

CYTOKINETICS INC  
Form PRE 14A  
March 17, 2011

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**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-12

**Cytokinetics, Incorporated**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box)

No fee required.

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

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

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.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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**Cytokinetics, Incorporated**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**May 18, 2011**

To the Stockholders:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of Cytokinetics, Incorporated (the Company), a Delaware corporation, will be held on Wednesday, May 18, 2011, at 10:00 a.m. local time, at the Embassy Suites Hotel, 250 Gateway Boulevard, South San Francisco, CA 94080, for the following purposes:

1. To elect L. Patrick Gage and Wendell Wierenga as Class I Directors, each to serve for a three-year term and until their successors are duly elected and qualified (Proposal One);
2. To ratify the selection by the Audit Committee of the Board of Directors of PricewaterhouseCoopers LLP as the independent registered public accounting firm to the Company for the fiscal year ending December 31, 2011 (Proposal Two);
3. To approve an amendment to the Amended and Restated Certificate of Incorporation increasing the number of authorized shares of common stock from 170,000,000 shares to 245,000,000 shares (Proposal Three);
4. To approve the material terms of the 2004 Equity Incentive Plan, as amended, including an increase in the number of authorized shares reserved for issuance thereunder by 3,000,000 shares (Proposal Four);
5. To approve, on an advisory basis, the compensation of the named executive officers, as disclosed in the Company's Proxy Statement for the 2011 Annual Meeting of Stockholders (Proposal Five);
6. To determine, on an advisory basis, the frequency with which the stockholders of the Company wish to have an advisory vote on the compensation of the named executive officers (Proposal Six);
7. To transact such other business as may properly be brought before the meeting and any adjournment(s) thereof.

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

Only stockholders of record at the close of business on March 23, 2011 are entitled to notice of and to vote at the meeting.

Sincerely,

Sharon A. Barbari  
*Corporate Secretary*

South San Francisco, California  
March 28, 2011



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**YOUR VOTE IS IMPORTANT**

**THIS PROXY STATEMENT IS FURNISHED IN CONNECTION WITH THE SOLICITATION OF PROXIES BY THE COMPANY, ON BEHALF OF THE BOARD OF DIRECTORS, FOR THE 2011 ANNUAL MEETING OF STOCKHOLDERS. THE PROXY STATEMENT AND THE RELATED PROXY FORM ARE BEING DISTRIBUTED ON OR ABOUT APRIL 5, 2011. IF YOU ARE A STOCKHOLDER OF RECORD YOU CAN VOTE YOUR SHARES USING ONE OF THE FOLLOWING METHODS:**

**COMPLETE AND RETURN A WRITTEN PROXY CARD**

**BY INTERNET OR TELEPHONE**

**ATTEND THE COMPANY'S 2011 ANNUAL MEETING OF STOCKHOLDERS AND VOTE**

**ALL STOCKHOLDERS ARE CORDIALLY INVITED TO ATTEND THE MEETING. HOWEVER, TO ENSURE YOUR REPRESENTATION AT THE MEETING, YOU ARE URGED TO MARK, SIGN, DATE AND RETURN THE ENCLOSED PROXY CARD AS PROMPTLY AS POSSIBLE IN THE POSTAGE-PREPAID ENVELOPE ENCLOSED FOR THAT PURPOSE OR VOTE YOUR SHARES BY INTERNET OR TELEPHONE. ANY STOCKHOLDER ATTENDING THE MEETING MAY VOTE IN PERSON EVEN IF HE OR SHE HAS RETURNED A PROXY CARD OR VOTED BY INTERNET OR TELEPHONE. 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 A PROXY ISSUED IN YOUR NAME FROM THAT RECORD HOLDER.**

*Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held on May 18, 2011*

**This Proxy Statement, Notice of Annual Meeting and Form of Proxy Card and the 2010 Annual Report to Stockholders are available at [www.cytokinetics.com/proxy](http://www.cytokinetics.com/proxy). You may obtain directions to the Annual Meeting of Stockholders by directing a request to:**

**Investor Relations  
Cytokinetics, Incorporated  
280 East Grand Avenue  
South San Francisco, California 94080  
email: [investor@cytokinetics.com](mailto:investor@cytokinetics.com)  
Telephone: 650-624-3000**

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**CYTOKINETICS, INCORPORATED**  
**280 East Grand Avenue**  
**South San Francisco, California 94080**

**PROXY STATEMENT**  
**FOR THE ANNUAL MEETING OF STOCKHOLDERS**  
**May 18, 2011**

**INFORMATION CONCERNING SOLICITATION AND VOTING**

**General**

The Board of Directors of Cytokinetics, Incorporated (the "Company") is soliciting proxies for use at the Annual Meeting of Stockholders (the "Annual Meeting") to be held at the Embassy Suites Hotel, 250 Gateway Boulevard, South San Francisco, CA 94080, on Wednesday, May 18, 2011, at 10:00 a.m. local time, and at any adjournment(s) thereof, for the purposes set forth herein and in the accompanying Notice of Annual Meeting of Stockholders. The Company's principal executive offices are located at the address listed at the top of the page and the telephone number is (650) 624-3000.

The Company's Annual Report and its Annual Report on Form 10-K, containing financial statements for the fiscal year ended December 31, 2010, are being provided together with these proxy solicitation materials to all stockholders entitled to vote. This proxy statement, the accompanying proxy card, the Company's Annual Report and its Annual Report on Form 10-K will first be mailed on or about April 5, 2011 to all stockholders entitled to vote at the meeting.

THE COMPANY SHALL PROVIDE WITHOUT CHARGE TO ANY STOCKHOLDER SOLICITED BY THESE PROXY SOLICITATION MATERIALS A COPY OF THE COMPANY'S ANNUAL REPORT ON FORM 10-K, TOGETHER WITH THE FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE ANNUAL REPORT ON FORM 10-K, UPON REQUEST OF THE STOCKHOLDER MADE IN WRITING TO CYTOKINETICS, INCORPORATED, 280 EAST GRAND AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA, 94080, ATTN: INVESTOR RELATIONS, ANNUAL STOCKHOLDER MEETING.

**Record Date and Share Ownership**

Stockholders of record at the close of business on March 23, 2011 (the "Record Date") are entitled to notice of and to vote at the meeting and at any adjournment(s) thereof. The Company has one series of common shares issued and outstanding, designated as Common Stock, \$0.001 par value per share (the "Common Stock"). As of the Record Date, 170,000,000 shares of Common Stock were authorized and [ ] shares were issued and outstanding. As of the Record Date, 10,000,000 shares of Preferred Stock were authorized and none were issued or outstanding.

**Revocability of Proxies**



Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before its use by: (i) issuing a later proxy, (ii) delivering to the Company at its principal offices (Attention: Corporate Secretary) a written notice of revocation, or (iii) attending the Annual Meeting and voting in person.

**Voting**

On all matters, each share has one vote.

**Solicitation of Proxies**

The Company will bear the entire cost of solicitation of proxies, including preparation, assembly, printing and mailing of this proxy statement, the proxy card 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. Proxies may be solicited by certain of the Company's directors, officers and regular employees, without additional compensation, personally or by telephone or facsimile.

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### **Voting Via the Internet or by Telephone**

Stockholders may grant a proxy to vote their shares by means of the telephone or on the Internet. The laws of the State of Delaware, under which the Company is incorporated, specifically permit electronically transmitted proxies, provided that each such proxy contains or is submitted with information from which the Inspector of Elections can determine that such proxy was authorized by the stockholder.

The telephone and Internet voting procedures below are designed to authenticate stockholders' identities, to allow stockholders to grant a proxy to vote their shares and to confirm that stockholders' instructions have been recorded properly. Stockholders granting a proxy to vote via the Internet should understand that there may be costs associated with electronic access, such as usage charges from Internet access providers and telephone companies, which must be borne by the stockholder.

#### ***For Shares Registered in Your Name***

Stockholders of record as of the close of business on the March 23, 2011 record date may go to [www.proxyvoting.com/cytk](http://www.proxyvoting.com/cytk) to grant a proxy to vote their shares by means of the Internet. They will be required to provide the Company's number and control number contained on their proxy cards. The voter will then be asked to complete an electronic proxy card. The votes represented by such proxy will be generated on the computer screen and the voter will be prompted to submit or revise them as desired. Any stockholder using a touch-tone telephone may also grant a proxy to vote shares by calling 1-866-540-5760 and following the recorded instructions.

#### ***For Shares Registered in the Name of a Broker or Bank***

Most beneficial owners whose stock is held in street name receive instructions for granting proxies from their banks, brokers or other agents, rather than the Company's proxy card.

A number of brokers and banks are participating in a program provided through Broadridge Financial Solutions that offers the means to grant proxies to vote shares via telephone and the Internet. If your shares are held in an account with a broker or bank participating in the Broadridge Financial Solutions program, you may grant a proxy to vote those shares telephonically by calling the telephone number shown on the instruction form received from your broker or bank, or via the Internet at Broadridge Financial Solutions' web site at [www.proxyvote.com](http://www.proxyvote.com).

#### ***General Information for All Shares Voted Via the Internet or By Telephone***

Votes submitted via the Internet or by telephone must be received by 11:59 p.m., Eastern Time on May 17, 2011. Submitting your proxy via the Internet or by telephone will not affect your right to vote in person should you decide to attend the Annual Meeting.

#### **Quorum; Abstentions; Broker Non-Votes**

Votes cast by proxy or in person at the Annual Meeting ( Votes Cast ) will be tabulated by the Inspector of Elections (the Inspector) who is expected to be a representative from BNY Mellon Shareowner Services, the Company's Transfer Agent and Registrar. The Inspector will also determine whether or not a quorum is present. Except in certain specific circumstances, the affirmative vote of a majority of shares present in person or represented by proxy at a duly held meeting at which a quorum is present is required under Delaware law for approval of proposals presented to stockholders. In general, Delaware law provides that a quorum consists of a majority of shares entitled to vote and present or represented by proxy at the meeting.

The Inspector will treat shares that are voted WITHHELD or ABSTAIN as being present and entitled to vote for purposes of determining the presence of a quorum. However, such shares will not be treated as votes in favor of approving any matter submitted to the stockholders for a vote. When proxies are properly dated, executed and returned, or if instructions are properly carried out for Internet or telephone voting, the shares represented by such proxies will be voted at the Annual Meeting in accordance with the stockholder's instructions. If no specific instructions are given, the shares will be voted (i) for the election of the nominees for directors set forth herein; (ii) for the ratification of PricewaterhouseCoopers LLP; (iii) for approval of the amendment to the Amended and Restated Certificate of Incorporation; (iv) for approval of the material terms of the 2004 Equity Incentive Plan, as amended;

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(v) for approval, on an advisory basis, of the compensation of the named executive officers; vi) for selection of every three years as the frequency with which the stockholders will vote, on an advisory basis, on the compensation of the named executive officers; and (vii) upon such other business as may properly come before the Annual Meeting or any adjournment thereof, but will not be voted in the election of directors other than as provided in (i) above.

If a broker indicates on the enclosed proxy or its substitute that such broker does not have discretionary authority as to certain shares to vote on a particular matter ( broker non-votes ), then those shares will be considered as present with respect to establishing a quorum for the transaction of business. Discretionary items are proposals considered routine under the rules of the New York Stock Exchange ( NYSE ) on which your broker may vote shares held in street name in the absence of your voting instructions. Non-discretionary items are matters that may substantially affect the rights or privileges of stockholders, such as mergers, stockholder proposals, elections of directors (even if not contested) and, for the first time, under a new amendment to the NYSE rules, executive compensation, including the advisory stockholder votes on executive compensation and on the frequency of stockholder votes on executive compensation. On non-discretionary items for which you do not give your broker instructions, the shares will be treated as broker non-votes. The Company believes that the tabulation procedures to be followed by the Inspector are consistent with the general statutory requirements in Delaware concerning voting of shares and determination of a quorum.

Broker non-votes with respect to proposals set forth in this proxy statement will not be considered Votes Cast and, accordingly, will not affect the determination as to whether the requisite number of Votes Cast has been obtained with respect to a particular matter. Abstentions and broker non-votes will be counted towards the quorum requirement. If there is no quorum, a majority of the votes present at the meeting may adjourn the meeting to another date.

## **Deadline for Receipt of Stockholder Proposals**

Stockholders are entitled to present proposals for action at a forthcoming meeting if they comply with the requirements of the Company's bylaws and the rules established by the Securities and Exchange Commission (the SEC ) under the Securities Exchange Act of 1934, as amended (the Exchange Act ). Under these requirements, proposals of stockholders of the Company that are intended to be presented by such stockholders at the Company's 2012 Annual Meeting of Stockholders must be received by the Company no later than November 29, 2011. A copy of the relevant bylaws provisions relating to stockholder proposals is available upon written request to Cytokinetics, Incorporated, 280 East Grand Avenue, South San Francisco, California 94080, Attention: Corporate Secretary.

## **Results of the voting at the Annual Meeting**

Preliminary voting results will be announced at the Annual Meeting. Final voting results will be published in a current report on Form 8-K that we expect to file within four business days after the Annual Meeting. If final voting results are not available to us in time to file a current report on Form 8-K within four business days after the Annual Meeting, we intend to file a current report on Form 8-K to publish preliminary results and, within four business days after the final results are known to us, file an additional current report on Form 8-K to publish the final results.

## **PROPOSAL ONE**

### **ELECTION OF TWO CLASS I DIRECTORS**

#### **Nominees**

The Company's Board of Directors currently has eight members. The Company has a classified Board of Directors, which is divided into three classes of directors whose terms expire at different times. The three classes are currently comprised of the following directors:

Class I consists of L. Patrick Gage and Wendell Wierenga, who will serve until the 2011 Annual Meeting of Stockholders and stand for re-election as Class I directors at such meeting;

Class II consists of Robert I. Blum, Denise M. Gilbert and James A. Spudich, who will serve until the 2012 Annual Meeting of Stockholders and until their successors have been duly elected and qualified; and

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Class III consists of Santo J. Costa, Stephen Dow and John T. Henderson, who will serve until the 2013 Annual Meeting of Stockholders and until their successors have been duly elected and qualified.

At each Annual Meeting of Stockholders, the successors to directors whose terms will then expire will be elected to serve from the time of election and qualification until the third Annual Meeting of Stockholders following election and until their successors have been duly elected and qualified. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of an equal number of directors.

Unless otherwise instructed, the proxy holders will vote the proxies received by them for the Company's two nominees named below, who are currently directors of the Company. The nominees have consented to be named as nominees in the proxy statement and to continue to serve as directors if elected. If any nominee becomes unable or declines to serve as a director or if additional persons are nominated at the meeting, the proxy holders intend to vote all proxies received by them in such a manner as will assure the election of the nominees listed below if possible (or, if new nominees have been designated by the Board of Directors, in such a manner as to elect such nominees), and the specific nominees to be voted for will be determined by the proxy holders.

The nominees for the Class I directors are as follows:

*L. Patrick Gage*

*Wendell Wierenga*

Biographical information for each Class I director can be found below in the Board of Directors section. The Company is not aware of any reason that any nominee will be unable or will decline to serve as a director. The term of office of each person elected as a Class I director will continue until the Company's 2014 Annual Meeting of Stockholders or until a successor has been elected and qualified. There are no arrangements or understandings between any director or executive officer and any other person pursuant to which he is or was to be selected as a director or officer of the Company.

**Vote Required**

Directors will be elected by a plurality vote of the shares of Common Stock present or represented and entitled to vote on this matter at the meeting. Accordingly, the candidates receiving the highest number of affirmative votes of shares represented and voting on this proposal at the meeting will be elected directors of the Company. Votes withheld from a nominee and broker non-votes will be counted for purposes of determining the presence or absence of a quorum but, because directors are elected by a plurality vote, will have no impact once a quorum is present. See Quorum; Abstentions; Broker Non-Votes.

**THE CLASS II AND III DIRECTORS RECOMMEND THAT  
STOCKHOLDERS VOTE *FOR* THE CLASS I NOMINEES LISTED ABOVE.**

**PROPOSAL TWO**

**RATIFICATION OF SELECTION OF PRICEWATERHOUSECOOPERS LLP  
AS INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM TO THE COMPANY FOR**

**THE FISCAL YEAR ENDING DECEMBER 31, 2011**

The Audit Committee of the Board of Directors has selected PricewaterhouseCoopers LLP, an independent registered public accounting firm, to audit the Company's financial statements for the fiscal year ending December 31, 2011, and recommends that the stockholders vote for ratification of such selection. Although action by stockholders is not required by law, the Board of Directors has determined that it is desirable to request ratification of this selection by the stockholders. Notwithstanding the selection or ratification, the Audit Committee, in its discretion, may direct the selection of a new independent registered public accounting firm at any time during the year, if the Audit Committee determines that such a change would be in the Company's best interest.

Representatives of PricewaterhouseCoopers LLP are expected to be present at the meeting and will be afforded the opportunity to make a statement if they desire to do so, and are expected to be available to respond to appropriate questions.

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**THE BOARD OF DIRECTORS RECOMMENDS THAT  
STOCKHOLDERS VOTE *FOR* RATIFICATION OF THE SELECTION BY THE AUDIT  
COMMITTEE OF THE BOARD OF DIRECTORS OF  
PRICEWATERHOUSECOOPERS LLP AS INDEPENDENT REGISTERED PUBLIC  
ACCOUNTING FIRM TO THE COMPANY  
FOR THE FISCAL YEAR ENDING DECEMBER 31, 2011.**

**Principal Accountant Fees and Services**

Fees incurred for professional services provided by our independent registered public accounting firm in each of the last two fiscal years were:

	<b>Years Ended December 31,</b>	
	<b>2010</b>	<b>2009</b>
Audit Fees	\$ 431,453	\$ 652,851
Audit-Related Fees		
Tax Fees		
Other Fees	1,500	1,500
	<b>\$ 432,953</b>	<b>\$ 654,351</b>

PricewaterhouseCoopers LLP served as our independent registered public accounting firm for the years ended December 31, 2010 and 2009.

Audit fees include fees associated with the annual audit of our financial statements, the interim review of our financial statements included in quarterly reports on Form 10-Q, fees associated with Sarbanes-Oxley compliance, audit services provided in connection with private placements of Common Stock, issuance of consents relating to registration statement filings with the SEC and all services that are normally provided by the accounting firm in connection with statutory and regulatory filings or engagements.

Other fees in 2010 and 2009 consist of the cost of our subscription to an accounting research tool provided by PricewaterhouseCoopers LLP.

All audit services and non-audit services provided to the Company by our independent registered public accounting firm are required to be pre-approved by the Audit Committee. The pre-approval of non-audit services to be provided by PricewaterhouseCoopers LLP includes making a determination that the provision of the services is compatible with maintaining the independence of PricewaterhouseCoopers LLP as our independent registered public accounting firm. All services for audit and other fees set forth in the table above were pre-approved by the Audit Committee.

**Vote Required**

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 PricewaterhouseCoopers LLP. Abstentions 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 this matter has been approved.

**PROPOSAL THREE**

**APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION INCREASING THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK FROM 170,000,000 SHARES TO 245,000,000 SHARES.**

On February 10, 2011, the Board of Directors approved, subject to stockholder approval at the Annual Meeting, an amendment to Article IV of the Amended and Restated Certificate of Incorporation of the Company

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increasing the number of authorized shares of Common Stock by 75,000,000 shares from 170,000,000 shares to 245,000,000 shares (the Authorized Share Increase). Each additional share of Common Stock authorized by the Authorized Share Increase will have the same rights and privileges as each share of Common Stock presently authorized. Stockholders have no preemptive rights to receive or purchase any of the additional shares of Common Stock to be authorized by the proposed amendment.

The Board of Directors believes that the availability of the additional shares of Common Stock for the purposes stated will be beneficial to the Company by increasing the flexibility of its business and financial planning. The proposed increase in the number of authorized shares of Common Stock will ensure that shares will be available, if needed, for issuance in connection with raising capital, issuing stock dividends, effecting stock splits, providing equity incentives to employees, consultants, officers and directors, establishing strategic relationships with other companies, expanding the Company's business through the acquisition of other businesses, technologies or products, and for other corporate purposes that the Board of Directors determines are advisable.

The following table sets forth certain information with respect to the Company's Common Stock:

<b>Common Stock</b>	<b>As of February 28, 2011</b>
Shares presently authorized for issuance	170,000,000
Shares issued and outstanding	66,910,100
Shares reserved for issuance under outstanding warrants and pursuant to equity compensation plans and committed equity financing facility*	18,521,149
Shares presently available for issuance	84,568,751
Shares that will be available for issuance if Proposal Three is adopted	159,568,751

\* Does not include the proposed increase of 3,000,000 shares for the 2004 Equity Incentive Plan, as amended, contemplated by Proposal Four.

If the Authorized Share Increase is approved by the stockholders, the Board of Directors will have the authority to issue the additional authorized shares of Common Stock, or any part thereof, without further action by the stockholders except as required by law or applicable requirements of self-regulatory organizations. For example, the NASDAQ Stock Market LLC, which governs the NASDAQ Global Market on which the Company's Common Stock is listed, currently requires stockholder approval prior to the listing of additional shares in several instances, including acquisition transactions where the present or potential issuance of shares could result in a 20% or greater increase in the number of shares outstanding.

The Authorized Share Increase could have an anti-takeover effect, although that is not the Company's intention in adopting it. For example, if the Company were the subject of a hostile takeover attempt, it could try to impede the takeover by issuing shares of Common Stock, thereby diluting the voting power of the other outstanding shares and increasing the potential cost of the takeover. The availability of this defensive strategy to the Company could discourage unsolicited takeover attempts, thereby limiting the opportunity for the Company's stockholders to realize a higher price for their shares than is generally available in the public markets. The Board of Directors is not currently aware of any attempt, or contemplated attempt, to acquire control of the Company, and this proposal is not being presented with the intent that it be utilized as a type of anti-takeover device. In addition to the Company's Common Stock, the Company's Amended and Restated Certificate of Incorporation currently empowers the Board of Directors

to authorize the issuance of one or more series of Preferred Stock without stockholder approval. No shares of Preferred Stock of the Company are currently issued or outstanding. No change to the Company's Preferred Stock authorization is requested by this Proposal Three.

If the Authorized Share Increase is adopted, it will become effective upon filing of a Certificate of Amendment to the Company's Amended and Restated Certificate of Incorporation with the Delaware Secretary of State, the form of which is set forth in Appendix A. However, if the Company's stockholders approve the proposed amendment, the Board of Directors retains discretion under Delaware law not to implement the proposed amendment. If the Board of Directors exercised such discretion, the number of authorized shares of Common Stock would remain at its current level.

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**Vote Required**

The affirmative vote of the holders of a majority of the shares of Common Stock outstanding as of the record date will be required to approve the Authorized Share Increase. Abstentions and broker non-votes will have the same effect as negative votes.

**THE BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE *FOR* APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION INCREASING THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK FROM 170,000,000 SHARES TO 245,000,000 SHARES.**

**PROPOSAL FOUR**

**APPROVAL OF MATERIAL TERMS OF  
THE 2004 EQUITY INCENTIVE PLAN, AS AMENDED**

The 2004 Equity Incentive Plan, as amended (the 2004 Equity Plan ), was originally adopted by the Board of Directors in January 2004 and approved by the stockholders in February 2004. Our stockholders approved amendments to the 2004 Equity Plan in May 2008, May 2009 and May 2010. A total of 1,600,000 split-adjusted shares of Common Stock were initially authorized for issuance under the 2004 Equity Plan. The authorized amount was thereafter increased pursuant to: i) the evergreen provisions of the 2004 Equity Plan, through May 2008; ii) by shares returned to the Company s 1997 Stock Option/Stock Issuance Plan (the 1997 Plan ) that were rolled into the 2004 Equity Plan pursuant to the terms of the 2004 Equity Plan; iii) by 2,000,000 shares as of May 22, 2008 as approved by the stockholders; iv) by 2,000,000 shares as of May 21, 2009 as approved by the stockholders, and v) by 2,300,000 shares as of May 20, 2010 as approved by the stockholders. As of February 28, 2011, a total of 12,754,668 shares are authorized for issuance under the 2004 Equity Plan, which may be increased by the number of shares, if any, returned on or after February 28, 2011 to the 1997 Plan as a result of termination of options or repurchase of shares issued under such plan, up to a maximum of 467,003 additional shares.

The Board of Directors is now requesting that the stockholders approve the material terms of the 2004 Equity Plan, including the amendments adopted by Board of Directors on February 10, 2011. These amendments include the increase of the number of authorized shares reserved for issuance under the 2004 Equity Plan by an aggregate of 3,000,000 shares. The Board of Directors has approved the 2004 Equity Plan and the increase to the authorized share reserve, subject to approval from the stockholders at the Annual Meeting. If the stockholders approve the amended 2004 Equity Plan, it will replace the current version of the 2004 Equity Plan and will continue in effect until February 9, 2021 unless terminated earlier by the Board of Directors. If the stockholders do not approve the amended 2004 Equity Plan, the current version of the 2004 Equity Plan will remain in effect through the remainder of its term. Stockholder approval of this proposal will also constitute a re-approval of the 2004 Equity Plan for purposes of Section 162(m) of the Code.

**Amendments to the 2004 Equity Plan**

The following is a summary of the amendments to the 2004 Equity Plan approved by the Board of Directors. This summary is qualified in its entirety by reference to the actual text of the proposed amendments to the 2004 Equity Plan, set forth as Appendix B.

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An increase to the number of authorized shares of the Company's Common Stock reserved for issuance under the 2004 Equity Plan of 3,000,000 shares, from 12,754,668 shares as of February 28, 2011 to 15,754,668 shares;

An amendment to the 2004 Equity Plan to allow the Company to award restricted stock units to employees, directors and consultants;

An extension of the termination date of the 2004 Equity Plan from January 14, 2014 to February 9, 2021; and

Certain non-substantive revisions to the 2004 Equity Plan intended to clarify existing language.

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The Board of Directors believes that the approval of the amended 2004 Equity Plan is essential to the Company's continued success. In particular, the Board of Directors believes that the Company's employees are its most valuable assets and that the awards permitted under the 2004 Equity Plan are vital to its ability to attract and retain outstanding and highly skilled individuals in the extremely competitive labor markets in which it operates. Such awards also are crucial to the Company's ability to motivate its employees to achieve the Company's goals. The proposed increase in the number of shares authorized for issuance under the 2004 Equity Plan is intended to provide sufficient shares to fund anticipated equity awards at least until the 2012 Annual Meeting of Stockholders.

In addition, if certain requirements are satisfied, Awards granted under the 2004 Equity Plan to key employees or officers of the Company that are covered by the terms of Section 162(m) of the Code will qualify as deductible performance-based compensation within the meaning of Section 162(m). We are seeking approval of the 2004 Equity Plan so that Awards granted under the 2004 Equity Plan will continue to be able to qualify under Section 162(m) as performance-based compensation.

### **Vote Required**

The approval of the 2004 Equity Plan requires the affirmative vote of a majority of the shares present in person or represented by proxy at the Annual Meeting. Abstentions 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 this matter has been approved.

### **Recommendation of the Board of Directors**

The Board of Directors recommends voting **FOR** approval of the amended 2004 Equity Plan and the number of authorized shares reserved for issuance thereunder.

### **Summary of the 2004 Equity Plan, As Amended**

The following is a summary of the principal features of the 2004 Equity Plan, as amended by the Board of Directors and subject to stockholder approval as described in this Proposal Four. The summary is qualified in its entirety by reference to the 2004 Equity Plan itself set forth in Appendix B.

The 2004 Equity Plan provides for the grant of the following types of incentive awards: (i) stock options, including incentive stock options and nonstatutory stock options, (ii) restricted stock, (iii) stock appreciation rights, (iv) performance units and performance shares, and (v) restricted stock units. Each of these is referred to as an Award. The 2004 Equity Plan also provides the ability to grant performance restricted stock, performance units and performance shares, and performance restricted stock units, which enable the Compensation and Talent Committee of the Board of Directors to use performance goals or other business criteria in establishing specific targets to be attained as a condition to the granting or vesting of Awards.

*Eligibility.* Those who will be eligible for Awards under the 2004 Equity Plan are members of the Board of Directors and employees and consultants who provide services to the Company and its parent or subsidiaries. As of February 28, 2011, approximately 111 of our employees, directors and consultants are eligible to participate in the 2004 Equity Plan.

*Number of Shares of Common Stock Available Under the 2004 Equity Plan.* The maximum aggregate number of shares that may be awarded and sold under the 2004 Equity Plan, after giving effect to the proposed amendment, is 15,754,668 shares, which may be increased by the number of shares, if any, returned on or after February 28, 2011 to

the 1997 Plan as a result of termination of options or repurchase of shares issued under such plan, up to a maximum of 467,003 additional shares.

Shares subject to Awards granted with an exercise price less than the fair market value on the date of grant count against the share reserve as two shares for every one share subject to such an Award.

If an Award expires or becomes unexercisable without having been exercised in full, or, with respect to restricted stock, performance shares or performance units, is forfeited to or repurchased by the Company, the unpurchased shares (or for Awards other than options and stock appreciation rights, the forfeited or repurchased

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shares) which were subject to the Award will become available for future grant or sale under the 2004 Equity Plan. Upon exercise of a stock appreciation rights settled in shares, the gross number of shares covered by the portion of the stock appreciation right so exercised will cease to be available under the 2004 Equity Plan. If the exercise price of an option is paid by tender shares owned by the participant to the Company, or by attestation to the ownership of shares owned by the participant, the number of shares available for issuance under the 2004 Equity Plan will be reduced by the gross number of shares for which the option is exercised. Shares that have actually been issued under the 2004 Equity Plan under any Award will not be returned to the 2004 Equity Plan and will not become available for future distribution under the 2004 Equity Plan; provided, however, that if shares of restricted stock, performance shares, performance units or restricted stock units are repurchased by the Company or are forfeited to the Company, such shares will become available for future grant under the 2004 Equity Plan as described above. Shares used to pay the exercise price of an Award and/or used to satisfy tax withholding obligations will not become available for future grant or sale under the 2004 Equity Plan. To the extent an Award is paid out in cash rather than stock, such cash payment will not reduce the number of shares available for issuance under the 2004 Equity Plan.

If the Company declares a stock dividend or engages in a reorganization or other change in our capital structure, including in connection with a merger, the Administrator (as defined below) will adjust the (i) number and class of shares available for issuance under the 2004 Equity Plan, (ii) number, class and price of shares subject to outstanding Awards, (iii) maximum number of shares issuable under the 2004 Equity Plan and (iv) specified per-person limits on Awards to reflect the change.

*Administration of the 2004 Equity Plan.* The Board of Directors, or a committee of directors or of other individuals satisfying applicable laws and appointed by the Board of Directors (referred to as the Administrator), will administer the 2004 Equity Plan. To make grants to certain of the Company's officers and key employees, the members of the committee must qualify as non-employee directors under Rule 16b-3 of the Exchange Act, and as outside directors under Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code), so that the Company can receive a federal tax deduction for certain compensation paid under the 2004 Equity Plan. The Board of Directors has delegated to the Compensation and Talent Committee of the Board of Directors, administration of the 2004 Equity Plan.

Subject to the terms of the 2004 Equity Plan, the Administrator has the sole discretion to select the employees, consultants, and directors who will receive Awards, to determine the terms and conditions of Awards, to modify or amend each Award (subject to the restrictions of the 2004 Equity Plan), to interpret the provisions of the 2004 Equity Plan and outstanding Awards, and to allow participants to satisfy withholding tax obligations by electing to have the Company withhold from the shares to be issued upon exercise that number of shares having a fair market value equal to the minimum amount required to be withheld.

The Administrator may, with stockholder approval, implement an exchange program under which (i) outstanding Awards may be surrendered or cancelled in exchange for Awards of the same type, Awards of a different type, or cash; (ii) participants would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator; and/or (iii) the exercise price of an outstanding Award could be reduced. However, subject to the mandatory anti-dilution adjustments section of the 2004 Equity Plan, the Administrator cannot amend the terms of any Award to reduce the exercise price of such outstanding Award or cancel an outstanding Award in exchange for cash or other Awards with an exercise price that is less than the exercise price of the original Award, without stockholder approval.

*Options.* The Administrator may grant nonstatutory stock options and incentive stock options under the 2004 Equity Plan. The Administrator determines the number of shares subject to each option, although the 2004 Equity Plan provides that a participant may not receive options for more than 1,500,000 shares in any fiscal year, except in connection with his or her initial employment with the Company, in which case he or she may be granted an option



covering up to a maximum of 3,000,000 shares. Stockholder approval of this Proposal Four will also constitute a re-approval of this 3,000,000-share limitation for purposes of Section 162(m) of the Code.

The Administrator determines the exercise price of options granted under the 2004 Equity Plan, provided the exercise price must be at least equal to the fair market value of our Common Stock on the date of grant. In addition, the exercise price of an incentive stock option granted to any participant who owns more than 10% of the total voting

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power of all classes of our outstanding stock must be at least 110% of the fair market value of the Common Stock on the grant date.

The term of each option will be stated in the Award agreement. The term of an option may not exceed ten years, except that, with respect to any participant who owns more than 10% of the voting power of all classes of the Company's outstanding capital stock, the term of an incentive stock option may not exceed five years.

After a termination of service with the Company, a participant will be able to exercise the vested portion of his or her option for the period of time stated in the Award agreement. If no such period of time is stated in the participant's Award agreement, the participant (or his or her permitted transferee) will generally be able to exercise the option for (i) three months following the participant's termination for reasons other than death or disability, and (ii) twelve months following the participant's termination due to death or disability.

*Restricted Stock.* Awards of restricted stock are issuances of shares of our Common Stock, which vest in accordance with the terms and conditions established by the Administrator in its sole discretion. For example, the Administrator may set restrictions based on the achievement of specific performance goals. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed. The Award agreement generally will grant the Company a right to repurchase or reacquire the shares upon the termination of the participant's service with the Company for any reason, including death or disability. The Administrator will determine the number of shares granted pursuant to an Award of restricted stock, but for Awards of restricted stock that are intended to qualify as performance-based compensation under Section 162(m) of the Code, no participant will be granted a right to purchase or acquire more than 1,000,000 shares of restricted stock during any fiscal year, except that a participant may be granted up to an additional 1,000,000 shares of restricted stock in connection with his or her initial employment with the Company, in which case he or she may be granted up to 2,000,000 shares of restricted stock. Stockholder approval of this Proposal Four will also constitute a re-approval of this 2,000,000-share limitation for purposes of Section 162(m) of the Code.

*Stock Appreciation Rights.* Stock appreciation rights (SARs), are rights to receive the appreciation in fair market value of Common Stock between the exercise date and the date of grant. The Company can pay the appreciation in either cash, shares of Common Stock or a combination thereof. The Administrator, subject to the terms of the 2004 Equity Plan, will have complete discretion to determine the terms and conditions of SARs granted under the 2004 Equity Plan, provided, however, that the exercise price may not be less than 100% of the fair market value of a share on the date of grant and the term of an SAR may not exceed ten years. No participant will be granted SARs covering more than 1,500,000 shares during any fiscal year, except that a participant may be granted SARs covering up to an additional 1,500,000 shares in connection with his or her initial employment with the Company, in which case he or she may be granted SARs covering up to a maximum of 3,000,000 shares. Stockholder approval of this Proposal Four will also constitute a re-approval of this 3,000,000-share limitation for purposes of Section 162(m) of the Code.

The Administrator may grant affiliated SARs, freestanding SARs, tandem SARs or any combination thereof. An affiliated SAR is an SAR that is granted in connection with a related option and which automatically will be deemed to be exercised at the same time that the related option is exercised. However, the deemed exercise of an affiliated SAR will not require a reduction in the number of shares subject to the related option. A freestanding SAR is one that is granted independent of any options. A tandem SAR is a SAR granted in connection with an option that entitles the participant to exercise the SAR by surrendering to the Company an equivalent portion of the unexercised related option. A tandem SAR may be exercised only with respect to the shares for which its related option is then exercisable. With respect to a tandem SAR granted in connection with an incentive stock option, the tandem SAR will expire no later than the expiration of the underlying incentive stock option, the value of the payout with respect to the tandem SAR will be for no more than 100% of the difference between the exercise price of the underlying incentive stock option and the fair market value of the shares subject to the underlying incentive stock option at the time the

tandem SAR is exercised, and the tandem SAR will be exercisable only when the fair market value of the shares subject to the incentive stock option exceeds the exercise price of the incentive stock option.

*Performance Units and Performance Shares.* Performance units and performance shares are Awards that result in a payment to a participant only if the performance goals or other vesting criteria the Administrator establishes are achieved or the Awards otherwise vest. Earned performance units and performance shares will be

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paid, in the Administrator's sole discretion, in the form of cash, shares, or in a combination thereof. The Administrator will establish performance or other vesting criteria in its discretion, which, depending on the extent to which they are met, will determine the number and/or the value of performance units and performance shares to be paid out to participants. The performance units and performance shares will vest at a rate determined by the Administrator; provided, however, that after the grant of a performance unit or performance share, the Administrator, in its sole discretion, may reduce or waive any performance objectives or other vesting provisions for such performance unit or performance share (unless such acceleration is otherwise not permitted under Section 162(m) of the Code to the extent compliance with Section 162(m) is desired). The Administrator will determine the number of performance shares or performance units to be granted to a participant, but for Awards of performance shares or performance units that are intended to qualify as performance-based compensation under Section 162(m) of the Code, no participant will receive more than 1,000,000 performance shares and no participant will receive performance units having an initial value greater than \$4,000,000, except that a participant may be granted up to an additional 1,000,000 performance shares in connection with his or her initial employment with the Company, in which case he or she may be granted up to a maximum of 2,000,000 shares. Stockholder approval of this Proposal Four will also constitute a re-approval of this \$4,000,000-value and 2,000,000-share limitation for purposes of Section 162(m) of the Code. Performance units will have an initial value established by the Administrator on or before the date of grant. Performance shares will have an initial value equal to the fair market value of a share of our Common Stock on the grant date.

*Restricted Stock Units.* A restricted stock unit represents an unfunded and unsecured obligation of the Company for the fair market value of one share of Common Stock on the date of grant. Vested restricted stock units will be settled in shares to be paid out to participants. The Administrator will establish service-based or other vesting criteria at its discretion, which, depending on the extent to which they are met, will determine the number of restricted stock units to be issued to participants. The restricted stock units will vest at a rate determined by the Administrator; provided, however, that after the grant of the restricted stock units, the Administrator, in its sole discretion, may reduce or waive any vesting provisions for such restricted stock units (unless such acceleration is otherwise not permitted under Section 162(m) of the Code to the extent compliance with Section 162(m) is desired). On the date set forth in the Award agreement, all unvested restricted stock units will be forfeited to the Company. The Administrator will determine the number of shares granted pursuant to a restricted stock unit award, but, for restricted stock units intended to qualify as performance-based compensation within the meaning of Section 162(m) of the Code, no participant will be granted units representing more than 1,000,000 restricted stock units during any fiscal year, except that a participant may be granted up to an additional 1,000,000 restricted stock units in connection with his or her initial employment with the Company, in which case he or she may be granted up to a maximum of 2,000,000 units. Stockholder approval of this Proposal Four will also constitute approval of this 2,000,000-unit limitation for purposes of Section 162(m) of the Code.

*Performance Goals.* Awards under the 2004 Equity Plan may be made subject to the attainment of performance goals relating to one or more business criteria within the meaning of Section 162(m) of the Code and may provide for a targeted level or levels of achievement including: cash position, clinical progression, research program progression, collaboration arrangement, collaboration progression, financing event, operating expenses, product approval, projects in development and regulatory filings. The performance goals may differ from participant to participant and from Award to Award, may be used alone or in combination, may be used to measure the performance of the Company as a whole or a business unit of the Company and may be measured relative to a peer group or index or to another performance goal.

*Transferability of Awards.* The grant or vesting of awards is generally not transferable, and all rights with respect to an Award granted to a participant generally will be available during a participant's lifetime only to the participant. The Administrator may make an Award transferable only to one or more of the following: (i) the participant's spouse, children or grandchildren (including adopted and step children or grandchildren), parents, grandparents, siblings or any Family Member (as defined pursuant to Rule 701 of the Securities Act of 1933, as amended) of the participant;

(ii) a trust for the benefit of one or more of the participant or the persons referred to in

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clause (i); (iii) a partnership, limited liability company or corporation in which the participant or the persons referred to in clause (i) are the only partners, members or stockholders; or (iv) organizations as charitable donations.

*Change in Control.* In the event of a change in control of the Company, each outstanding Award will be assumed or an equivalent option or right substituted by the successor corporation or a parent or subsidiary of the successor corporation. If the successor corporation refuses to assume or substitute for the Award, then: (i) the participant will fully vest in, and have the right to exercise, all of his or her outstanding options and stock appreciation rights, including shares as to which such Awards would not otherwise be vested or exercisable; (ii) all restrictions on restricted stock will lapse; and, (iii) with respect to performance shares, performance units and restricted stock units, all performance goals or other vesting criteria will be deemed achieved at target levels and all other terms and conditions met. In addition, if an option or stock appreciation right is not assumed or substituted for in the event of a change in control, the Administrator will notify the participant in writing or electronically that the option or stock appreciation right will be fully vested and exercisable for a period of time determined by the Administrator in its sole discretion, and the option or stock appreciation right will terminate upon the expiration of