

GAIAM, INC
Form 10-Q
May 09, 2014

United States

Securities and Exchange Commission

Washington, D.C. 20549

Form 10-Q

x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES AND EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2014

OR

.. TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES AND EXCHANGE ACT OF 1934

For the transition period from_____to_____

Commission File Number 000-27517

GAIAM, INC.

(Exact name of registrant as specified in its charter)

COLORADO
(State or other jurisdiction of
incorporation or organization)
833 WEST SOUTH BOULDER ROAD,
LOUISVILLE, COLORADO 80027
(Address of principal executive offices)
(303) 222-3600
(Registrant's telephone number, including area code)

84-1113527
(I.R.S. Employer
Identification No.)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities and Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES NO

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES NO

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class	Outstanding at May 6, 2014
Class A Common Stock (\$.0001 par value)	18,662,761
Class B Common Stock (\$.0001 par value)	5,400,000

GAIAM, INC.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This report may contain forward-looking statements that involve risks and uncertainties. The words anticipate, believe, plan, estimate, expect, strive, future, intend and similar expressions are intended to identify such forward-looking statements. Our actual results could differ materially from the results anticipated in these forward-looking statements as a result of certain factors set forth under Management's Discussion and Analysis of Financial Condition and Results of Operations, Quantitative and Qualitative Disclosures about Market Risk and elsewhere in this report. Risks and uncertainties that could cause actual results to differ include, without limitation, general economic conditions, competition, loss of key personnel, pricing, brand reputation, consumer trends, acquisitions, new initiatives undertaken by us, security and information systems, legal liability for website content, merchandise supply problems, failure of third parties to provide adequate service, our reliance on centralized customer service, overstocks and merchandise returns, our reliance on a centralized fulfillment center, increases in postage and shipping costs, E-commerce trends, future Internet related taxes, our founder's control of us, fluctuations in quarterly operating results, customer interest in our products, the effect of government regulation and other risks and uncertainties included in our filings with the Securities and Exchange Commission. We caution you that no forward-looking statement is a guarantee of future performance, and you should not place undue reliance on these forward-looking statements which reflect our view only as of the date of this report. We undertake no obligation to update any forward-looking information.

PART I FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited)

Unaudited Interim Condensed Consolidated Financial Statements

We have prepared our unaudited interim condensed consolidated financial statements included herein pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and note disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to these rules and regulations, although we believe that the disclosures made are adequate to make the information not misleading. In our opinion, the unaudited interim condensed financial statements contain all adjustments (consisting of only normal recurring adjustments) necessary to present fairly, in all material respects, our consolidated financial position as of March 31, 2014, the interim results of operations for the three months ended March 31, 2014 and 2013, and cash flows for the three months ended March 31, 2014 and 2013. These interim statements have not been audited. The balance sheet as of December 31, 2013 was derived from our audited consolidated financial statements included in our annual report on Form 10-K. The interim condensed consolidated financial statements contained herein should be read in conjunction with our audited financial statements, including the notes thereto, for the year ended December 31, 2013.

GAIAM, INC.**Condensed consolidated balance sheets**

(in thousands, except share and per share data)	March 31, 2014 (unaudited)	December 31, 2013
ASSETS		
Current assets:		
Cash	\$ 29,545	\$ 32,229
Accounts receivable, net	23,832	31,399
Inventory, less allowances	19,886	20,275
Deferred advertising costs	583	311
Advances	620	1,078
Other current assets	8,491	8,081
Current assets of discontinued operations	900	1,879
Total current assets	83,857	95,252
Property and equipment, net	22,648	22,540
Media library, net	5,578	5,211
Goodwill	13,999	13,999
Other intangibles, net	858	1,155
Other assets	2,240	1,835
Noncurrent assets of discontinued operations	10	10
Total assets	\$ 129,190	\$ 140,002
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable	\$ 8,440	\$ 11,697
Accrued liabilities	15,092	17,503
Participations payable	632	3,916
Current liabilities of discontinued operations	831	1,596
Total current liabilities	\$ 24,995	34,712
Commitments and contingencies		
Equity:		
Gaiam, Inc. shareholders equity:		
Class A common stock, \$.0001 par value, 150,000,000 shares authorized, 18,638,448 and 18,595,121 shares issued and outstanding at March 31, 2014 and December 31, 2013, respectively	2	2
Class B common stock, \$.0001 par value, 50,000,000 shares authorized, 5,400,000 issued and outstanding at March 31, 2014 and December 31, 2013	1	1
Additional paid-in capital	168,609	167,875
Accumulated other comprehensive income (expense)	194	(33)
Accumulated deficit	(68,547)	(66,413)
Total Gaiam, Inc. shareholders equity	100,259	101,432

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Noncontrolling interest	3,936	3,858
Total equity	104,195	105,290
Total liabilities and equity	\$ 129,190	\$ 140,002

See accompanying notes to the interim condensed consolidated financial statements.

GAIAM, INC.**Condensed consolidated statements of operations**

(in thousands, except per share data)	For the Three Months Ended	
	March 31,	
	2014	2013
	(unaudited)	
Net revenue	\$ 37,611	\$ 36,679
Cost of goods sold	20,591	20,929
Gross profit	17,020	15,750
Expenses:		
Selling and operating	16,408	15,382
Corporate, general and administration	3,090	2,921
Other general income and expense		603
Total expenses	19,498	18,906
Loss from operations	(2,478)	(3,156)
Interest and other income (expense)	38	(31)
Gain on sale of investment	438	
Loss before income taxes and noncontrolling interest	(2,002)	(3,187)
Income tax expense (benefit)	96	(984)
Net loss from continuing operations	(2,098)	(2,203)
Income from discontinued operations, net of tax	26	1,981
Net loss	(2,072)	(222)
Net (income) attributable to noncontrolling interest	(62)	(54)
Net loss attributable to Gaiam, Inc.	\$ (2,134)	\$ (276)
Net income (loss) per share attributable to Gaiam, Inc. common shareholders basic:		
From continuing operations	\$ (0.09)	\$ (0.10)
From discontinued operations	\$ 0.00	\$ 0.09
Basic net income (loss) per share attributable to Gaiam, Inc.	\$ (0.09)	\$ (0.01)
Net income (loss) per share attributable to Gaiam, Inc. common shareholders diluted:		
From continuing operations	\$ (0.09)	\$ (0.10)
From discontinued operations	\$ 0.00	\$ 0.09
Diluted net income (loss) per share attributable to Gaiam, Inc.	\$ (0.09)	\$ (0.01)

Weighted-average shares outstanding:		
Basic	24,006	22,732
Diluted	24,006	22,732

See accompanying notes to the interim condensed consolidated financial statements.

GAIAM, INC.**Condensed consolidated statements of comprehensive loss**

(in thousands, except per share data)	For the Three Months Ended	
	March 31,	
	2014	2013
	(unaudited)	
Net loss	\$ (2,072)	\$ (222)
Accumulated other comprehensive income (loss):		
Foreign currency translation gain (loss), net of tax	27	2
Unrealized gain on equity security, net of tax	232	
Comprehensive loss	(1,813)	(220)
Less: comprehensive (income) loss attributable to the noncontrolling interest	(16)	(55)
Comprehensive loss attributable to Gaiam, Inc.	\$ (1,829)	\$ (275)

See accompanying notes to the interim condensed consolidated financial statements

GAIAM, INC.**Condensed consolidated statements of cash flows**

(in thousands)	For the Three Months Ended March 31,	
	2014	2013
	(unaudited)	
Operating activities		
Net loss	\$ (2,072)	\$ (222)
Income from discontinued operations	(26)	(1,981)
Loss from continuing operations	(2,098)	(2,203)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation	512	553
Amortization	518	386
Share-based compensation expense	583	194
Deferred and stock option income tax expense (benefit)	(43)	91
(Gain) loss on translation of foreign currency	(28)	42
Gain on investment	(438)	
Changes in operating assets and liabilities, net of effects from acquisitions:		
Accounts receivable, net	7,598	3,074
Inventory, net	399	2,272
Deferred advertising costs	(272)	380
Advances	459	282
Other current assets	(647)	(1,060)
Accounts payable	(3,273)	(1,958)
Participations payable	(3,478)	312
Accrued liabilities	(2,237)	1,330
Net cash provided by (used in) operating activities continuing operations	(2,445)	3,695
Net cash provided by (used in) operating activities discontinued operations	239	2,501
Net cash provided by (used in) operating activities	(2,206)	6,196
Investing activities		
Proceeds from sale of investment	438	
Purchase of property, equipment and media rights	(1,208)	(652)
Purchase of businesses, net of acquired cash		(321)
Net cash used in investing activities continuing operations	(770)	(973)
Net cash used in investing activities discontinued operations		(26)
Net cash used in investing activities	(770)	(999)
Financing activities		
Proceeds from issuance of stock	193	

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Net cash (used in) provided by financing activities continuing operations	193	
Net cash (used in) provided by financing activities discontinued operations		(7,903)
Net cash (used in) provided by financing activities	193	(7,903)
Effect of exchange rates on cash	99	(40)
Net change in cash	(2,684)	(2,746)
Cash at beginning of period	32,229	9,858
Cash at end of period	29,545	7,112

Supplemental cash flow information

Income taxes paid	\$ 147	\$ 33
Interest paid	\$ 13	\$ 164

See accompanying notes to the interim condensed consolidated financial statements

Notes to interim condensed consolidated financial statements

1. Organization, Nature of Operations, and Principles of Consolidation

References in this report to we , us , our or Gaiam refer to Gaiam, Inc. and its consolidated subsidiaries, unless we indicate otherwise. We are a lifestyle media company providing a broad selection of information, media, products and services to customers who value personal development, wellness, ecological lifestyles, responsible media and conscious community. We were incorporated under the laws of the State of Colorado on July 7, 1988.

We have prepared the accompanying unaudited interim condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States, or GAAP, and they include our accounts and those of our subsidiaries. Intercompany transactions and balances have been eliminated.

The unaudited condensed consolidated financial position, results of operations and cash flows for the interim periods disclosed in this report are not necessarily indicative of future financial results.

Discontinued Operations

During 2013, we sold our non-branded entertainment media distribution operation and discontinued our DRTV operations. Accordingly, the assets and liabilities, operating results, and cash flows for these businesses are presented as discontinued operations separate from our continuing operations, for all periods presented in these consolidated financial statements and footnotes, unless indicated otherwise.

2. Significant Accounting Policies

No changes were made to our significant accounting policies during the three months ended March 31, 2014.

Recent Accounting Pronouncements

In April of 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2014-08, *Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*. The amendments in the ASU change the criteria for reporting discontinued operations and expand the related disclosures. Under the new guidance, only disposals representing a strategic shift in operations are presented as discontinued operations. The new guidance also requires disclosure of the pre-tax income attributable to a disposal of a significant part of an organization that does not qualify for discontinued operations reporting. The amendments in the ASU are effective in the first quarter of 2015 for public organizations with calendar year ends. The Company has not determined the impact the new ASU will have on reported financial position or results of operations.

Use of Estimates and Reclassifications

The preparation of financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the amounts reported in the accompanying financial statements and disclosures. Although we base these estimates on our best knowledge of current events and actions that we may undertake in the future, actual results may be different from the estimates. We have made certain reclassifications to prior period amounts to conform to the current period presentations.

3. Related Party Transactions

During 2013, we sold the majority of our investment in Real Goods Solar, Inc. (RSOL) for total net proceeds of approximately \$25 million. Following the sale of the first portion in May 2013, our voting ownership percentage declined to below 20% and our Chairman resigned as Chairman of RSOL s board and, thus, we no longer had significant influence over Real Goods Solar. Therefore, we changed our accounting for our investment in RSOL from the equity to cost method. Due to this accounting method change, we no longer report our portion of RSOL s net income or loss each period.

4. Equity

During the first three months of 2014, we issued 4,827 shares of our Class A common stock under our 2009 Long-Term Incentive Plan to our independent directors, in lieu of cash compensation, for services rendered in 2014. We valued the shares issued to our independent directors at estimated fair value based on the closing price of our shares on the date the shares were issued, which by policy is the last trading day of each quarter in which the services were rendered.

The following is a reconciliation from December 31, 2013 to March 31, 2014 of the carrying amount of total equity, equity attributable to Gaiam, Inc., and equity attributable to the noncontrolling interest.

					III	(2)	(3)
Joseph Rubinfeld, Ph.D.	I	(1)	(2)				
Marvin R. Selter	II	(1)	(2)	(3)			
Richard L. Wennekamp	III	(1)	(2)	(3)			

- (1) Members of our Audit Committee. Mr. Selter is the Chairman of the committee.
- (2) Members of our Compensation Committee. Dr. Rubinfeld is Chairman of the committee.
- (3) Members of our Nominating and Corporate Governance Committee. Mr. Wennekamp is Chairman of the committee.

Audit Committee

Our Board of Directors has determined that each of the current members of the Audit Committee is “independent” under the current independence standards of The NASDAQ Capital Market.

The Audit Committee’s responsibilities include oversight activities described below under the “Report of the Audit Committee.” The Audit Committee reviews our financial structure, policies and procedures, appoints our independent registered public accounting firm, reviews with our independent registered public accounting firm the plans and results of the audit engagement, approves permitted non-audit services provided by our independent registered public accounting firm, reviews the independence of our independent registered public accountants and reviews the adequacy of our internal accounting controls.

The Audit Committee has discussed with our independent registered public accounting firm the firm’s independence from management and us, including the matters in the written disclosures required by the Independence Standards Board and considered the compatibility of permitted non-audit services with the auditors’ independence. The Audit Committee operates pursuant to a written charter, a copy of which is available on our website at <http://www.cytrx.com>.

Audit Committee Report

Set forth below is the Audit Committee Report:

The following Report does not constitute soliciting material and should not be considered or deemed filed, or incorporated by reference into any filing, by us with the SEC, except to the extent we specifically incorporate this Report by reference.

The primary function of the Audit Committee is to assist the Board of Directors in fulfilling its oversight responsibilities relating to:

- The quality and integrity of our financial statements and reports.
- Our independent registered public accounting firm’s qualifications and independence.
- The performance of our internal audit function and our independent auditors.

The Audit Committee operates under a written charter adopted by the Board of Directors in April 2003, which was amended by the Board of Directors in March 2007.

The Audit Committee’s primary duties and responsibilities are to:

- Serve as an independent and objective party to monitor our financial reporting process and internal control system.
 - Review and appraise the audit efforts of our independent accountants and internal audit function.
- Provide an open avenue of communication among the independent accountants, internal auditors, our management and the Board of Directors.

The Audit Committee provides assistance to the Board of Directors in fulfilling its oversight responsibility to the stockholders, potential stockholders, the investment community and others relating to our financial statements and the

financial reporting process, the systems of internal accounting and financial controls, the internal audit function, the annual independent audit of our financial statements and the ethics programs when established by our management and the Board of Directors. The Audit Committee has the sole authority (subject, if applicable, to stockholder ratification) to appoint or replace the outside auditors and is directly responsible for determining the compensation of the independent auditors.

The Audit Committee must pre-approve all auditing services and all permitted non-auditing services to be provided by the outside auditors. In general, the Audit Committee's policy is to grant such approval where it determines that the non-audit services are not incompatible with maintaining the auditors' independence and there are cost or other efficiencies in obtaining such services from the auditors as compared to other possible providers. During 2011, the Audit Committee approved all of the non-audit services proposals submitted to it.

The Audit Committee met four times during 2011. The Audit Committee schedules its meetings with a view to ensuring that it devotes appropriate attention to all of its tasks. In discharging its oversight role, the Audit Committee is empowered to investigate any matter brought to its attention, with full access to all of our books, records, facilities and personnel, and to retain its own legal counsel and other advisers as it deems necessary or appropriate.

As part of its oversight of our financial statements, the Audit Committee reviews and discusses with both management and its outside auditors our interim financial statements and annual audited financial statements that are included in our Quarterly Reports on Form 10-Q and Annual Report on Form 10-K, respectively. Our management advised the Audit Committee in each case that all such financial statements were prepared in accordance with generally accepted accounting principles and reviewed significant accounting issues with the Audit Committee. These reviews included discussion with the outside auditors of matters required to be discussed pursuant to Statement on Auditing Standards No. 114, as amended (AICPA Professional Standards, Vol. 1, AU Section 380 - Communication with Audit Committees), as adopted by the Public Company Accounting Oversight Board ("PCAOB") in Rule 3200T.

The Audit Committee retained BDO USA, LLP to audit our financial statements for 2011. The Audit Committee also has selected BDO USA, LLP as our independent registered public accounting firm for fiscal 2012.

The Audit Committee discussed with BDO USA, LLP, which audited our annual financial statements for 2011, matters relating to its independence, including a review of audit and non-audit fees and the letter and written disclosures made by BDO USA, LLP to the Audit Committee pursuant to Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees).

In addition, the Audit Committee reviewed initiatives aimed at strengthening the effectiveness of CytRx's internal control structure. As part of this process, the Audit Committee continued to monitor and review staffing levels and steps taken to implement recommended improvements in internal procedures and controls.

Taking all of these reviews and discussions into account, the Audit Committee recommended to our Board of Directors that our audited financial statements be included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the SEC.

Respectfully submitted,

Audit Committee:

Marvin R. Selter, Chairman
Joseph Rubinfeld, Ph.D.
Richard L. Wennekamp

Compensation Committee

The Compensation Committee is authorized to determine the annual salaries and bonuses of our officers and to determine in its sole discretion all grants of stock options, the exercise price of each option, and the number of shares to be issuable upon the exercise of each option under our various stock option plans. The Committee also is authorized to interpret our stock option plans, to prescribe, amend and rescind rules and regulations relating to the plans, to determine the term and provisions of the respective option agreements, and to make all other determinations deemed necessary or advisable for the administration of the plans. The Compensation Committee operates pursuant to a written charter, a copy of which is available on our website at www.cytrx.com. As indicated above with respect to service on our Audit Committee, our Board of Directors has determined that each of the current members of the

Compensation Committee, Messrs. Wennkamp, Link and Selter, are “independent” under the current independence standards of The NASDAQ Capital Market.

The Compensation Committee held four meetings during 2011.

Nomination and Governance Committee

The Nomination and Governance Committee assists our Board of Directors in discharging its duties relating to corporate governance and the compensation and evaluation of the Board. The Nomination and Governance Committee also operates pursuant to a written charter, a copy of which likewise is available on our website at www.cytrx.com. As indicated above with respect to service on our Audit Committee, our Board of Directors has determined that each of the current members of the Nomination and Governance Committee, Messrs. Wennkamp, Link and Selter, are “independent” under the current independence standards of The NASDAQ Capital Market.

The principal responsibilities of the Nomination and Governance Committee include:

- Overseeing our corporate governance practices and developing and recommending to our Board a set of Corporate Governance Guidelines.
- Assisting our Board in identifying qualified director candidates, selecting nominees for election as directors at meetings of stockholders and selecting candidates to fill vacancies on our Board, and developing criteria to be used in making such recommendations.
- Creating and recommending to our Board a policy regarding the consideration of director candidates recommended by stockholders and procedures for stockholders’ submission of nominees of director candidates.
- Reviewing and recommending the compensation for non-employee directors and making recommendations to our Board for its approval.
- Establishing criteria for our Board and for all committees (including the Nomination and Governance Committee) to use to evaluate their performance on an annual basis.
 - Overseeing developments related to corporate governance and advising our Board in connection therewith.

The Nomination and Governance Committee has sole authority, in connection with the identification of qualified director candidates, to retain and terminate any search firm for such purpose (including the authority to approve any such firm’s fees and other retention terms). We do not currently employ an executive search firm, or pay a fee to any other third party, to locate qualified candidates for director positions.

The Nomination and Governance Committee held two meetings during 2011.

The Nomination and Governance Committee has not established any specific minimum qualifications for director candidates or any specific qualities or skills that a candidate must possess in order to be considered qualified to be nominated as a director.

Qualifications for consideration as a director nominee may vary according to the particular areas of expertise being sought as a complement to the existing board composition. In making its nominations, our Nomination and Governance Committee generally will consider, among other things, an individual’s business experience, industry experience, financial background, breadth of knowledge about issues affecting our company, time available for meetings and consultation regarding company matters and other particular skills and experience possessed by the individual.

Stockholder Recommendations of Director Candidates

The policy of the Nomination and Governance Committee is that a stockholder wishing to submit recommendations for director candidates for consideration by the Nomination and Governance Committee for election at an annual meeting of shareholders must do so in writing by December 15 of the previous calendar year. The written recommendation must include the following information:

- A statement that the writer is a stockholder and is proposing a candidate for consideration.
 - The name and contact information for the candidate.

- A statement of the candidate's business and educational experience.
 - Information regarding the candidate's qualifications to be a director.
- The number of shares of our common stock, if any, owned either beneficially or of record by the candidate and the length of time such shares have been so owned.
- The written consent of the candidate to serve as a director if nominated and elected.
- Information regarding any relationship or understanding between the proposing stockholder and the candidate.
 - A statement that the proposed candidate has agreed to furnish us all information as we deem necessary to evaluate such candidate's qualifications to serve as a director.

As to the stockholder giving the notice, the written recommendation must state the name and address of the stockholder and the number of shares of our common stock which are owned beneficially or of record by the shareholder.

Any recommendations in proper form received from stockholders will be evaluated in the same manner that potential nominees recommended by our Board members or management are evaluated.

Stockholder Nominations of Directors

Our Bylaws specify the procedures by which stockholders may nominate director candidates directly, as opposed to merely recommending a director candidate to the Nomination and Governance Committee as described above. Any stockholder nominations must comply with the requirements of our Bylaws and should be addressed to: Corporate Secretary, CytRx Corporation, 11726 San Vicente Boulevard, Suite 650, Los Angeles, California 90049.

Stockholder Communication with Board Members

Stockholders who wish to communicate with our Board members may contact us by telephone, facsimile or regular mail at our principal executive office. Written communications specifically marked as a communication for our Board of Directors, or a particular director, except those that are clearly marketing or soliciting materials, will be forwarded unopened to the Chairman of our Board, or to the particular director to which they are addressed, or presented to the full Board or the particular director at the next regularly scheduled Board meeting. In addition, communications sent to us via telephone or facsimile for our Board of Directors or a particular director will be forwarded to our Board or the director by an appropriate officer.

Transactions with Related Persons

General

Our Audit Committee is responsible for reviewing and approving, as appropriate, all transactions with related persons, in accordance with its Charter and the requirements of The NASDAQ Capital Market.

Transactions between us and one or more related persons may present risks or conflicts of interest or the appearance of conflicts of interest. Our Code of Ethics requires all employees, officers and directors to avoid activities or relationships that conflict, or may be perceived to conflict, with our interests or adversely affect our reputation. It is understood, however, that certain relationships or transactions may arise that would be deemed acceptable and

appropriate so long as there is full disclosure of the interest of the related parties in the transaction and review and approval by disinterested directors to ensure there is a legitimate business reason for the transaction and that the transaction is fair to us and our stockholders.

As a result, the procedures followed by the Audit Committee to evaluate transactions with related persons require:

- that all related person transactions, all material terms of the transactions, and all the material facts as to the related person's direct or indirect interest in, or relationship to, the related person transaction must be communicated to the Audit Committee; and

- that all related person transactions, and any material amendment or modification to any related person transaction, be reviewed and approved or ratified by the Audit Committee, as required by the requirements of The NASDAQ Capital Market.

Our Audit Committee will evaluate related person transactions based on:

- information provided by members of our Board of Directors in connection with the required annual evaluation of director independence;
- pertinent responses to the Directors' and Officers' Questionnaires submitted periodically by our officers and directors and provided to the Audit Committee by our management;
- background information on nominees for director provided by the Nominating and Corporate Governance Committee of our Board of Directors; and
 - any other relevant information provided by any of our directors or officers.

In connection with its review and approval or ratification, if appropriate, of any related person transaction, our Audit Committee is to consider whether the transaction will compromise standards included in our Code of Ethics. In the case of any related person transaction involving an outside director or nominee for director, the Audit Committee also is to consider whether the transaction will compromise the director's status as an independent director as prescribed by The NASDAQ Capital Market.

Exemption Clause

Item 404(a)(7)(a) of Securities and Exchange Commission Regulation S-K states that: Disclosure need not be provided if the transaction is one where the rates or charges involved in the transaction are determined by competitive bid, or the transaction involves rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority.

Applicable Definitions

For purposes of our Audit Committee's review:

- "related person" has the meaning given to such term in Item 404(a) of Securities and Exchange Commission Regulation S-K ("Item 404(a)"); and
- "related person transaction" means any transaction for which disclosure is required under the terms of Item 404(a) involving the Company and any related persons.

Board Member Attendance at Annual Meetings

Our Board of Directors has no formal policy regarding attendance of directors at our annual stockholder meetings. Our 2011 Annual Meeting of Stockholders was attended by all of our directors.

Section 16(a) Beneficial Ownership Reporting Compliance

Our executive officers and directors and any person who owns more than 10% of our outstanding shares of common stock are required under Section 16(a) of the Securities Exchange Act to file with the SEC initial reports of ownership

and reports of changes in ownership of our common stock and to furnish us with copies of those reports. Based solely on our review of copies of reports we have received and written representations from certain reporting persons, we believe that our directors and executive officers and greater than 10% shareholders for 2010 complied with all applicable Section 16(a) filing requirements.

Security Ownership of Certain Beneficial Owners and Management

Based solely upon information made available to us, the following table sets forth information with respect to the beneficial ownership of our common stock as of March 22, 2011 by (1) each person who is known by us to beneficially own more than five percent of our common stock; (2) each of our directors; (3) our named executive officers listed in the Summary Compensation Table under the caption "Executive Compensation"; and (4) all of our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the SEC rules. Shares of common stock subject to warrants or options that are presently exercisable, or exercisable within 60 days of March 22, 2011, which are indicated by footnote, are deemed outstanding in computing the percentage ownership of the person holding the warrants or options, but not in computing the percentage ownership of any other person. The percentage ownership reflected in the table is based on 148,427,069 shares of our common stock outstanding as of March 22, 2011. Except as otherwise indicated, the holders listed below have sole voting and investment power with respect to all shares of common stock shown, subject to applicable community property laws. An asterisk (*) represents beneficial ownership of less than 1%.

N a m e o f B e n e f i c i a l Owner	Shares of Common Stock	
	Number	Percent
Louis Ignarro, Ph.D.(1)	718,916	*
Steven A. Kriegsman(2)	7,946,166	5.2 %
Max Link, Ph.D.(3)	544,848	*
Joseph Rubinfeld, Ph.D.(4)	629,000	*
Marvin R. Selter(5)	722,451	*
Richard L. Wennekamp(6)	381,965	*
Dan Levitt, M.D., Ph.D.(7)	718,078	*
John Y. Caloz (8)	408,820	*
Scott Wieland, Ph.D.(9)	343,890	*
Benjamin S. Levin(10)	929,411	*
All executive officers and directors as a group (eleven persons)(11)	13,519,939	8.6 %

(1) Includes 627,000 shares subject to options or warrants.

(2) Includes 3,766,390 shares subject to options or warrants. Mr. Kriegsman's address is c/o CytRx Corporation, 11726 San Vicente Boulevard, Suite 650, Los Angeles, CA 90049.

(3) Includes 284,543 shares subject to options or warrants.

(4) Includes 629,000 shares subject to options or warrants.

(5) The shares shown are owned, of record, by the Selter Family Trust or Selter IRA Rollover. Includes 265,000 shares subject to options or warrants owned by Mr. Selter.

(6) Includes 265,000 shares subject to options or warrants.

(7) Includes 618,078 shares subject to options or warrants.

(8) Includes 377,027 shares subject to options or warrants.

(9) Includes 343,890 shares subject to options or warrants.

(10) Includes 895,833 shares subject to options or warrants.

(11) Includes 8,248,157 shares subject to options or warrants.

Executive Officers

Set forth below is information regarding our current executive officers (other than information relating to Steven A. Kriegsman, our President and Chief Executive Officer, which is set forth above under “Continuing Directors”). Each officer’s age is indicated in parentheses after his name.

Daniel Levitt, M.D., Ph.D. (64) joined us in October 2009 as our Chief Medical Officer. Dr. Levitt brings more than 24 years of senior management experience, having spearheaded numerous drug development programs to commercialization at leading biotechnology and pharmaceutical companies. Prior to joining CytRx, Dr. Levitt served from January 2007 to February 2009 as Executive Vice President, Research and Development at Cerimon Pharmaceuticals, Inc. Prior to that, from August 2003 to April 2006, he was Chief Medical Officer and Head of Clinical and Regulatory Affairs at Dynavax Technologies Corporation, managing clinical trials for four programs and overseeing multi-country regulatory strategies. From August 2002 to July 2003, Dr. Levitt was Chief Operating Officer and Head of Research and Development at Affymax, Inc., and prior to that he spent six years at Protein Design Labs, Inc., completing his tenure as that firm’s President and Head of Research and Development. Dr. Levitt’s past experience includes a position as Head of Drug Development at Geron Corporation, and Head of the Cytokine Development Unit and Global Clinical Oncology at Sandoz Pharmaceuticals Ltd., and as Director, Clinical Oncology and Immunology at Hoffmann-LaRoche, Inc. Dr. Levitt graduated Magna Cum Laude and Phi Beta Kappa with a Bachelor of Arts degree from Brandeis University. He earned both his M.D. and his Ph.D. in Biology from the University of Chicago, Pritzker School of Medicine. Dr. Levitt has received 10 major research awards and authored or co-authored nearly 200 papers and abstracts.

John Y. Caloz (60) joined us in October 2007 as our Chief Accounting Officer. In January of 2009 Mr. Caloz was named Chief Financial Officer. He has a history of providing senior financial leadership in the life sciences sector, as Chief Financial Officer of Occulogix, Inc, a NASDAQ listed, a medical therapy company. Prior to that, Mr. Caloz served as Chief Financial Officer of IRIS International Inc., a Chatsworth, CA based medical device manufacturer. He served as Chief Financial Officer of San Francisco-based Synarc, Inc., a medical imaging company, and from 1993 to 1999 he was Senior Vice President, Finance and Chief Financial Officer of Phoenix International Life Sciences Inc. of Montreal, Canada, which was acquired by MDS Inc. in 1999. Mr. Caloz was a partner at Rooney, Greig, Whitrod, Filion & Associates of Saint Laurent, Quebec, Canada, a firm of Chartered Accountants specializing in research and development and high tech companies, from 1983 to 1993. Mr. Caloz, a Chartered Accountant, holds a degree in Accounting from York University, Toronto, Canada.

Scott Wieland, Ph.D. (53) joined CytRx in 2005 as the Vice President, Clinical and Regulatory