. The compensation committee may treat any prohibited assignment or transfer as an election to withdraw from an Offering Period. Options may be exercised during a participant's lifetime only by the participant.

Shares of our common stock will not be issued with respect to an Option unless the exercise of such Option and the issuance and delivery of such shares pursuant thereto comply with all applicable provisions of law, including securities laws and the requirements of any stock exchange upon which the shares may then be listed. As a condition to the exercise of an Option, we may require the participant to represent that the shares are being purchased only for investment and without any present intention to sell or distribute such shares, and shares issued under the Purchase Plan may be subject to such transfer restrictions and stop-transfer instructions as the compensation committee deems appropriate. At the time of each exercise of an Option, and at the time any common stock issued under the Purchase Plan to a participant is disposed of, the participant must adequately provide for our federal, state or other tax withholding obligations, if any, that arise upon the exercise of the Option or the disposition of the common stock.

Securities Subject to the Purchase Plan. If Proposal 4 is approved, the aggregate number of shares of our common stock that may be issued upon exercise of Options granted under the Purchase Plan will be 2,200,000. Shares of common stock subject to unexercised Options that expire, terminate or are cancelled will again become available for the grant of further Options under the Purchase Plan. As of March 24, 2005,

1,290,409 shares have been issued under the Purchase Plan and the market value of our common stock was \$0.61 per share.

Federal Income Tax Consequences

The following summary of certain federal income tax consequences to the participant and us with respect to the grant and exercise of rights to purchase shares of our common stock under the Purchase Plan does not purport to be a complete statement of the law in this area and reference should be made to the applicable provisions of the Internal Revenue Code. This summary does not address the tax consequences under foreign, state and local, estate and gift tax laws, and such tax laws may not correspond to the federal income tax treatment described herein. The exact income tax treatment of transactions under the Purchase Plan will depend upon the specific circumstances of the participant, and participants are advised to consult their personal tax advisors with regard to all consequences arising from the grant or exercise of Options and the disposition of any acquired shares.

The Purchase Plan is intended to qualify as an employee stock purchase plan under Section 423 of the Internal Revenue Code. If certain employment requirements are satisfied, an employee who is granted a right, or option, to purchase stock under a plan meeting the requirements of Internal Revenue Code Section 423 will not be subject to federal income tax, and we will not be entitled to any deduction, on either the grant or the exercise of such right.

If the employee makes no disposition of the stock acquired pursuant to the exercise of such right within two years after the date of the grant of such stock purchase right (generally, the first day of each Offering Period, i.e., the Enrollment Date) or within one year after the transfer of the stock to the employee pursuant to the exercise of such right, any gain or loss on the subsequent disposition of the stock generally will be treated as capital gain or loss, except to the extent that the employee's purchase price was less than 100% of the fair market value of the stock on the Enrollment Date, and no deduction will be available to us at the time of such disposition. If the employee's purchase price for the stock was less than 100% of the fair market value of the stock on the Enrollment Date, the employee will be required to include in his or her gross income as ordinary income for the year of the disposition (or, if earlier, at the time of his or her death) an amount equal to the lesser of (i) the excess of the fair market value of the stock on the Enrollment Date over the purchase price that the employee would have been required to pay if the employee had exercised such right as of the Enrollment Date or (ii) the excess of the fair market value of the stock at the time of the disposition or death over the amount paid for the stock. No deduction will be available to us with respect to any such ordinary income recognized by the employee.

Any sale or disposition of the stock acquired under a right granted under the Purchase Plan at any time within (i) two years after the Enrollment Date or (ii) one year after the transfer of the shares to the employee pursuant to the exercise of such right generally will be treated as a disqualifying disposition. Upon a disqualifying disposition, the employee generally will recognize ordinary compensation income in an amount equal to the difference between the pur